

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

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

DAY: WEDNESDAY
DATE: DECEMBER 1, 2021
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. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[DPC-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-27-2021 [\[126\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

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 motion. 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 chapter 13 trustee objects to the debtors' claim of exemption in the following bank accounts listed in Amended Schedule C, ECF No. 117: Pacific Postal Credit Union combined checking and savings accounts \$160.00; Bank of America checking \$81.00; and Wells Fargo checking and savings \$2,983.00. Debtors have claimed the amounts in these bank accounts exempt as earnings under C.C.P. § 704.070.

EXEMPTIONS

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. Id. § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in nonbankruptcy cases." *Wolfe v. Jacobson* (In re Jacobson), 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ Case Number: 2020-25101 Filed: 5/18/2021 Doc # 89 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D.

Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

EARNINGS

In California earnings are defined as follows: "Earnings means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." (Cal. Civ. Proc. Code § 706.011).

The trustee contends that the debtors are not entitled to claim the deposits in the bank accounts exempt under C.C.P. § 704.070 as the debtors are not wage earners.

The debtors' sole source of income is pension or retirement as indicated in the Amended Schedule I, ECF No. 117. Therefore, the debtors improperly claimed the monies in the bank accounts exempt under C.C.P. § 704.070.

The court will sustain the trustee's objection and the exemption claimed in all bank accounts under C.C.P. 704.070 is disallowed.

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 the Debtor's Claim of Exemptions has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained.

2. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[RJ-3](#)

MOTION TO CONFIRM PLAN
10-8-2021 [\[120\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee and creditor Villa del Sol Homeowners Association of Sacramento

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee and creditor Villa del Sol Homeowners Association of Sacramento oppose the motion contending that the proposed modified plan is not feasible.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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).

Secured Claims

The chapter 13 trustee observes that the following secured claims have been filed but are not provided for in the chapter 13 plan: 1) the County of Sacramento Utilities, in the amount of \$624.56, Claim No. 7, which is secured as a utility lien against real property; and U.S. Bank National Association, (Rushmore Loan Management Services, LLC) in the amount of \$1,754.23 as post-petition mortgage arrears owed by the Debtor. The trustee questions the feasibility of the plan given the additional secured debt.

As neither of the obligations is provided for in the proposed plan the court is unable to determine if the obligation is to be paid by the debtor outside the plan, a third party, or surrendered. Each option directly impacts the debtor's budget which in turn impacts the feasibility of the plan.

The debtor's failure to provide for these two secured creditors in the plan calls into question the feasibility of the plan. How a debt will be satisfied and who might make the payment on a secured obligation is an essential component of a debtor's budget in a chapter 13 case.

Ability to Pay Increased Plan Payments

The debtor filed this case on April 23, 2021, and has yet to confirm a plan. The current plan calls for payments as follows: \$1,662.48 for 3 months; \$1,749.54 for 7 months; and \$3,300.00 per month thereafter.

Creditor Villa del Sol Homeowners Association (Creditor) argues that the debtor's plan is not feasible as she has not proven her ability to make the increased payments proposed in the plan. The court agrees.

In support of her plan the debtor has filed amended Schedules I and J, ECF No. 124, and a Declaration, ECF No. 122. The amended Schedule I lists increased income due to a promotion anticipated by the debtor at her job with SMUD, such that she would be able to increase her plan payment in March 2022 to \$3,300.00 per month. This assertion does not match the statements made in the Declaration, *id.*, 2:22-27. The debtor states that she applied for a promotion and received positive feedback but does not state that she received a promotion or when the promotion will occur. Thus, the assertion, while hopeful, is merely speculative. Additionally, the court notes an unusual statement appearing on the amended Schedule I which is unclear and uncertain. The Schedule, ECF No. 124, states that "Line 3 overtime is hijacked for the upcoming promotion." It is unclear what this means regarding the debtor's current ability to make payments or to her future ability to do so.

The lack of certainty regarding the debtor's increased income is especially troubling considering the obligation owed to Creditor. The court previously denied a motion for stay relief to the creditor and found the debtor still held an interest in her residence after a foreclosure sale had been conducted by the creditor, ECF No. 112.

The proposed plan does not propose to pay any monies toward the \$36,274.22 owed to Creditor in its arrears for homeowner's association dues until the 11th month of the plan.

The court will deny confirmation of the debtor's plan as the debtor has not proven that her plan is feasible.

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.

3. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
10-18-2021 [\[80\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from November 16, 2021

Disposition: Denied

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

The debtor filed a motion to modify her plan TLA-4. The motion to modify the plan has been granted by the court. The trustee filed non-opposition to the motion to modify, ECF No. 97. In his non opposition the trustee indicated that the chapter 13 plan payments were current.

The court will deny this motion to dismiss, and the case will remain pending.

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 trustee's motion to dismiss has been presented to the court. Having considered the motion and good cause appearing,

IT IS ORDERED that the motion is denied.

4. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[TLA-4](#)

MOTION TO MODIFY PLAN
10-26-2021 [\[87\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); non-opposition filed by trustee

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed October 26, 2021

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 moves for confirmation of her First Modified Chapter 13 Plan filed October 26, 2021. The chapter 13 trustee has filed a non-opposition to the motion

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in

reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b) (1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b) (1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

5. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-3](#)

MOTION TO BORROW
10-20-2021 [\[64\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve New Debt [Vehicle Loan]

Notice: LBR 9014-1(f) (1); written opposition filed by trustee

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Prepared by moving party

The debtors seek permission to incur new debt to finance the purchase of a vehicle, a 2009 Toyota Tacoma. The exhibit submitted in support of the motion, ECF No. 67, is a copy of the financing and purchase agreement for the vehicle.

The exhibit shows that the debtors intend to finance \$12,801.67 and pay a cash down payment of \$8,000.00, with a total purchase price of \$20,801.67. Conversely, the trustee’s opposition, ECF No. 79, and the debtor’s declaration in support of the motion, ECF NO. 67, indicate that the down payment is \$4,300.00.

The court agrees that the debtors have a need for a replacement vehicle as the debtor’s sole source of income is from self-employment as a courier, which of necessity requires a vehicle. The court requires clarification regarding the following matters: the precise amount and source(s) of the down payment; clarification of the monthly payment on the contract; clarification of the purchase price; and amount financed.

The court will continue this matter to allow the debtors an opportunity to augment the record with admissible evidence clarifying the facts.

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 hearing on this motion is continued to December 17, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than December 8, 2021, the debtors shall file and serve any additional evidence in support of the motion.

6. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-4](#)

MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS
ATTORNEY(S)
11-2-2021 [\[71\]](#)

MARK BRIDEN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Motion for Compensation

Notice: LBR 9014-1(f)(1); non-opposition filed by trustee

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

COMPENSATION AND EXPENSES

In this chapter 13 case, Mark Briden, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$2,250.00 and reimbursement of expenses in the amount of \$10.80.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The moving papers fail to include a declaration by the debtors evidencing their agreement to pay the fees and costs as requested. The hearing on this motion will be continued to January 5, 2022, at 9:00 a.m. to allow the debtors to file a declaration and/or for counsel to submit any other evidence in support of the motion.

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.

Mark Briden's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court.

IT IS ORDERED that the hearing on the motion for allowance of additional compensation is continued to January 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date debtor's counsel shall file and serve any additional evidence in support of the motion.

7. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-4](#)

MOTION TO MODIFY PLAN
10-20-2021 [\[57\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee and creditor

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee and creditor Wilmington Savings Plan, FSB, oppose the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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 chapter 13 trustee objects to the modification of the plan as the plan is not feasible as follows: it contains errors on its face regarding the treatment of a secured creditor in Class 1 of the plan; that the additional provisions are unclear and uncertain in that it appears to be a missing page; and that the plan is not mathematically feasible.

Unclear and Uncertain Plan Terms

The plan provides for an unknown creditor "Dovenmuchle" in Class 1, in the amount of \$21.08.00. The trustee believes this amount and creditor are listed in error. Regardless it is unclear to whom and in what amount monies are due. This objection is sustained as the plan on its face is unclear and uncertain.

Plan is Not Mathematically Feasible

The trustee argues that the plan will not fund in the remaining 11 months of the plan. He also believes that there is a page of missing provisions which might clarify the plan payments. The court finds that the plan is not feasible.

11 U.S.C. § 1322(b) (5)

The objecting creditor, Wilmington Savings plan FSB, (Creditor) argues that the plan fails to cure the mortgage arrears owed on its claim. Debtors have stated that their home was destroyed in the Fawn Fire in September 2021. The debtors also indicated that the obligation to Creditor was paid in full by insurance proceeds.

Creditor has indicated in its opposition, ECF No. 85, that it has not yet received payment from the insurance company and notes, as did the trustee, that the proposed plan fails to properly provide for payment on arrears owed to Creditor.

