

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

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

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

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-20300](#)-A-13 **IN RE: STEVEN AMBROSE**
[DNL-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES
ATTORNEY(S)
11-14-2022 [[107](#)]

W. SHUMWAY/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Final Compensation to Former Chapter 7
Trustee's Attorney

Notice: LBR 9014-1(f)(1); non-opposition filed by the Chapter 13
trustee

Disposition: Approved

Order: Prepared by applicant

Compensation Approved: \$2,368.50

Reimbursement of Expenses: \$26.35

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 application was required not less than 14 days
before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, applicant Desmond, Nolan, Livaich &
Cunningham was the attorney to the former Chapter 7 trustee in this
case before it was converted to a case under Chapter 13. The
applicant has applied for an allowance of compensation in the amount
of \$2,368.50 and reimbursement of expenses in the amount of \$26.35.
The applicant requests approval of the compensation and expenses as
an administrative claim to be paid through the Chapter 13 plan.

Upon a conversion to Chapter 13, Chapter 7 trustees and their
attorneys should be entitled to compensation for services rendered
which benefit the bankruptcy estate, if those services are
reasonable and necessary. *See, In re Washington*, 232 B.R. 814,
(Bankr. S.D. Fla. 1999), *In re Collins*, 210 B.R. 538 (Bankr.N.D.Ohio
1997).

Section 330 authorizes "reasonable compensation for actual,
necessary services." 11 U.S.C. § 330(a)(1). Reasonable
compensation is determined by considering all relevant factors. *See*
id. § 330(a)(3). Such amount is paid pro rata with other
administrative expenses out of each distribution made by the Chapter
13 trustee. *See id.* §§ 503(b), 507(a)(2), 1322(a)(2), 1326(b)(1).

The court notes that on December 5, 2022, the debtor filed a Chapter 13 Plan, ECF No. 124. Section 3.06 of the proposed plan provides for payment of administrative claims under 11 U.S.C. § 1326(b)(3)(B) in the amount of \$100.00 per month.

The court finds that the compensation and expenses sought are reasonable and benefitted the bankruptcy estate. As a result, the court will approve the compensation and expenses on a final basis.

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.

Desmond, Nolan, Livaich & Cunningham's application for allowance of compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$2,368.50 and reimbursement of expenses in the amount of \$26.35.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan and § 1326(b)(3) of the Bankruptcy Code.

2. [18-26701](#)-A-13 **IN RE: GEORGE MOUNZ AND BECKY RUIZ-MUNOZ**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
11-23-2022 [\[50\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.

Final Ruling

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

3. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[PGM-2](#)

MOTION TO MODIFY PLAN
11-8-2022 [\[51\]](#)

PETER MACALUSO/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

Disposition: Continued to February 7, 2023, at 9:00 a.m.

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 \$100.00 pursuant to the proposed modified plan. The plan cannot be confirmed if the plan payments are not current.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 50 months to fund as proposed. The term of the proposed plan is 48 months. See First Modified Chapter 13 Plan, Section 2.03, ECF No. 54.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1).

Moreover, the trustee contends that the reason the plan is overextended is the contemplation of \$1,500.00 additional attorney compensation as indicated in the additional provisions of the proposed plan. See *Id.*, Section 7. The court will not approve this payment of additional compensation at this time as the debtor's counsel has not satisfactorily explained his failure to submit an order after the hearing on the debtor's Motion to Approve Refinancing (PGM-1). Neither has counsel applied separately for additional compensation as required. The debtor's attorney must apply for any additional compensation via a motion under 11 U.S.C. § 330(a). Requiring the debtor to pay this additional amount through the Chapter 13 plan is premature.

The motion to modify may be granted only if the trustee reports the plan payments are current under the proposed modified plan and the provision for \$1,500.00 additional attorney fees is stricken from Section 7 of the proposed plan. The court notes that the debtor's declaration in support of the instant motion does not in any way address the proposed additional attorney compensation or the debtor's agreement to pay the additional compensation or increased payments contemplated by the proposed plan. See Declaration, ECF No. 53.

DEBTOR REPLY

On December 6, 2022, the debtor filed a reply. See Reply, ECF No. 62. The reply consists of an unsworn statement by debtor's counsel indicating that the plan payments have been brought current. The court gives no weight to inadmissible evidence provided by counsel.

The reply also offers to increase the plan payments to accommodate the proposed additional attorney compensation discussed previously in this ruling. The court will not approve a plan which provides for compensation which has yet to be approved.

The court will continue the hearing on this motion to allow the debtor's attorney to file a motion for compensation; and to augment the evidentiary record in this motion. The debtor shall file a

declaration indicating his understanding of the following: (1) that the plan payment shall be increased, or the plan length increased; (2) that the reason for this change to the plan is to pay the additional attorney compensation contemplated but not yet approved; and (3) that the debtor agrees to the payment of such compensation if approved by the court. If the debtor fails to file such declaration the motion will be denied without further hearing.

