

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: NOVEMBER 8, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [22-22002](#)-A-13 **IN RE: IMELDA DEL ROSARIO**
[MJD-1](#)

CONTINUED OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM
NUMBER 1
8-31-2022 [\[26\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

Notice: Continued from October 18, 2022

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor objects to the claim of LVNV Funding, LLC, Claim No. 1.

CLAIM OBJECTION

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a 'claim.'" The law has long treated

unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

The applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The claimant has filed a proof of claim based on a credit account that is stale. The objection's well-pleaded facts show that the debtor has made no payments or other transactions on this credit account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

2. [22-22002](#)-A-13 **IN RE: IMELDA DEL ROSARIO**
[RMP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR REAL
TIME RESOLUTIONS, INC.
9-28-2022 [\[37\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RENEE PARKER/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The objection was withdrawn by the moving party on October 20, 2022, ECF No. 52. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

3. [22-21207](#)-A-13 **IN RE: MANJIT SINGH**
[PGM-1](#)

MOTION TO CONFIRM PLAN
9-29-2022 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee and creditor

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee and creditor PHH Mortgage Corporation oppose the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). The court takes judicial notice of the documents on the court's docket in this case. Fed. R. Evid. 201.

FACTS

This case was filed on May 15, 2022. An objection to confirmation of the previously proposed plan was sustained on July 19, 2022, ECF Nos. 28, 29. The proposed amended plan was filed September 29, 2022, over two months later.

The debtor resides at 878 Trehowell Drive, Roseville, California. PHH Mortgage Corporation has filed a claim, Claim No. 5. The claim shows that the creditor holds a note secured by a deed of trust in the debtor's residence and that as of the filing of this case the pre-petition arrears totaled \$101,177.86.

The proposed Chapter 13 plan provides for treatment of PHH Mortgage in Class 1. However, as both the trustee and PHH Mortgage observe, the plan does not provide any monthly payment for mortgage arrears. The plan does provide a series of contingent possibilities which would allow the plan to proceed with different treatments of PHH Mortgage's secured claim, during the pendency of the plan. See

Plan, Additional Provisions, ECF No 43. It appears that the debtor intends to modify the mortgage loan thereby resolving the arrears in this manner.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Third Party Support of Plan

The trustee argues the plan is not feasible under 11 U.S.C. § 1325(a)(6) as it is not supported by a sufficient declaration by the third party who will commit \$400.00 each month to the debtor for payment into the plan.

The trustee contends, and the court agrees, that the Declaration of Kashmir Kaur is cursory and lacks sufficient factual detail to be of value. First, the declaration does not acknowledge the plan length or state that the declarant is willing and able to make contributions for the entire duration of the plan. Second, as the trustee observes, only net figures for income have been provided. Third, the declaration fails to identify the declarant's source(s) of income. Finally, the court requires a much more detailed portrayal of the declarant's income and expenses to find that a third party has the ability to fund the plan. The court prefers the use of Schedules I and J in proffering such evidence. See Declaration of Kashmir Kaur, ECF No. 44. The subsequently filed declaration by Ms. Kaur is also insufficient and raises additional concerns as Ms. Kaur indicates that her income is derived from the operation of a business. See Declaration, ECF No. 57.

The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(b) (5)

The provisions proposed by the debtor in the Additional Provisions of the plan are locally known as the "Ensminger Provisions". This court does not approve these provisions as there is no provision for payment of mortgage arrears within a reasonable time as required by Section 1322(b) (5). The court sustained the objection to the debtor's previous plan containing these provisions.

The additional provisions provide that payment of mortgage arrears will be made upon the approval of a loan modification. However, the objecting creditor reports that it has not received an application for mortgage modification as of October 24, 2022. See Reply, ECF No. 59, 3:17-18. The debtor's declaration in support of the motion states only "I am pursuing a loan modification." See Declaration, ECF No. 45, 1:25-26. The debtor provides no application date, the status of any pending application or any other detail which supports his assertion that he is pursuing a loan modification. Additionally, the debtor's counsel filed a reply which appears to contradict the debtor's assertion.