The plan fails to comply with 11 U.S.C. § 1322(b)(5) as it fails to provide a cure of the arrears owed to creditor in the amount of \$28,660.58.

The court will deny the debtors' motion to modify.

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 modify 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 modification of the chapter 13 plan.

8. [21-22222](#)-A-13 **IN RE: ARMAR/MARICELA WALKER**
[MMJ-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-15-2021 [\[22\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.
WOLLEMI ACQUISITIONS, LLC VS.

RESPONSIVE PLEADING

No Ruling

9. [18-22724](#)-A-13 **IN RE: ANGELO NOLASCO AND DEBRA RODRIQUEZ-NOLASCO**
[PGM-5](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR AND/OR NOTICE OF DEATH OF A DEBTOR
11-1-2021 [\[107\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Substitution of Representative, Continued Administration, Waiver of Personal Financial Management and Waiver of Certifications

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

Disposition: Granted

Order: Civil minute order

Debtor, Debra Rodriguez-Nolasco prays as follows: for her appointment as personal representative; for substitution of the representative; for continued administration of the chapter 13 proceeding; for waiver of the post-petition education requirement; and for the § 1328 certification for her now deceased spouse Angelo Nolasco.

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a *Notice of Death of the debtor* [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, Ms. Rodriguez-Nolasco notified all relevant parties with the notice of Mr. Nolasco's death on September 22, 2021. She filed a notice of death on October 28, 2021, ECF No. 103 and filed a copy of the decedent's Certificate of Death, ECF No. 110.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Ms. Rodriguez-Nolasco is the decedent's spouse and is a co-debtor in this bankruptcy proceeding. She is also the decedent's successor in interest with no other party having a superior claim.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. *If a reorganization, family farmer's debt adjustment, or individual's*

debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016 (emphasis added).

Ms. Rodriguez-Nolasco is a co-debtor in this bankruptcy proceeding. She has personal knowledge of all relevant facts concerning the case. She has indicated in her declaration that she is able to continue with the chapter 13 plan and to make payments, ECF No. 109.

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless . . .
. . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to a *debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.* For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "*disability*" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4). Decedent, Angelo Nolasco passed away prior to completing his post-petition debtor education.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and

Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1

CIVIL MINUTE ORDER

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

Debra Rodriguez-Nolasco's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) Debra Rodriguez-Nolasco is the representative of Angelo Nolasco and is substituted in his place and stead; (2) continued administration is appropriate; (3) as to Angelo Nolasco the post-petition education requirement is waived, 11 U.S.C. s 109(h); and (4) as to Angelo Nolasco the certifications required by 11 U.S.C. § 1328 are waived.

10. [21-23326](#)-A-13 **IN RE: ROBERT MACLAY**
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
10-27-2021 [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: September 22, 2021

Previous Chapter: 7

Previous Petition Filed: October 29, 2020

Previous Discharge: March 2, 2021

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE - 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)(1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive

discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on October 29, 2020, debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 trustee's Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

11. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[HDR-1](#)

OBJECTION TO CLAIM OF KELLY WILLIAMS, CLAIM NUMBER 12
10-14-2021 [\[70\]](#)

HARRY ROTH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written response filed by chapter 13 trustee

Disposition: Sustained in part; allowed as unsecured in the amount of \$3,000.00

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). 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).

Debtor objects to the claim of Kelly Williams, Claim No. 12. The basis of the objection is that the claim does not satisfy the requirements of Fed. R. Bankr. P. 3001 as it is unsigned; does not provide documents evidencing that the claim is secured; and lists an amount due of \$5,000.00, an amount contested by the debtor. The objection to the claim was served upon the claimant and the attorney who has filed another claim on her behalf, Claim No. 14. No response has been filed by the claimant. The chapter 13 trustee has filed a response stating that the claim is not filed on the official form, does not comply with Fed. R. Bankr. P. 3001 and that the amount owed is unclear.

OBJECTION TO CLAIM

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Garvida*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Garvida*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

The claim's secured status is not supported by the documents filed in support of the claim. The claim amount of \$5,000.00 is also not supported by the record. The claim is supported in the amount of \$3,000.00, which is the amount indicated in the judgment entered in favor of claimant. The debtor has requested that the claim be allowed in the amount of \$3,000.00.

Accordingly, the court sustains the objection and allows Claim No, 12 as an unsecured claim in the amount of \$3,000.00.

12. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[HDR-2](#)

OBJECTION TO CLAIM OF KELLY WILLIAMS, CLAIM NUMBER 11
10-14-2021 [\[76\]](#)

HARRY ROTH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written response filed by chapter 13 trustee

Disposition: Sustained; claim disallowed

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). 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).

BACKGROUND

Debtor objects to Claim No. 11 filed by Kelly Williams. As the chapter 13 trustee observes in his response, ECF. No. 95, the claim has not been filed on the official form and the amount claimed is unclear from the documents submitted which include a complaint for partition of real property. The objection to the claim was served upon claimant, and the attorney who filed the complaint in the partition action and who filed another claim, Claim No. 14, on claimant's behalf. Other than the chapter 13 trustee, there has been no response to the objection.

CLAIM OBJECTION

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also* *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Garvida*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v.*

Verizon Wireless S-CA (In re Campbell), 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

Furthermore, "[a] claim that is not regular on its face does not qualify as having been 'executed and filed in accordance with these rules.'" *Garvida*, 347 B.R. at 707 n.7 (quoting Fed. R. Bankr. P. 3001(f)). Such a claim lacks prima facie validity.

The claim to which the objection is directed is not regular on its face because it does not "conform substantially to the appropriate Official Form." Fed. R. Bankr. P. 3001(a).

The court cannot determine the amount which is owed from the documents filed. Accordingly, the objection is sustained, and Claim No. 11 is disallowed in its entirety.

13. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[HDR-3](#)

OBJECTION TO CLAIM OF KELLY WILLIAMS, CLAIM NUMBER 14
10-14-2021 [\[83\]](#)

HARRY ROTH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1)(A); written response filed by chapter 13 trustee

Disposition: Sustained in part; allowed as priority in the amount of \$837.08

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). 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).

BACKGROUND

Debtor objects to the claim filed by Kelly Williams, Claim No. 14. The claim was filed on Official Form 410 in the amount of \$3,696.00 indicating a priority status. The basis of the claim is child support, *id.*, item 9, and asserts priority status as a domestic support obligation, *id.*, item 12. The attachments to the claim support the claim of child support but do not list an amount which is owed. Debtor disputes the amount claimed and requests that the claim be disallowed in its entirety or in the alternative allowed in the amount of \$529.08.

The claimant was served with the objection as was the attorney who filed the claim on her behalf. Neither party has responded to the objection. The chapter 13 trustee has filed a response

Debtor has provided a declaration in support of his objection, ECF No. 86 and Exhibits A and B, ECF No. 87. This bankruptcy case was filed on April 13, 2021.

Exhibit B is a Case Audit Form from the California Department of Health and Human Services Agency, Department of Child Support Service, El Dorado County (Case Audit Form). It contains data from the account of the debtor reflecting support payments made and amounts owed. The balance owed on the account on April 2, 2021, is \$837.08. This entry is the last entry made prior to the filing of the bankruptcy case on April 13, 2021. The next entry in the exhibit is not until April 16, 2021, which is a post-petition entry. Debtor's Declaration, ECF No. 86, describes payments he sent during the period between April 2, 2021, and April 13, 2021. These payments are not reflected in the Case Audit Form. The debtor has not submitted any other documentation proving that the Case Audit Form is in error as of the date the bankruptcy case was filed.

CLAIM OBJECTION

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); see also *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See *Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

"A creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack prima facie validity, so any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

However, "a claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks the documentation required by Rule 3001(c)." *Campbell*, 336 B.R. at 434. In other words, objections based solely on noncompliance with Rule 3001(c) are insufficient to disallow a claim absent any factual or legal disagreement as to the liability or amount of the claim. *Id.* at 434-36.

But "a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for

evidentiary sanctions, thereby coming within [§] 502(b)'s grounds to disallow the claim.'" *Id.* at 436 (quoting *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005)).

Because the debtor has not provided sufficient evidence to refute the amount owed as indicated in the Case Audit Form, the court will allow the claim in the amount of \$837.08, which is the balance owed amount closest in time prior to the filing of the bankruptcy case.

Accordingly, Claim No. 14 is allowed as a priority claim in the amount of \$837.08.

14. [21-21942](#)-A-13 **IN RE: PATRICK/REBECCA HITE**
[PSB-1](#)

MOTION TO CONFIRM PLAN
10-12-2021 [\[32\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed October 12, 2021

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 confirmation of their First Amended Chapter 13 Plan filed October 12, 2021. The trustee has filed a non-opposition to the motion.

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.