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 hearing on this motion is continued to February 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 24, 2023, the debtor shall file and serve a declaration, if any, in support of this motion as indicated by the court in its ruling. If a declaration is not filed, the court intends to rule on this motion without further notice or hearing.

IT IS FURTHER ORDERED that counsel for the debtor shall file and serve any motion for additional compensation not later than January 3, 2023, and set the compensation motion for hearing on February 7, 2023, at 9:00 a.m.

4. [21-22506](#)-A-13 **IN RE: KEVIN KENNEDY**
[DPC-3](#)

OBJECTION TO CLAIM OF STACEY MACDONALD, CLAIM NUMBER 7
10-27-2022 [\[47\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1), written opposition required

Disposition: Continued to February 22, 2023, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to the claim of Stacey MacDonald, Claim No. 7. The trustee indicates that the claimant appears to reside in a foreign country and that Fed. R. Bankr. P. 2002(p) may be applicable.

The claimant's address is UNIT 8400 BOX B DPO AE 09498, which the trustee contends is an Army Post Office destination with the armed forces in Europe, the Middle East, Africa, or Canada.

As such, the court will continue the hearing in this matter to allow for the trustee to give additional notice of the hearing pursuant to Fed. R. Bankr. P. 2002(p), which provides:

If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or *that the time prescribed for the notice by mail be enlarged.*

Fed. R. Bankr. P. 2002(p)(1) (emphasis added).

The court will also allow additional time for the claimant to file opposition, if any, to the trustee's objection.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to February 22, 2023, at 9:00 a.m. No later than December 19, 2022, the Chapter 13 Trustee shall file and serve an amended notice of hearing on the claimant. The notice shall advise the claimant of the continued hearing date pursuant to Fed. R. Bank. P 2002(p)(1) and set forth the deadline for the claimant to file and serve written opposition to the trustee's objection.

IT IS FURTHER ORDERED that not later than February 7, 2023, the claimant Stacey MacDonald may file and serve opposition, if any, to the trustee's objection to her claim in this proceeding.

5. [22-22110](#)-A-13 **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-4-2022 [\[41\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.
PENNYMAC LOAN SERVICES, LLC VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Pennymac Loan Services, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied as follows.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

On November 4, 2022, the movant filed a Certificate of Service in support of its motion showing service was effected on November 4, 2022, ECF No. 47. The movant has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

Pennymac Loan Services, LLC's Motion for Relief From Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

6. [22-22616](#)-A-13 **IN RE: FRANK SLAMA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
11-22-2022 [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

schedule. Absent such opposition, the court will adopt this tentative ruling.

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

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

Fed. R. Bankr. P. 4002 (emphasis added).

The trustee reports that the debtor failed to provide proof of his social security information at the 341 meeting on November 17, 2022.

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The trustee reports that the debtor admitted at the 341 meeting that he has not filed tax returns for the 4-year period prior to the filing of the bankruptcy case. If the debtor has not filed these tax returns, and was required to do so, then the plan may not be

confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS

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

The debtor has failed to provide the trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

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

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

7. [22-21422](#)-A-13 **IN RE: MARTIN/MONIQUE ARCHULETA**
[MWB-2](#)

MOTION TO CONFIRM PLAN
10-20-2022 [\[39\]](#)

MARK BRIDEN/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 the trustee

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed October 20, 2022

DEFAULT OF RESPONDENT

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

The debtors seek confirmation of their Second Amended Chapter Plan, ECF No. 42. The Chapter 13 trustee has filed a non-opposition to the motion. See Non-Opposition, ECF No. 44.

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.

8. [21-21825](#)-A-13 **IN RE: ROSE THORNWELL**
[FF-2](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
FRALEY & FRALEY, PC FOR GARY RAY FRALEY, DEBTORS ATTORNEY(S)
9-2-2022 [\[34\]](#)

GARY FRALEY/ATTY. FOR DBT.

Tentative Ruling

Application: Allowance of Additional Compensation

Notice: Continued from November 1, 2022; non-opposition filed by the trustee; opposition filed by the debtor

Disposition: Approved

Order: Civil minute order

Number of Requests for Additional Compensation: First

Additional Compensation Approved: \$1,995.00

Additional Cost Reimbursement Approved: \$57.00

The hearing on this matter was continued to allow the applicant to respond to the opposition filed by the debtor on October 21, 2022, ECF No. 44. On November 15, 2022, Mr. Fraley (the applicant) filed a status report, ECF No. 51. In the report the applicant indicated a desire to withdraw the motion although he maintained his application for additional compensation was reasonable and necessary in this case.

On December 2, 2022, Mr. Fraley filed an additional declaration which indicated that: (1) he had received a check in the amount of \$2,052.00 from the debtor on November 30, 2022; (2) that the notation on the check indicated that it was for legal fees; (3) that he did not solicit the payment of fees from the debtor; (4) that no written communication from the debtor was included with the check; (5) he has had no other communication with the debtor; and (6) that the check remains uncashed in his possession, pending further order of this court. See Status Report, ECF No. 55.