DEBTOR INTENDS TO COMPLETE THE LOAN MODIFICATION
PROCESS WITHIN (60) DAYS WITH ASSISTANCE OF COUNSEL
The debtor prays that counsel for the creditor assist
in obtaining the most current application, and counsel
for the debtor will assist in it's prosecution
forthwith. Debtor has no opposition to submitting a
complete loan modification application ("Application")
for later than 30 days of obtaining the Application.

Debtor's Reply, ECF No. 56, 2:3-16.

The debtor's reply acknowledges the debtor has yet to submit an application for a loan modification.

This case has been pending since May 12, 2022, nearly six months. The debtor has had ample time to apply for a loan modification and he has yet to do so. In addition to finding that the proposed plan does not meet the requirements of 11 U.S.C. § 1322(b) (5) the court finds that the debtor's delay in applying for the loan modification evidences that the plan is not proposed in good faith under 11 U.S.C. § 1325(a) (3).

The evidentiary record in this case is closed, LBR 9014-1(f) (1) (C).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the

arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies confirmation of the chapter 13 plan.

4. [22-22222](#)-A-13 **IN RE: RODERICK SINGLETON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-19-2022 [\[20\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The Chapter 13 trustee objects to the debtor's plan as follows.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 95 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v.*

Fantasia (In re Fantasia), 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$4,965.00. The plan cannot be confirmed if the plan payments are not current.

Mortgage Arrearages

Because the plan payments were not tendered the Chapter 13 trustee has been unable pay Class 1 creditor, Rushmore Loan Management Services. As such the September 2022 payment was not tendered to this creditor. The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Business Income

The debtor admitted at the 341 meeting of creditors that he has received no business income this year. This testimony conflicts with assertions in the Statement of Financial Affairs which indicates \$3,185.00 in year-to-date income from the operation of a business. See Statement of Financial Affairs, ECF No. 13.

Expenses

At the 341 meeting the debtor also admitted to paying \$60.00 per month in automobile expenses. This expense is not reflected in Schedule J, ECF No. 13. The court finds that with the additional expense the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Plan Improperly Provides for Attorney Fees

The trustee contends the plan is not feasible as it does not properly provide for payment of the agreed upon attorney fees in the amount of \$4,000.00 to the debtor's counsel. No boxes are checked in the plan indicating how the fees will be approved or paid. See Chapter 13 Plan, Section 3.05, ECF No. 11. The court agrees and sustains this objection.

Attorney Fee Amount Unclear

Debtor's counsel has filed documents regarding compensation which contain inconsistent terms. The trustee cannot determine if the plan is feasible because it is unclear how much counsel is to be paid.

The Rights and Responsibilities Statement, which is signed by the debtor and counsel, indicates that the agreed upon fees total \$4,000.00 and that \$1,187.00 was paid to counsel prior to the filing of the case. See Rights and Responsibilities, ECF No. 12.

The Disclosure of Compensation, which is signed only by the attorney includes the following provisions.

For all chapter 13 cases: All post-confirmation attorney fees, if any, shall be paid as a Class One Administrative Expense. *Consistent with the 2016-b statement and the debtor(s) fee agreement with Kostopoulos & Associates PLLC., IF AT THE TIME OF CONFIRMATION, DEBTOR(S) ATTORNEY FEES EXCEED \$3000.00, DEBTOR(S) ATTORNEY SHALL FILE A FEE APPLICATION. IF THE ORDER CONFIRMING PLAN PROVIDES FOR THE FILING OF ATTORNEY FEES BY APPLICATION, THEN FOR 30 DAYS FOLLOWING THE ENTRY OF THE ORDER CONFIRMING PLAN, THE TRUSTEE SHALL HOLD FROM DISTRIBUTION THE SUM OF \$3000.00 AS A FUND FOR THE PAYMENT OF THE ATTORNEY FEES AND COSTS THAT SHALL BE DETERMINED BY THE COURT PURSUANT TO 11 U.S.C SECTION 330 AND LBR 2016-1(EDM). IF NO FEE APPLICATION HAS BEEN FILED WITHIN THIS 30 DAY PERIOD, THE RESERVED FUNDS WILL BE RELEASED FOR DISTRIBUTION TO CREDITORS. If a fee application is timely filed, the trustee shall continue to withhold the above-indicated sum until an order resolving the fee application has been entered with the Court. At that time, the Trustee shall distribute the withheld funds according to the terms of the plan ad (sic) the order granting/denying fees.