15. [21-23142](#)-A-13 **IN RE: JILLIAN BEILBY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
10-18-2021 [[17](#)]

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

16. [19-21347](#)-A-13 **IN RE: FELICIA HUDSON**
[PGM-5](#)

MOTION TO MODIFY PLAN
10-22-2021 [[110](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by trustee

Disposition: Denied

Order: Civil Minute Order

Subject: First Modified Chapter 13 Plan - COVID-19 Plan, filed October 22, 2021

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 modifying her chapter 13 plan. The trustee opposes the plan as it is proposed.

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

PAYMENT TO UNSECURED CREDITORS

The chapter 13 trustee opposes the plan as it proposes to pay 0% to the unsecured creditors. According to the trustee's calculations the plan will pay 100% to the unsecured creditors. The trustee agrees that the plan may be modified if the debtor agrees to provide that the unsecured creditors will receive 100%.

If the debtor agrees to change the percentage to the unsecured creditors as requested by the trustee, then the court will approve the modification of the plan. Absent this change to the order the court will deny this motion as the proposed plan does not accurately reflect the payments to creditors.
The court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's motion to modify plan 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.

17. [19-21258](#)-A-13 **IN RE: TROY EMRY**
[PSB-5](#)

MOTION TO MODIFY PLAN
10-18-2021 [\[123\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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 \$2,017.00. The plan cannot be confirmed if the plan payments are not current.

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 modify 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 modification of the chapter 13 plan.

18. [19-26163](#)-A-13 **IN RE: JOSE PADILLA CARDONA AND VANESSA PADILLA**
[PSB-2](#)

MOTION TO MODIFY PLAN
10-18-2021 [\[48\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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).

Income Tax Withholding

The trustee contends that the plan is not feasible because the debtor's schedules and pay advices do not show that California and federal income taxes are being withheld from Mr. Cardona's pay.

The court notes that the Internal Revenue Service has filed a proof of claim in this case, Claim No. 11. The claim lists a total of \$18,151.28 in federal income taxes owed for 2016, 2017 and 2018 tax years.

The debtors' declaration in support of this motion, ECF No.51, does not address the debtors' current tax withholding and how this supports the feasibility of the proposed plan.

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

Inconsistent Plan Terms

The trustee contends that Section 7 of the plan (Additional Provisions) provides terms which are inconsistent with the trustee's records of payments since the inception of the case. The trustee attributes this inconsistency to typographical errors and opines the inconsistencies regarding amounts paid into the plan and payments to Class 1 and Class 2 creditors may be corrected in the order granting the motion.

Without the appropriate revisions to this section the proposed plan terms and the payment history do not match. If the court approved the plan in its current form the debtors would be in immediate breach of the terms of the plan.

For these reasons the court finds the plan is not feasible.

Incorrect Provisions for Post-Petition Mortgage Arrears

The trustee contends that amount of the post-petition mortgage arrears is incorrectly proffered in the modified plan. The trustee contends that the arrears total \$5,275.26, but the plan provides for arrears in the amount of \$3,516.84.

The plan is not feasible under 11 U.S.C. § 1325(a)(6) with the lesser amount of arrears provided for in the plan.

The trustee has proposed correcting the typographical errors in the order granting the motion, presuming the debtor agrees with the trustee's numerical analysis. The court disagrees. While the corrections may be the result of typographical errors, they are several in number. Moreover, the discrepancy in amounts for mortgage arrears directly impacts the amounts to be paid to a secured creditor as well as the feasibility of the plan.

Each of these drafting errors bars confirmation of the plan. The plan is not feasible. The court finds that too many errors have been made to correct in the order granting the motion without creating additional confusion for creditors and other parties attempting to determine the plan terms.

The court finds that the plan is not feasible and will deny the motion.

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 modify 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 modification of the chapter 13 plan.

19. [19-21764](#)-A-13 **IN RE: SHEMILA JOHNSON**
[MMP-2](#)

MOTION TO MODIFY PLAN
10-22-2021 [\[63\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); non opposition filed by the trustee

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

Subject: Modified Chapter 13 Plan filed October 22, 2021

The debtor requests confirmation of her chapter 13 plan filed October 22, 2021. The trustee has filed opposition to the plan. The most recently filed Schedules I and J were filed July 19, 2019, ECF No. 32.

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).

FEASIBILITY

The debtor must prove that the plan is 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).

Here, the debtor has not carried that burden. In this case, the movant's Schedules I and J were filed on July 19, 2019. Consequently, they are not recent enough to be probative of the debtor's ability to perform the plan.