COMPENSATION AND EXPENSES

In this chapter 13 case, Gary Fraley, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,995.00 and reimbursement of expenses in the amount of \$57.00.

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).

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully filed and prosecuted a motion to sell the debtor's real property.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,995.00 and reimbursement of expenses in the amount of \$57.00.

LIQUIDATION TEST

The Chapter 13 trustee has not stated his position indicating whether the currently confirmed plan funds and passes the liquidation test of 11 U.S.C. § 1325(a)(4) with the addition of the requested compensation and expenses. This representation is required before the court will grant the motion, should the applicant prefer to accept payments through the plan. The trustee shall be prepared to address this issue at the hearing on the motion.

The court will grant the motion and allow the applicant to accept direct payment from the debtor absent objection from the Chapter 13 trustee.

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.

Gary Fraley's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court. Having considered the well-pleaded facts of the application, and hearing the arguments in favor of and in opposition to the motion, if any,

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$1,995.00 and reimbursement of expenses in the amount of \$57.00. The court authorizes the compensation and expenses to be paid by the debtor directly to the applicant and not through the confirmed Chapter 13 plan. The applicant is authorized to negotiate payment of the compensation by depositing the check received from the debtor,

which he is holding, for payment of the additional compensation approved.

9. [22-22625](#)-A-13 **IN RE: JASON/CHRISTINE EATMON**
[DBL-1](#)

MOTION TO VALUE COLLATERAL OF DANIEL LOCKWOOD, ROSEANNE
LOCKWOOD, DEVELOPMENT GROUP INC., AND DEVELOPMENT GROUP
HOLDINGS, LLC
11-15-2022 [\[21\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

SERVICE

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e) (2).

Service of the motion was insufficient. The debtor failed to file a Certificate of Service at all. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Value Collateral has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

10. [22-20528](#)-A-13 **IN RE: AMANDA PAULSEN**
[MWB-2](#)

MOTION TO CONFIRM PLAN
10-27-2022 [[65](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The Chapter 13 trustee indicates that plan payments are delinquent in the amount of \$600.00 with another payment due on November 25, 2022, in the amount of \$900.00. The plan may not be confirmed if the payments are delinquent.

Incorrect or Incomplete Plan Provisions

The trustee contends the plan is not feasible as it purports to contain additional provisions which were not appended to the plan. The proposed plan indicates that additional provisions are appended. See First Amended Chapter 13 Plan, Section 1.02, ECF No. 63. However, there are no additional provisions appended to the plan.

Thus, all creditors have been served with a plan which is either incorrect or incomplete. As such, the motion will be denied. This is a defect which cannot be remedied absent the filing of an amended plan. The court finds the plan is not feasible under 11 U.S.C. 1325(a)(6).

DEBTOR REPLY

On November 28, 2022, the debtor filed a reply to the trustee's opposition, ECF No. 74. The reply consists of an unsworn statement by debtor's counsel and is not accompanied by any admissible evidence. The reply states that the debtor will become current by the hearing on this motion and that the box in the plan discussed above by the court was checked in error. See *Id.*, 1:27-28, 2:3-4. The court gives no weight to unsworn testimony by the debtor's attorney.

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 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.

11. [22-22935](#)-A-13 **IN RE: ANTON NEMTYSHKIN**
[MS-1](#)

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
11-15-2022 [\[8\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject Vehicle: 2019 Jeep Wrangler Sport SUV

Value: \$25,681.00

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 respondent 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 valuing the collateral of Chrysler Capital under 11 U.S.C. § 506.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2019 Jeep Wrangler Sport SUV. The debt owed to the respondent is secured by a purchase money security interest and the debt was incurred outside the 910-day period preceding the date of the petition. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$25,681.00.

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 value collateral consisting of a motor vehicle 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 personal property collateral described as a 2019 Jeep Wrangler Sport SUV has a value of \$25,681.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$25,681.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

12. [22-22936](#)-A-13 **IN RE: COURTNEY WILSON**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-28-2022 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: 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). 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 extension of the automatic stay under 11 U.S.C. § 363(c)(3). The debtor, a nurse, suffered unemployment and two broken ankles during her previous Chapter 13 case. Additionally, the debtor made significant payments, totaling \$34,000.00 to bring her

Chapter 13 plan payments current in the prior case but contends that the case was dismissed because her previous attorney did not properly advise her regarding the need to make the additional monthly payment which came due after the filing of the trustee's motion to dismiss. See Declaration, ECF No. 17.

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

13. [22-22444](#)-A-13 **IN RE: BRADLEY/ANDREA MCGRATH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-21-2022 [\[28\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 \$3,080.00. The plan cannot be confirmed if the plan payments are not current.

Failure To Provide Financial/Business Documents

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

The debtors failed to provide the trustee with documents which are required under § 521 of the Bankruptcy Code, which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: 60 days of pay advices covering the two month period prior to the filing of the bankruptcy petition.