Disclosure of Compensation, ECF No. 13.

The court notes that none of the language contained in the additional terms of the Disclosure of Compensation are indicated in the debtor's plan. Moreover, the terms provided in the Disclosure directly conflict with those in the Rights and Responsibilities Statement which is signed by the debtor and counsel. As such, it is unclear to the court if counsel intends to opt in to the flat fee payment scheme. If so, counsel is limited to \$4,000.00 in attorney fees in this case, absent further application and order by this court.

Each application for additional compensation in Chapter 13 cases is reviewed to determine: (1) if the debtor has agreed to payment of the additional compensation; (2) whether the compensation requested is reasonable under both 11 U.S.C. § 330 and LBR 2016-1(c)(3); (3) the impact of the compensation

requested on the currently confirmed plan, *Matter of Gould*, 2022 WL 4353593, at *2 (9th Cir. Sept. 20, 2022).

The court finds that the attorney fee provisions contained in the Disclosure Statement are in direct conflict with the terms of the debtor's plan and the Rights and Responsibilities Statement executed by the debtor and counsel. Moreover, there is no evidence that the terms in the Disclosure Statement have been agreed to by the debtor.

Attorney compensation in this case shall be limited to \$4,000.00 in this case under LBR 2016-1(c)(1). Any additional compensation during the pendency of this case must be approved after a hearing on an application for compensation pursuant to 11 U.S.C. § 330. The provisions regarding additional attorney fees in the Disclosure of Compensation, ECF No. 13, will not be allowed.

The court will sustain each of the trustee's objections to confirmation.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Service of Objection to Confirmation in Chapter 13

An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. *An objection to confirmation is governed by Rule 9014.* If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Fed. R. Bankr. P. 3015(f) (emphasis added).

Rule 3015(f) provides that Fed. R. Bankr. P. 9014 governs in objections to confirmation of a Chapter 13 plan. As such, Rule 9014(b) prescribes that service is required under Rule 7004 as follows.

The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and

within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b) (9).

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 23. The trustee has correctly served both the debtor and the creditor which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed.

Service under Fed. R. Bankr. P. 7004, 9014(b), 3015(f) is correctly indicated in the certificate of service as to the debtor.

Outdated Form Certificate

The trustee has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, *as incorporated by* Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. Box 6B should have been checked on page 3 indicating Rule 5 service where Rule 7004 was not applicable. In this case box 6B is left blank.

Finally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes or identifies the special notice creditor on the same list. The special notice creditors must be indicated in a separate attachment. To properly memorialize service Attachment 6B2 must be included listing the special notice parties, while indicating the appropriate parties in interest in the certificate. Alternatively, the trustee could use the Clerk's Matrix of special notice creditors and attach

that list as Attachment 6B3, again checking the corresponding boxes in the certificate.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that attorney fees shall be limited to \$4,000.00 in this case under LBR 2016-1(c)(1). Any additional compensation during the pendency of this case must be approved after a hearing on an application for compensation pursuant to 11 U.S.C. § 330. The provisions regarding additional attorney fees in the Disclosure of Compensation, ECF No. 13, will not be allowed.

5. [16-22928](#)-A-13 **IN RE: NICOLE DOW**
[FEC-1](#)

LETTER/MEMORANDUM BY DEBTOR
9-12-2022 [\[111\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
CASE CLOSED: 05/19/2022
DEBTOR DISMISSED: 08/09/2021

No Ruling

6. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-19-2022 [\[28\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The Chapter 13 trustee objects to confirmation of the debtor's plan as follows.

LIQUIDATION

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . . .

11 U.S.C. § 1325(a)(4).

The plan calls for a 0% dividend to the unsecured creditors which the trustee estimates are owed \$12,516.00. The trustee calculates that the debtor's non-exempt equity in assets totals \$26,305.94 based on the amended Schedule A/B filed September 26, 2022. The debtor filed a further Amended Schedule A/B on October 20, 2022. It

is unclear how, or if, this impacts the trustee's liquidation calculation. The court will sustain the objection.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Failure to Provide Income Information

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor provided the trustee with his 2020 income tax return. However, at the 341 meeting the debtor testified that he was required to, and did, file a 2021 tax return. The trustee has requested a copy of the 2021 tax return.

In addition, the debtor has failed to provide pay advices to the trustee for the debtor's non-filing spouse, covering the 6 month period prior to the filing of the bankruptcy case.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court will sustain the trustee's objection.

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy

Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The Chapter 13 trustee has noted concerns regarding the following information provided in the bankruptcy schedules: (1) \$1,500.00 unexplained monthly expense for income taxes on Schedule J; (2) unsubstantiated income of \$7,500.00 per month attributed to the debtor's non-filing spouse on Schedule I; (3) inaccurate valuation of real property in Elk Grove, California in the amount of \$678.00.

Each of these discrepancies requires further documentation, explanation or correction by the debtor and the trustee has not received information which allows for resolution of these matters.

The court notes that the debtor filed an amended Schedule A/B and Statement of Financial Affairs on October 20, 2022. See ECF No. 32. The real property value has been adjusted. It is unclear if this amendment resolved the remaining objections raised by the trustee regarding the debtor's schedules.

The court finds that the plan has not been proposed in good faith under 11 U.S.C § 1325(a)(3).

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Service of Objection to Confirmation in Chapter 13

An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. *An objection to confirmation is governed by Rule 9014.* If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Fed. R. Bankr. P. 3015(f) (emphasis added).

Rule 3015(f) provides that Fed. R. Bankr. P. 9014 governs in objections to confirmation of a Chapter 13 plan. As such, Rule 9014(b) prescribes that service is required under Rule 7004 as follows.

The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Fed. R. Bankr. P. 7004(b) (9).

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 31. The trustee has correctly served both the debtor and the creditor which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed.

Service under Fed. R. Bankr. P. 7004, 9014(b), 3015(f) is not correctly indicated in the certificate of service as to the debtor. Rule 7004 service boxes are blank. The trustee properly served the debtor by first class mail but service on the debtor is under Rule 7004.

Outdated Form Certificate

The trustee has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, *as incorporated by* Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. Box 6B should have been checked on page 3 indicating Rule

5 service where Rule 7004 was not applicable. In this case box 6B is left blank.

Finally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes or identifies the special notice creditor on the same list. The special notice creditors must be indicated in a separate attachment. To properly memorialize service Attachment 6B2 must be included listing the special notice parties, while indicating the appropriate parties in interest in the certificate. Alternatively, the trustee could use the Clerk's Matrix of special notice creditors and attach that list as Attachment 6B3, again checking the corresponding boxes in the certificate.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

7. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
10-11-2022 [[23](#)]

MARC VOISENAT/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

Carrington Mortgage Services, LLC objects to confirmation of the debtor's plan.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Proposed Plan Will Not Fund Ongoing Mortgage Payment

The proposed plan calls for monthly payments of \$3,113.00 and a monthly payment of \$2,160.00 to the objecting creditor for the ongoing mortgage payment. See Chapter 13 Plan, ECF No. 3. Conversely, the objecting creditor indicates that the monthly payment due is \$2,471.87, a difference of \$311.87. The court has reviewed the Schedules I and J filed in this case, ECF No. 1. The schedules show that the debtor has net income of \$3,153.00. While this is sufficient to make the proposed plan payment of \$3,113.00 it does not allow for a \$311.87 increase to the plan payment to fully fund the ongoing mortgage payment.