The debtor has not supported the plan by filing recently amended Schedules I and J. Without those documents, the court is unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The court will continue this matter to allow the debtor to provide the amended Schedules I and J.

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 debtor's motion to confirm is continued to January 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that on or before December 22, 2021, the debtor shall file and serve Amended Schedules I and J, on all interested parties. If the debtor fails to file the required schedules by this date the court may deny this motion without further hearing.

20. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[SS-6](#)

MOTION TO MODIFY PLAN
10-14-2021 [\[95\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

FEASIBILITY

The debtor must prove that the plan is 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).

Loan Modification

The trustee contends that the modified plan will only be feasible if the court grants the Motion to Approve Loan Modification, SS-7.

The court has denied the motion to approve loan modification. Thus, the proposed plan is not feasible.

Schedules I and J

The trustee observes that the schedules proffered in support of the motion to modify have been filed only as an exhibit to this motion, ECF No. 99. This presents a difficulty as the schedules are not identified as such on the court's docket and thus not retrievable by parties later wishing to review the debtor's schedules.

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 modify 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 modification of the chapter 13 plan.

21. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[SS-7](#)

CONTINUED MOTION TO APPROVE LOAN MODIFICATION
10-18-2021 [\[101\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

Notice: Continued from November 2, 2021

Disposition: Denied

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 hearing on this motion was continued from November 2, 2021, to allow the debtor to provide written evidence of the monthly payment called for by the loan modification.

The terms presented in the Exhibits indicate that the monthly payment is \$2,614.69, ECF No. 104. The debtor's declaration and the motion both state that the debtor was orally informed that the monthly payment is \$2,880.90, ECF Nos. 101 and 103. Until this discrepancy is resolved the court will not grant the motion.

As of November 18, 2021, the court's docket shows that no additional evidence has been filed in support of the motion.

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." 11 U.S.C. § 362(a)(6), (d)(1).

The court will deny the motion to approve loan modification, because the monthly mortgage payment in the loan modification documents is inconsistent with the motion and documents submitted in support of the motion.

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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having considered the motion and any papers filed in support and opposition to the motion,

IT IS ORDERED that the motion is denied.

22. [21-20576](#)-A-13 **IN RE: MARK GUZMAN**
[MS-1](#)

CONTINUED MOTION TO MODIFY PLAN
9-17-2021 [\[19\]](#)

MARK SHMORGON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from November 2, 2021

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed September 17, 2021

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 confirmation of his First Modified Chapter 13 Plan filed September 17, 2021. The trustee has filed a non-opposition to the motion, ECF No. 25.

The hearing on this motion was continued to allow the debtor to file amended schedules I and J. The schedules were filed on October 29, 2021, ECF No. 27. The income and expenses are unchanged from the prior schedules filed. The court finds that the plan is feasible, because of the debtor's prior performance under the plan, and

because the motion to modify appears to be necessary because of the filing of the Notice of Filed Claims, ECF. No. 17.

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.

23. [21-23877](#)-A-13 **IN RE: GORDON MORRISON**
[CPG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-15-2021 [\[9\]](#)

CARY GREISEN/ATTY. FOR MV.
JOSEPH FORD VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 221 Hawkcrest Circle, Sacramento, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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).

Movant seeks an order authorizing him to continue prosecution of an unlawful detainer action currently pending against the debtor in Sacramento Superior Court, Case No. 21UD01696. The subject property is residential property. Movant is the owner of the subject property having purchased it at a pre-petition foreclosure sale on March 12, 2019. The debtor has paid no monies to movant since movant's acquisition of the subject property and neither the debtor nor the estate has any ownership interest in the subject property. The instant bankruptcy case was filed the day prior to the hearing on an Order to Show Cause in the Unlawful Detainer proceeding.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Joseph Ford's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 221 Hawkecrest Circle, Sacramento, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

24. [15-25581](#)-A-13 **IN RE: JOSE/VILMA SANTOS**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [\[75\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from September 21, 2021

Disposition: Denied

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (6) as the debtor has failed to make all payments due under the plan.

This matter was continued to allow the debtors to obtain new counsel and allow counsel time to review the motion and oppose the plan.

Debtors have obtained new counsel and have filed opposition to the trustee's motion.

The trustee has filed a status report, ECF No. 89. In his report the trustee indicates that payments have been made to complete the plan, that the debtors have provided evidence that the mortgage payments previously thought delinquent had been made outside the plan. The trustee indicates that he no longer wishes to proceed with the motion to dismiss.