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

The court will sustain the trustee's objection.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 67 months to fund as proposed.

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

The overextension appears to be caused by the claim filed by the Internal Revenue Service (IRS). See Claim No. 4.

The court will deny confirmation of the debtor's plan.

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be

held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

If the debtors (either jointly or individually) have not filed 2017, 2018 or 2021 tax returns, and were required to do so as the IRS and the trustee contend, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtors did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtors regarding the issues raised in this motion. The court will sustain the objection

CIVIL MINUTE ORDER

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

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

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

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

14. [22-22548](#)-A-13 **IN RE: ADA AERICA SIMPSON AND CASEY CAKAU**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-21-2022 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

Fed. R. Bankr. P. 4002 (emphasis added).

Debtor, Casey Cakau failed to provide proof of his social security information. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

15. [19-26951](#)-A-13 **IN RE: FRANK/SYLIVIA FERNANDEZ**
[WW-2](#)

MOTION TO MODIFY PLAN
11-1-2022 [\[45\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

16. [22-21761](#)-A-13 **IN RE: ADOLFO/ALEJANDRA SANCHEZ**
[MS-1](#)

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

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

The hearing on this motion was continued from November 8, 2022, to allow for further briefing by the parties. Each party has submitted

additional argument and/or evidence as ordered by the court. The evidentiary record is closed.

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

BACKGROUND

The debtors filed this case on July 14, 2022. A Chapter 13 Plan has never been confirmed. When the case was filed the debtors scheduled a 2018 Toyota C-HR vehicle with a value of \$23,396.00. See Schedules A/B, and D, ECF No. 1. The vehicle was encumbered by a loan held by Toyota Motor Credit Corporation in the amount of \$6,920.93. The debtors claimed as exempt the amount of \$3,625.00, leaving approximately \$12,850.07 in non-exempt equity in the vehicle. See Amended Schedule C, ECF No. 21. The initial plan called for the vehicle payments to be made in Class 2. See Chapter 13 Plan, ECF No. 3.

On September 6, 2022, the debtors suffered an automobile accident. As a result of that accident the vehicle described above was totaled. On September 16, 2022, despite provision for the payment of the vehicle through the plan, the insurance company paid the loan secured by the vehicle in the amount of \$6,845.93 directly to Toyota Motor Credit Corporation. See Exhibit B, ECF No. 47. The insurance company also tendered \$17,892.43 directly to the debtors. *Id.* After subtracting the payment to the lender and the debtors' claimed exemption the non-exempt value of the vehicle is \$14,267.43. The debtors have used the funds to purchase a replacement vehicle.

On September 26, 2022, the debtors filed a First Amended Chapter 13 Plan, ECF No. 31. The amended plan is the subject of this motion to confirm brought by the debtors. The Amended Plan provides:

Modifies Section 3.08: Toyota Motor Credit shall be paid in full with insurance proceeds as a result of a recent car accident resulting in the totaling of the Toyota C-HR XLE Premium Sport Utility 4D. Remainder of funds shall be sent directly to the debtors so they can purchase a vehicle with those proceeds.

Id., Section 7.01.

MOTION TO CONFIRM AND OPPOSITION

The trustee initially objected to the plan contending that the plan was not proposed in good faith under 11 U.S.C. § 1325(a)(3) as the debtors used nonexempt insurance proceeds to purchase a replacement vehicle and allowed payment of the debt outside the proposed Chapter 13 plan, without seeking leave of court to do so. The trustee's

objection failed to cite authority regarding the requirement that the debtor obtain court permission to make the purchase of the replacement vehicle with the non-exempt insurance proceeds. Although argument might have been posed, the trustee's supplemental brief suffers from the same deficiency.

However, in his reply brief the trustee has appropriately argued liquidation and feasibility objections under 11 U.S.C. § 1325(a)(4), (6). See Continued Opposition, ECF No. 40. Additionally, the court finds, for reasons other than those argued by the trustee, the current amended plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Liquidation

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

Section 1325(a)(4) requires the trustee to determine, by calculation, if the proposed plan will pay unsecured creditors the same amount they would receive in a hypothetical Chapter 7 case. To properly perform this calculation all assets must be listed accurately in the debtors' schedules. The trustee correctly argues that the insurance proceeds are property of the estate under 11 U.S.C. §§ 541(a)(7) and 1306(a)(1). Without properly and timely amended schedules containing all relevant information the trustee was unable to compute the liquidation analysis when the debtors filed and set the amended plan for hearing.

Good Faith

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

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

The insurance proceeds were received by the debtors on September 16, 2022. The debtors filed and set the plan for hearing on September 26, 2022. Yet, amended schedules disclosing the conversion of assets and asset values were not filed until November 17, 2022, ECF No. 43. The schedules were filed only after the court ordered supplemental briefing by the parties and the trustee identified the liquidation issue.