Proposed Plan Will Not Cure Arrears

While the objecting creditor has not yet filed a claim it contends that the pre-petition arrears total \$55,081.04. The plan provides for arrears in the amount of \$52,000.00. The current budget schedules do not show that the debtor has sufficient income to pay the full amount of claimed arrears, particularly in light of the increased amounts required to make the ongoing mortgage payments.

The court will sustain the objection under 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Carrington Mortgage LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

8. [22-21943](#)-A-13 **IN RE: CHRISTOPHER KEENER**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
9-29-2022 [\[27\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from October 18, 2022, response filed by debtor

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the trustee to properly serve the objection on creditors which had filed requests for special notice. The trustee has properly served all special notice parties.

FEASIBILITY

The trustee contends the plan is not feasible under 11 U.S.C. § 1325(a)(6) as the plan payments are delinquent in the amount of \$3,407.00. Consequently, the trustee was unable to disburse payments to the Class 1 creditor in September 2022.

The debtor filed a response to the trustee's objection indicating his intention to file an amended plan. See Response, ECF No. 31, 1:23.

As such the court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6) and will sustain the trustee's objection.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

9. [22-22244](#)-A-13 **IN RE: LENY HERNANDEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-19-2022 [\[13\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Continued to January 4, 2023, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor's plan contending the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4); and under 11 U.S.C. § 1325(b) as the debtor proposes a voluntary contribution to a 401(k) plan in the amount of \$800.00 per month in Schedule I. See Objection to Confirmation, ECF No. 13.

The trustee's objection provides no analysis of the debtor's completed Form 122C-1, 122C-2. The court is unable to determine if

the trustee contends that the \$800.00 monthly 401(k) contribution has been included in Form 122C, if the trustee contends the form contains errors, or if the legal basis for the trustee's objection was correctly argued under Section 1325(b).

The court will continue the matter for analysis and legal briefing by the parties.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3 (limiting notice for Rule 2002(a)(6) (motions for compensation), Rule 9036-1 (electronic service) and Rule 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Service of Objection to Confirmation in Chapter 13

An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. *An objection to confirmation is governed by Rule 9014.* If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Fed. R. Bankr. P. 3015(f) (emphasis added).

Rule 3015(f) provides that Fed. R. Bankr. P. 9014 governs in objections to confirmation of a Chapter 13 plan. As such, Rule 9014(b) prescribes that service is required under Rule 7004 as follows.

The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

Fed. R. Bankr. P. 9014(b) (emphasis added).

Rule 7004, allows service on the debtor "after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address

as the debtor may designate in a filed writing.” Fed. R. Bankr. P. 7004(b) (9) .

The Chapter 13 trustee filed a certificate of service in this case using EDC 7-005, ECF No. 16. The trustee has correctly served both the debtor and the creditor which requested special notice by first class mail. However, Form EDC 7-005 is incorrectly completed.

Service under Fed. R. Bankr. P. 7004, 9014(b), 3015(f) is correctly indicated in the certificate of service as to the debtor. Rule 7004 service boxes are blank. The trustee properly served the debtor by first class mail.

Outdated Form Certificate

The trustee has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court’s website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court’s website on October 6, 2022.

Special Notice Parties

Conversely, service of the objection to confirmation on the special notice parties is made under Fed. R. Civ. P. 5, as *incorporated by* Fed. R. Bankr. P. 7005. Service is not made under Rule 7004, nor has it been accomplished under Rule 7004 in this case. Rule 5 allows for service on parties by first class mail. Thus, the trustee has properly served the objection on the special notice parties.

While the trustee has properly served the special notice creditors, he has not properly memorialized the service in the Certificate of Service. First, the trustee has failed to check the box in Section 5 indicating the Special Notice parties were served. Second, Box 6B should have been checked on page 3 indicating Rule 5 service where Rule 7004 was not applicable. In this case box 6B is left blank.