DISCUSSION

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a) (1) (A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a) (2). Here, the Chapter 13 trustee has signaled his abandonment of his objection. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the trustee's request.

The court will deny the motion.

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 trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

25. [20-23982](#)-A-13 **IN RE: SHIRLEY KEHN**
[FF-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-5-2021 [\[18\]](#)

PETER MACALUSO/ATTY. FOR DBT.
GARY FRALEY/ATTY. FOR MV.
VIOLET DELLASANTA VS.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

Notice: Continued from November 2, 2021

Disposition: Granted

Order: Civil minute order

Subject: Exercise of state law rights and remedies to obtain possession of real property located at 1564 Summerhill Lane, Lincoln, California, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession

BACKGROUND

The hearing on this matter was continued from November 2, 2021, to allow the parties to supplement the evidentiary record.

Movant is the owner of the subject property. The property was leased to the debtor in 2012, and the lease expired in 2013. Since that time the tenancy has continued month-to-month with rent established at \$2,450.00 per month.

Movant has supplemented the record, ECF No. 35. Movant states that the debtor is delinquent in rent payments as follows: \$11,250.00 pre-petition arrears; \$39,200.00 post-petition arrears; total arrears \$50,450.00. Movant requests relief from the automatic stay to proceed with an unlawful detainer action in state court.

The debtor does not dispute the allegations of delinquency. Rather, she proposes to cure the post-petition delinquency by applying for funds from the California Covid-19 Rent Relief Program. Debtor contends that she has been approved for a disbursement of \$36,750.00 in rents through that program, ECF. No. 38. In support of this contention the debtor has filed an exhibit, ECF No. 39, which is a printout from the relief program. The exhibit indicates that the "amount funded" to the debtor is \$36,750.00 and that it is pending "assignment". It is unclear what this means. The debtor states in her declaration that the movant is required to apply for relief through the same program, presumably to receive the allotted funds.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

This case was filed on August 17, 2020, and the debtor is delinquent in the amount of \$36,750.00 through November 2021. This is cause for relief under 11 U.S.C. § 362(d)(1).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of the real property described above and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Violet Dellasanta's motion for relief from the automatic stay has been presented to the court. Having considered the motion, the

opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 1564 Summerhill Lane, Lincoln, California, and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

26. [17-24490](#)-A-13 **IN RE: RAYMOND/ELIZABETH CAMPBELL**
[LBG-402](#)

MOTION TO MODIFY PLAN
10-18-2021 [[139](#)]

LUCAS GARCIA/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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).

Incorrect Plan Provisions

The proposed plan calls for unsecured creditors to receive not less than 18%. The prior plan called for a 26% return to unsecured creditors. The trustee reports that he has already disbursed 67% to unsecured creditors. Thus, the proposed plan contains terms which are inconsistent with what has already occurred.

The trustee contends that the Additional Provisions of the proposed plan incorrectly state that payments are incorrectly dated in that payments were to change in July 2020 whereas the proposed plan calls for changes to the payment in July 2021. With the incorrect year indicated the plan is not feasible.

Finally, the trustee indicates that the plan incorrectly states the amount which has been paid. The plan indicates the total amount paid in equals \$31,554.99 while the trustee's records indicate that a total of \$32,004.99 has been paid.

Each of these drafting errors bars confirmation of the plan. The plan is not feasible. The court finds that too many errors have been made to correct in the order granting the motion without creating additional confusion for the court, creditors, and other parties attempting to determine the plan terms.

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 modify 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 modification of the chapter 13 plan.

27. [21-23494](#)-A-13 **IN RE: TODD WHICHARD AND WHITNEY KOROPP**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-10-2021 [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
11/12/21 FINAL INSTALLMENT PAYMENT \$313

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

28. [21-23197](#)-A-13 **IN RE: CLAUDE WILKES**
[DPC-1](#)

MOTION TO DISMISS CASE
11-1-2021 [\[29\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Conditionally granted

Order: Civil minute order

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).

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$7,546.00, with another payment of \$7,546.00, due on November 25, 2021.

Debtor has filed an opposition to the trustee's motion, ECF No. 43. The debtor has registered with the trustee's automated payment system, TFS, and contends that the trustee has received the first payment on November 3, 2021. The debtor has not indicated if he has scheduled or made the November 25, 2021, payment.