The court considers amended schedules disclosing the accurate value of assets, and the changes to assets of the bankruptcy estate to be part of the debtors' *prima facie case at plan confirmation*. The trustee has finally been provided complete information regarding the loss of the 2018 Toyota, the accurate value of the vehicle, and the exact amounts which were paid to the secured creditor and to the debtors.

This is information which the *debtors should have provided upon the filing of the instant motion and not in response to objection by the trustee, or query of the court.*

It is unclear from the record if the debtors ever contacted the Chapter 13 trustee to inform him that the vehicle had been totaled in an accident and of the debtors' need to purchase a replacement vehicle. Had the debtors contacted the trustee's office, it appears likely the trustee's opposition to the current plan could have been avoided.

For these reasons the court finds the instant plan is not proposed in good faith, 11 U.S.C. § 1325(a)(3).

The court will deny the debtors' motion to confirm, allowing the Chapter 13 trustee to evaluate any subsequently proposed plan in the context of the recently filed amended schedules, and information provided in the exhibits to this 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 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.

17. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KB-1](#)

AMENDED MOTION TO AVOID LIEN OF FRANKLIN CREDIT CORPORATION
10-25-2022 [\[85\]](#)

KIM BEATON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The motion was not mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service. See Certificate of Service, ECF No. 91.

The court notes that the moving party also failed to serve the motion on the chapter 13 trustee or the U.S. Trustee.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the debtor - a previous motion to avoid lien filed on September 26, 2022, ECF No. 66.

Failure to comply with the LBR 9014-1(c) may result in the imposition of sanctions or denial of relief under LBR 1001-1(g).

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Lien has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

18. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KB-2](#)

MOTION TO CONFIRM PLAN
10-27-2022 [\[94\]](#)

KIM BEATON/ATTY. FOR DBT.
WITHDRAWN BY M.P.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Withdrawn by moving party

Order: Civil minute order

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

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

The debtors have filed a notice of withdrawal of their motion to confirm plan. See Notice of Withdrawal, ECF No. 121. Here both the trustee and a creditor have filed opposition to the motion to confirm.

RULE 41

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 debtors have signaled their abandonment of the motion. Neither the trustee, nor any creditor, has expressed opposition to the withdrawal of the debtors' motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the debtors' request.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the debtors - a previous motion to confirm plan filed on September 26, 2022, ECF No. 69.

Failure to comply with the LBR 9014-1(c) may result in the imposition of sanctions or denial of relief under LBR 1001-1(g).

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 motion is withdrawn by the moving party.

19. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KB-2](#)

AMENDED OBJECTION TO CLAIM OF FRANKLIN CREDIT, CLAIM NUMBER
10
10-26-2022 [\[100\]](#)

KIM BEATON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Objection to Claim

Disposition: Overruled without prejudice

Order: Civil minute order

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b). Service on FDIC-insured institutions must be made "by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

The motion was not sent by certified mail or was not addressed to an officer of the institution. Nothing indicates that the exceptions in Rule 7004(h) are applicable.

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in two previous motions by the debtors: (1) - a previous motion to confirm plan filed on September 26, 2022, ECF No. 69 and (2) a second motion to confirm plan filed on October 27, 2022, ECF No 94.

Failure to comply with the LBR 9014-1(c) may result in the imposition of sanctions or denial of relief under LBR 1001-1(g).

CIVIL MINUTE ORDER

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

The debtor's Objection to Claim has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice

20. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KB-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC
11-4-2022 [[108](#)]

KIM BEATON/ATTY. FOR DBT.
KELLI BROWN/ATTY. FOR MV.

Final Ruling

Motion: Opposition to Confirmation of Plan

Notice: LBR 9014-1(f)(2)

Disposition: Overruled as moot

Order: Civil minute order

Bosco Credit, LLC, opposes confirmation of the debtors' Amended Plan, ECF 95. The debtors have requested to withdraw the motion to confirm, and the court has granted the motion to withdraw the motion. This opposition will be overruled as moot.

This opposition was incorrectly filed as it was accompanied by a separate notice of hearing, ECF No. 109. A notice of hearing in this matter is not necessary or desired. The opposition may be filed simply as an opposition to the debtors' Motion to Confirm.

Counsel is encouraged to review LBR 3015-1 and 9014-1. Future failure to properly comply with the Eastern District's Local Bankruptcy Rules may result in the denial of relief or the imposition of sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the opposition to confirmation of plan is overruled as moot.

21. [22-22974](#)-A-13 **IN RE: GREGORY BUSH**
[HSM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-29-2022 [\[15\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
THOMAS GRIFFIN/ATTY. FOR MV.
EL DORADO SAVINGS BANK VS.