Finally, while the certificate properly includes Attachment 6A1 describing Rule 7004 service on the debtor, it improperly includes or identifies the special notice creditor on the same list. The special notice creditors must be indicated in a separate attachment. To properly memorialize service Attachment 6B2 must be included listing the special notice parties, while indicating the appropriate parties in interest in the certificate. Alternatively, the trustee could use the Clerk’s Matrix of special notice creditors and attach that list as Attachment 6B3, again checking the corresponding boxes in the certificate.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the Chapter 13 trustee’s objection to confirmation is continued to January 4, 2023, at 9:00 a.m. No later

than November 29, 2022, the trustee shall file and serve any additional analysis, evidence, and legal argument in support of his objection.

IT IS FURTHER ORDERED, that no later than December 20, 2022, the debtor shall file and serve any written response to include evidence, analysis, or legal argument, in response to the trustee's objection.

IT IS FURTHER ORDERED that all parties shall cite appropriate legal authority in support of proffered argument. Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A).

IT IS FURTHER ORDERED that the evidentiary record will close on December 20, 2022.

IT IS FURTHER ORDERED that if either party fails to file pleadings as ordered the court may rule on the matter without further notice or hearing.

10. [22-22251](#)-A-13 **IN RE: CELESTE RASMUSSEN**
[RTD-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY SACRAMENTO CREDIT UNION
10-19-2022 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
ROXANNE DANERI/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

Sacramento Credit Union objects to confirmation of the debtor's Chapter 13 plan. The creditor holds a note secured by a 2015 Mercedes Benz C300.

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

The court takes judicial notice of the documents on file in the instant case and in the debtor's most recently filed Chapter 13 case: No. 2020-24414, E.D. Cal. Bankr. (2020). Fed. R. Evid. 201.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

The creditor objects to confirmation contending the proposed plan is not feasible under 11 U.S.C. § 1325(a)(6).

This is the second recent Chapter 13 case filed by the debtor. The debtor's prior Chapter 13 case was filed September 18, 2020, and dismissed August 26, 2022. See Case No. 2020-24414, E.D. Cal. Bankr. (2020). The instant case was filed on the heels of the previous case, on September 2, 2022.

The proposed plan calls for a monthly payment of \$2,975.00. This is higher than the plan payment called for in the previous case, which was dismissed for significant delinquency in plan payments as follows.

Debtor is \$8,614.81 delinquent in plan payments, which represents multiple months of the \$2,930.60 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Civil Minutes, Case No. 2020-24414, E.D. Cal. Bankr. (2020), ECF No. 26.

The debtor projects gross monthly income of \$7,316.25. See Schedule I, ECF No. 1. The Statement of Financial Affairs does not support this monthly projection as it shows the debtor had earned \$50,000.00 from employment for 2022 until the filing of the case. As the case was filed on September 2, 2022, the court presumes that the sum reported covers the period of January - August 2022, or 8 months. The average of \$50,000 over 8 months is \$6,250.00 per month, far less than is projected in Schedule I. See Statement of Financial Affairs, Item 4, ECF No. 1. Given the history of the debtor's plan performance in her prior Chapter 13 case, and the inconsistency between the debtor's Schedule I and the Statement of Financial Affairs, and the lack of amendment and/or correction of either document the court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The court notes that while Schedule I and the Statement of Financial Affairs provide inconsistent information, the debtor has failed to amend/correct either document or to provide any explanation regarding the numerical differences. Thus, the court concludes that the plan is not proposed in good faith under 11 U.S.C. 1325(a)(3).

DEBTOR RESPONSE

On October 28, 2022, the debtor filed a Response to the creditor's objection to confirmation. The response consists of an unsworn statement which offers to resolve the objection as follows:

Sacramento Credit Union shall be paid \$400 per month on its Class Two Claim, receive an adequate protection payment of \$2,000 during month 2 of the Plan, and 8% annual interest on its Class Two Claim.

Response, 1:20-22, ECF No. 32.

The debtor has provided no substantive argument refuting the creditor's objection to confirmation, nor has any evidence been filed in support of the debtor's proposed resolution.