Tax Returns

The trustee contends the debtor did not provide the most recently filed federal tax return to the trustee at least 7 days prior to the meeting of creditors, as required by 11 U.S.C. § 521(a), (e) and Fed. R. Bankr. P. 4002(b).

The debtor indicates that prior to the meeting of creditors, he emailed copies of his 2018-2020 tax returns to the trustee at legalmail(2acusick13.com). The debtor further contends that while at the meeting of creditors he advised the trustee that the tax returns had been sent by email. Immediately after the meeting the debtor contacted the trustee's office via email attempting to confirm the trustee's receipt of the documents. On November 3, 2021, the trustee confirmed by email that the tax returns were received and forwarded to the paralegal assigned to his case.

Chapter 13 Eligibility

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$419,275 [originally "\$250,000", adjusted effective April, 1, 2019]² and noncontingent, liquidated, secured debts of less than \$1,257,850 [originally "\$750,000", adjusted effective April 1, 2019]², or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$419,275 [originally "\$250,000", adjusted effective April, 1, 2019]² and *noncontingent, liquidated, secured debts* of less than \$1,257,850 [originally "\$750,000", adjusted effective April 1, 2019]² may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) (emphasis added).

The trustee contends that the debtor is not eligible to be a debtor under Chapter 13 because his secured debts exceed the maximum amount allowed under § 109(e) which is currently \$1,257,850. The debtor's Schedule D, ECF No. 19, filed at the inception of the case lists the following secured obligations: J.P. Morgan Chase Bank, N.A. in the

amount of \$1,626,207.26; and The Deforest Building Residential Condominium Association in the amount of \$132,171.18. The secured obligations total \$1,758,378.44.

The trustee indicates that J.P. Morgan Chase has filed a proof of Claim, Claim No. 1. The claim is a secured claim filed in the amount of \$1,626,140.43.

Schedule D lists both obligations as disputed and indicates the courts where litigation is proceeding regarding each claim. The Statement of Financial Affairs, ECF No. 19, also lists the legal proceedings wherein the obligations are disputed. The obligation to J.P. Morgan Chase appears to be on appeal from a decision dismissing the debtor's complaint. The obligation to Deforest Condominium Association is pending in Santa Clara County Superior Court.

Neither the trustee nor the debtor has provided any information regarding the status of the previously described litigation matters.

Secured Debts Exceed Chapter 13 Debt Limits

The Ninth Circuit has "simply and explicitly state[d] the rule for determining Chapter 13 eligibility under § 109(e) to be that eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001).

The schedules filed in this case indicate that the secured debt limits exceed those allowed by § 109(e).

The debtor argues that the obligations to J.P. Morgan Chase and The Deforest condominium Association should be excluded from the § 109(e) eligibility calculation as the amounts claimed are in dispute.

While the debts are listed as disputed in Schedule D this classification does not exclude the amounts owed to J.P. Morgan Chase Bank, N.A. and The Deforest Condominium Association from the calculation of secured obligations.

However, a disputed claim is still a "claim" under § 101(5). Section 109(e) excludes unliquidated and contingent debts from the eligibility calculation, but it does not exclude debts which are *merely disputed*. *In re Nicholes*, 184 B.R. at 88. Additionally, eligibility under § 109(e) is determined as of the petition date and is not based on post-petition events. *In re Fountain*, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020) citing *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001).

In re Fountain, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020) (emphasis added).

Thus, the idea that the pending litigation might change the amount owed does not impact the determination of the debtor's eligibility

to proceed under Chapter 13. Eligibility is determined at the outset of the case, and the speculative results of subsequent litigation are not relevant.

CONVERSION TO CHAPTER 11

The debtor has requested deferred entry of an order of dismissal for at least seven (7) days so that he can convert this case to Chapter 11.

The court will conditionally grant this motion. The debtor shall have 14 days from the entry of this order to file a motion to convert this case to Chapter 11 and set the motion for hearing as required under 11 U.S.C. § 1307(d). If the debtor fails to do so the case shall be dismissed upon the trustee's ex-parte application.

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 trustee's motion to dismiss this chapter 13 case 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 to dismiss is conditionally granted because the secured obligations in this case exceed the debt limits of 11 U.S.C. § 109(e).

IT IS FURTHER ORDERED that not later than 14 days from the entry of the order on this motion the debtor shall file, serve, and set for hearing a motion to convert this case to one under Chapter 11.

IT IS FURTHER ORDERED that if the debtor fails to file, serve, and set a motion to convert this case within the time indicated in the preceding paragraph then the case shall be dismissed upon the trustee's ex-parte application.