No Ruling

22. [22-22376](#)-A-13 **IN RE: CAMERON/DEBORAH ENGLISH**
[KMB-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
10-27-2022 [\[19\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
KELLI BROWN/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The objection was withdrawn by the moving party on November 21, 2022, ECF No. 22. No written response was filed to this objection. Fed. R. Civ. P. 41. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

23. [22-21984](#)-A-13 **IN RE: ANDREW KNIERIEM**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-10-2022 [\[48\]](#)

Tentative Ruling

Objection: Trustee's Objection To Claim of Exemptions

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

Disposition: Sustained

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 chapter 13 trustee has objected timely to the debtor's amended claim of exemptions in all assets as indicated in Amended Schedule C, ECF No. 35. The trustee contends his objection should be

sustained for the following reasons: (1) the debtor has stated no legal basis for any claim of exemptions as required; and (2) the debtor has not claimed dollar amounts exempt as required under California law.

EXEMPTION LAWS NOT CLAIMED

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201, 204 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 of Title 11 allows a debtor (1) to exempt property under § 522(d), unless a state does not so authorize, or (2) to exempt property under state or local law and federal law other than § 522(d). *Id.* § 522(b)(2)-(3)(A), (d). California has opted out of the federal exemption scheme. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 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).

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

Burden of Proof

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

"[P]roperty passes to the estate automatically, and it is the debtor's burden to make out the claim of exemption with adequate

specificity.” *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985). Further, [a]mbiguities in matters of claims of exemption will be construed against the debtor because “it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor’s schedules.” *In re Mohring*, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992), *aff’d*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff’d*, 24 F.3d 247 (9th Cir. 1994) (internal quotation marks omitted).

Discussion

The debtor has failed to elect either set of exemptions under California law as required. See Schedule C, ECF No. 35. No legal basis for any exemption claimed has been stated. Therefore, the court will sustain the trustee’s objection as to all exemptions claimed on Schedule C.

FAIR MARKET VALUE CLAIM OF EXEMPTION

In 2010, the Supreme Court issued a decision that was the basis for an amendment to the instructions on the current version of Schedule C. See *Schwab v. Reilly*, 560 U.S. 770 (2010) (property claimed exempt on Schedule C to which the trustee may object is property that § 522(b) and (d) permit to be exempted in kind or exempted as interests in categories of property up to a specified dollar amount). Consistent with *Schwab v. Reilly*, Schedule C was amended in 2015 to permit debtors to claim exemptions in property by specifying an exempt dollar-limited amount or 100% of fair market value up to any applicable statutory limit. See Official Form 106C (Schedule C) advisory committee’s note (2015). The advisory committee’s note also indicates that selecting 100% of fair market value up to any applicable statutory limit “would impose no dollar limit where the exemption is unlimited in dollar amount, such as some exemptions for health aids, certain governmental benefits, and tax-exempt retirement funds.” *Id.*

The trustee has objected to the debtor’s claim of exemptions in all assets as the debtor has checked the box to claim “100% of fair market value, up to any applicable statutory limit,” for each of these assets listed on Schedule C and failed to cite any legal authority or the proposition that he is entitled to such exemption.

If the law permits a finite exemption, it follows that the law does not permit an exemption of whatever the property happens to be worth. The claims of exemption in the debtor’s Amended Schedule C are improper.

The debtor is required to claim a specific amount of equity as exempt up to the relevant statutory maximum and cite the legal authority for which he is entitled to the exemption.

The court will sustain the trustee’s objection to the debtor’s claim of exemptions. The court disallows all exemptions claimed in Amended Schedule C, ECF No. 35.

CIVIL MINUTE ORDER

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

The chapter 13 trustee's Objection to the Debtor's Claim of Exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is sustained. The court disallows all exemptions claimed by the debtor in Amended Schedule C, ECF No. 35.

24. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2022 [\[46\]](#)

RICHARD JARE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
SANTANDER CONSUMER USA, INC. VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2019 Nissan Sentra

Pre-Petition Delinquency: \$302.20

Post-Petition Delinquency: \$1,109.60

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).

Santander Consumer USA, Inc. seeks an order for relief from the stay of 11 U.S.C. § 362(a). The debtor filed this bankruptcy on July 7, 2022, and has yet to confirm a plan. The court notes that it denied confirmation of the debtor's most recently proposed plan on September 14, 2022, and that the debtor has yet to propose a further amended plan. Thus, there is currently no plan pending.

The Chapter 13 trustee reports that payments under the previous plan are "\$5,944.94 delinquent through October where \$10,544.94 has come

due and \$4,600.00 has been paid.” See Response, ECF No. 67, 1:26-27. Moreover, the court notes that the instant Chapter 13 proceeding is not the debtor’s first. A previous case was filed in 2021 and dismissed on May 6, 2022, just prior to filing the instant case.

Of particular concern to the court is that a motion to dismiss this case has not yet been filed by the Chapter 13 trustee. The previous plan provided for the movant in Class 4 of the plan. Since there is currently no plan before the court, and no payments are being tendered to the movant the court will grant this motion for relief.