The court is unable to rule on the creditor's objection contending an improper interest rate is proposed as the final page of the objection is illegible. However, the court sustains the objection to confirmation and finds the plan is not feasible and not proposed in good faith. 11 U.S.C. § 1325(a)(3), (6).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Sacramento Credit Union's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

11. [22-21558](#)-A-13 **IN RE: MARK/DEBRA KOBOLD**
[CRG-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW,
LLP FOR CARL R GUSTAFSON, DEBTORS ATTORNEY(S)
9-23-2022 [\[27\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Compensation

Notice: LBR 9014-1(f)(1)

Disposition: Continued to December 6, 2022, at 9:00 a.m.

Order: Civil minute

The motion for approval of compensation will be continued to allow the debtor to submit an appropriate order confirming the plan approved by the Chapter 13 trustee. While a hearing was held on October 18, 2022, wherein the court confirmed the plan, no order confirming the plan has yet been submitted to the court.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion for approval of compensation is continued to December 6, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than November 22, 2022, the debtor shall submit an appropriate order confirming the plan signed by the Chapter 13 trustee. If no order confirming plan is timely received the court will deny the motion for compensation without prejudice without further order or hearing.

12. [22-21761](#)-A-13 **IN RE: ADOLFO/ALEJANDRA SANCHEZ**
[MS-1](#)

MOTION TO CONFIRM PLAN
9-26-2022 [\[27\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Continued to December 13, 2022, at 9:00 a.m.

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001)

("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$333.00. The plan cannot be confirmed if the plan payments are not current.

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

The trustee also contends the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3). The trustee's argument centers around the debtors' conduct regarding a 2018 Toyota C-HR XLE Premium Sport Utility vehicle. The debtors' motion to modify states as follows:

10. On September 6, 2022 the debtors' 2018 Toyota C-HR XLE Premium Sport Utility 4D was totaled.

11. Subsequently, the insurance company paid off the Class 2 claim of Toyota Motor Credit Corporation in full and sent the remaining balance of \$14,805.94 to the debtors.

12. Debtors then purchased a replacement vehicle with those cash proceeds without any financing.

Motion to Confirm, ECF No. 27, 3:1-8.

The trustee reports that the subject vehicle was not exempt in the amount of \$11,680.27, and states "[t]he Trustee believes the Debtors' may not have been entitled to apply non-exempt proceeds from the bankruptcy estate without obtaining Court permission to do so." See Opposition, ECF No. 35, 2:27-28, 3:1. The trustee has failed to cite any legal authority in support of this contention.

The court will continue the hearing on this matter for further briefing by the parties.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the debtors' motion to confirm Chapter 13 plan is continued to December 13, 2022, at 9:00 a.m. No later than November 15, 2022, the trustee shall file and serve any additional analysis, evidence, and legal argument in support of his position.

IT IS FURTHER ORDERED, that no later than December 6, 2022, the debtors shall file and serve any written response to include evidence, analysis, or legal argument, in response.

IT IS FURTHER ORDERED that all parties shall cite appropriate legal authority in support of proffered argument. Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A).

IT IS FURTHER ORDERED that the evidentiary record will close on December 6, 2022.

IT IS FURTHER ORDERED that if either party fails to file pleadings as ordered the court may rule on the matter without further notice or hearing.

13. [22-20967](#)-A-13 **IN RE: JONATHAN EMMONS**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID CUSICK
9-28-2022 [\[30\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Discharge

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Continued to December 6, 2022, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to the entry of a discharge in this case under 11 U.S.C. § 1328(f).

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Objection to Discharge

This objection is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought. The court has determined that notice shall be given to parties who have filed a request for special notice as follows.

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d) (3) (B) (iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d) (3) (B) (iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d) (3) (B) (iv) includes creditors which have

filed requests for special notice as parties who must be served with all motions and supporting papers.

In this case creditors AIS Portfolio Services, LP, and Conn Appliances, Inc. have each filed a request for special notice. See *Request for Notice*, ECF Nos. 10, 11, 12. Thus, the trustee is bound to serve his objection to discharge on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this objection by the Chapter 13 trustee does not list the creditors as parties served with the notice as required. See Certificate of Service, ECF No. 33.