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by the vehicle described above. The debtor has defaulted on the loan as both prepetition and postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

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

The movant filed an initial Certificate of Service on October 31, 2022, ECF No. 54. Form EDC 7-005 was not required at that time to memorialize service, nor was the form used.

On November 7, 2022, the movant filed an additional Certificate of Service using Form EDC 7-005. See Certificate of Service, ECF No. 56. The certificate is a supplemental certificate and includes notice to parties which have required requests for special notice. The proper parties have all been served. However, the special notice creditors are served under Fed. R. Civ. P. 5, not Fed. R. Bankr. P. 7004. The appropriate boxes in the certificate should have been checked at 6B2 and then listed on a separate attachment labeled 6B4, or 6B3 if the Clerk’s Matrix of Special Notice Creditors was used.

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.

Santander Consumer USA, Inc.'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 a 2019 Nissan Sentra, 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 pursue its rights against the property pursuant to applicable non-bankruptcy law.

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.

25. [21-21198](#)-A-13 **IN RE: ANDREW NILSEN**
[DPC-1](#)

CONTINUED OBJECTION TO CLAIM OF DEREK JACOB YOUNGBLOOD,
CLAIM NUMBER 6
8-10-2022 [\[86\]](#)

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

Tentative Ruling

Objection: Objection to Claim

Notice: Continued from September 27, 2022

Disposition: Sustained

Order: Civil minute order

Conversion to Chapter 13: June 4, 2021

Chapter 13 Claims Bar Date: September 20, 2021

Formal Claims 6 and 7 Filed: February 1, 2022

The hearing on the chapter 13 trustee's objection to Claims 6 and 7 filed by Derrick Jacob Youngblood was continued from September 27, 2022, to allow for further briefing by the parties. The court previously sustained the objections to the formal claims filed ruling that Claim No. 7 was disallowed in its entirety as it was a duplicate of Claim No. 6. The court further ruled that Claim No. 6 was not filed timely, that the objection to Claim No. 6 was sustained, and the claim disallowed.

The sole issue before the court is whether there is sufficient evidence for the court to find that an informal proof of claim exists.

PROCEDURAL HISTORY

This case was filed as a Chapter 7 case on April 1, 2021. The case was converted to a Chapter 13 on June 4, 2021. The Notice of Conversion to Chapter 13 was served by the Clerk on June 25, 2021, see ECF Nos. 48, 49, 50. The Notice of Conversion notified all creditors of the claims bar date in the Chapter 13 proceeding, which was September 20, 2021.

INFORMAL PROOF OF CLAIM

Informal Claim

The Ninth Circuit recognizes the informal proof of claim doctrine whereby claims not filed in the proof of claim format may be deemed valid. See *In re Sambo's Restaurants, Inc.*, 754 F2d 811, (9th Cir. 1985).

For the court to allow an informal proof of claim each of the following elements must be proven.

Creditor still must establish *each* of the elements that have consistently been required by the cases for over seventy-five years: (1) presentment of a writing; (2) *within the time for the filing of claims*; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature and amount of a claim asserted against the estate.

In re Edelman, 237 B.R. 146, 155 (B.A.P. 9th Cir. 1999) (emphasis added).

Every case located by this Panel, including those cited by Creditor, requires, at an absolute minimum, that a writing be *received by either the bankruptcy court or a representative of the bankruptcy estate* no later than the claims bar date.

Id. at 155 (emphasis added).

Delivery of the writing to the debtor during the claims period is sufficient. See *id.*, at 155.

DISCUSSION

On May 13, 2021, while the case was pending as a Chapter 7, claimant Derrick Youngblood filed an application to renew a judgment held against the debtor in the Superior Court of California, Shasta County. See ECF No. 85. The application was accompanied by the Declaration of K. Thomas Smith, which details the amount of the judgment and accounts for accrued interest. The judgment was renewed, and a Notice of Renewal of Judgement was issued on May 17, 2021. See *id.*

The court continued this matter to determine if the renewal documents were served upon the debtor or otherwise delivered to and "received by the bankruptcy court, or a representative of the bankruptcy estate" no later than the claims bar date, and within the time for filing of the proofs of claim as required under *Edelman*.

The claimant has provided the Proof of Service from the state court proceeding, which shows the *application* for the renewal of the state court judgement was served on May 7, 2021. See ECF No. 98. It does not show that the renewed judgment itself was ever served on the debtor. No such document has been filed with the court by the claimant.

The claimant has failed to satisfy the second prong of the test required in *Edelman*. The second prong of the test requires that the writing be delivered within the time for filing proofs of claim.

There is no evidence before the court of an informal proof of claim. The document filed by the claimant at ECF No. 98 does not show that the renewed judgment was ever served upon the debtor. The service of the application for renewal of the state court judgment fails to satisfy the *Edelman* test for an informal claim because it was not served within the period of time for filing claims during the Chapter 13 proceeding. The renewal application was served upon the debtor while the case was pending as a Chapter 7 and before the period of time for filing claims in Chapter 13 as it was served before the case was converted.