The court will continue the hearing on this objection to confirmation to allow for notice to the special notice party.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:
Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 13 trustee's objection to discharge has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the hearing on the objection is continued to December 6, 2022, at 9:00 a.m. Not later than November 15, 2022, the Chapter 13 trustee shall file and serve the objection and an amended notice of hearing on the debtor and all parties which have filed a request for special notice in this case.

14. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-20-2022 [[98](#)]

MARK BRIDEN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. See Plan, ECF No. 90. The objection will be overruled as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the objection to confirmation is overruled as moot.

15. [22-21072](#)-A-13 **IN RE: TOM/EVERLYN NELSON**
[RK-2](#)

MOTION TO CONFIRM PLAN
9-21-2022 [\[68\]](#)

RICHARD KWUN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); trustee non-opposition

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed September 21, 2022

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order confirming their Amended Chapter 13 Plan, filed September 21, 2022, ECF No. 70. The plan is supported by Schedules I and J filed June 10, 2022, ECF No. 31. The Chapter 13 trustee supports confirmation of the plan. See Response, ECF No. 85, 2:5.

CHAPTER 13 PLAN CONFIRMATION

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

16. [22-21175](#)-A-13 **IN RE: REBECCA MACIAS**
[MB-2](#)

AMENDED MOTION TO CONFIRM PLAN
9-30-2022 [\[45\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); trustee non-opposition

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed September 30, 2022

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order confirming her First Amended Chapter 13 Plan, filed September 30, 2022, ECF No. 42. The plan is supported by Schedules I and J filed August 4, 2022, ECF No. 32. The Chapter 13 trustee supports confirmation of the plan. See Non-Opposition, ECF No. 47.

CHAPTER 13 PLAN CONFIRMATION

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

CERTIFICATE OF SERVICE

The Certificate of Service filed in support of this matter violates the court's Local Rules, LBR 9014-1(c)(1). LBR 9014-1(c)(1) requires that all pleadings in support of a motion, including the certificate of service, contain the docket control number assigned to the motion. The certificate of service in this matter contains no docket control number. See Certificate of Service, ECF No. 44. The certificate was nearly missed in the court's review of this matter. Future violations of this type may result in denial of relief or sanctions under LBR 1001-1(g).

The court finds that the debtor has met her burden for confirmation of the Chapter 13 plan, and the court will approve confirmation of the plan.

17. [22-21996](#)-A-13 **IN RE: GUADALUPE JOHNSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-17-2022 [\[25\]](#)

DAVID FOYIL/ATTY. FOR DBT.
10/20/22 INSTALLMENT FEE PAID \$79

Final Ruling

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending.

18. [22-22699](#)-A-13 **IN RE: CHRISTINE BONILLA**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-25-2022 [\[11\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied

Order: Civil minute order

The debtor seeks an order extending the automatic stay under 11 U.S.C. § 363(c)(3).

STAY EXTENSION

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous

case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c) (3) (C) (i) (II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c) (3) (C) (i) (III).

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c) (3) (B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The debtor has filed Schedules I and J in support of her motion as well as a declaration. The proposed plan calls for a monthly plan payment of \$4,300.00. The debtor's gross monthly income is \$6,100.00. See Schedule I, ECF No. 1. The debtor projects income from the following sources: \$2,400.00 from employment; \$500.00 from room rental; \$500.00 from employment at Door Dash; \$900.00 per month from her son's SSI; and \$1,800.00 per month from IHHS which she earns caring for her disabled son. *Id.* The court notes that no withholding taxes are projected anywhere in the debtor's budget. See *Id.* There are projected self-employment taxes of \$35.00 per month listed on Schedule J, ECF No. 1. The debtor has provided no fiscal analysis regarding her projected tax liability. Absent this evidence the court will deny the motion. Additionally, the court notes that the plan payment in this case represents 70% of the debtor's projected monthly income. As a practical matter the court does not believe the plan is feasible as required by 11 U.S.C. § 1325(a) (6). The motion will be denied.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's Motion to Extend the Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,
IT IS ORDERED that the motion is denied.