The court will sustain the trustee's objection to Claim No. 6 and No. 7 entirely. The court finds that the elements for an informal proof of claim have not been proven. The claims will be disallowed.

CIVIL MINUTE ORDER

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

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

The Chapter 13 trustee's Objection to the claim of Derrick Youngblood has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is sustained. Claim No. 6 and 7 are disallowed in their entirety. The court denies any request for an informal claim.

26. [22-22598](#)-A-13 **IN RE: MAYRA PALACIOS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-21-2022 [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

Fed. R. Bankr. P. 4002 (emphasis added).

The debtor failed to provide proof of her social security information. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

27. [22-22974](#)-A-13 **IN RE: GREGORY BUSH**
[KLG-2](#)

MOTION TO EXTEND AUTOMATIC STAY O.S.T.
12-7-2022 [\[25\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

The debtor seeks an extension of the automatic stay under 11 U.S.C. § 362(c)(3). The debtor's previous Chapter 13 bankruptcy proceeding was filed on June 29, 2022, and was dismissed on September 1, 2022. The Chapter 13 plan was never confirmed, and the case was dismissed as the debtor failed to pay the filing fee installment which was due. See Order, 22-21677, E.D. Cal. Bankr. (2022), ECF No. 41.

EXTENSION OF THE STAY

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

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

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

The debtor argues that the presumption of bad faith does not arise in this case because "no plan had been confirmed and the case was dismissed due to the Debtor's mistake and therefore 11 U.S.C. 362(c)(3)(C)(i)(II), is not applicable." See Motion, 4:1-3, ECF No. 25. The court disagrees because 11 U.S.C. § 362(c)(3)(C)(i)(III) provides:

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--
(i) as to all creditors, if--

. . . .

(III) *there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--*
(aa) *if a case under chapter 7, with a discharge; or*
(bb) *if a case under chapter 11 or 13, with a confirmed plan that will be fully performed;*

11 U.S.C. § 362(c)(3)(i)(III)(bb) (emphasis added).

The debtor's financial circumstances are unchanged from the most recently dismissed case, 22-21677, E.D. Cal. Bankr. (2022). See Schedules I and J, *id.*, ECF No. 25. The debtor's income is as follows on Schedule I in the previous case: \$1,975.00 from Social Security; \$640.00 from pension; and \$1,300.00 contribution from mother. Schedule J shows the debtor's expenses total \$834.50 in the previous case. *Id.*

In the instant case Schedules I and J show the same amounts for income and expenses. See Schedules I and J, ECF No. 22.

The debtor has not shown that his financial circumstances have changed, and the court concludes that the presumption of bad faith arises in this case.

DEBTOR'S PROPOSED PLAN

The debtor states that he allowed his previous case to be dismissed because he was informed that he could refinance his real property

mortgages instead of following through with his Chapter 13 plan. See Declaration, 2:1-3, ECF No. 27.

The debtor has proposed a plan in the instant case. The plan proposes a 100% dividend to unsecured creditors accomplished to be by a sale, or refinance mortgages on the debtor's residence by May 31, 2023. The plan in its current form is not confirmable.

First, while the plan provides for El Dorado Savings Bank in Class 1 it lacks a monthly payment to this creditor, which holds the second deed of trust on the debtor's residence. Therefore, the trustee has no direction to make any payments to this creditor. This contravenes 11 U.S.C. § 1322(b)(5).

Second the debtor's plan does not appear to be feasible under 11 U.S.C. § 1325(a)(6). While the debtor's Schedules I and J appear to support the \$2,195.00 proposed plan payment the court finds that the debtor's expenses are meager and unrealistic projecting: \$0 for automobile insurance while the debtor owns two vehicles; \$0 for pet care where the debtor has two dogs; \$15.00 per month for personal care; \$50.00 per month for medical and dental expenses; \$50.00 per month for clothing; \$80.00 per month for transportation expenses. The debtor provides no additional information regarding the expenses in the schedules nor does the declaration in support of this motion address his meager circumstances. Schedule I shows that the debtor receives \$1,300.00 per month from his mother. This is a sizeable contribution. There is no evidence before the court of ability and willingness to make this monthly contribution by the debtor's mother. The monthly plan payment of \$2,195.00 is not feasible without this contribution.

Third, the proposed plan calls for either a sale or refinance of the debtor's residence by May 31, 2023. The declaration in support of the motion to extend does not contain any information regarding a proposed sale or refinance. The debtor has not indicated that the property is currently listed for sale, nor does he state whether with whom he has applied for financing.

The supporting declaration does not point to any substantial change in the personal and financial affairs of the debtor since the dismissal of their previous case. The plan contains provisions which prevent confirmation, and the debtor has provided no evidence that his plan will be feasible on a monthly basis or that he is actively marketing the property or seeking financing. Thus, the debtor has not proven that this plan is likely to be confirmed under 11 U.S.C. § 362(c)(3)(i)(III)(bb).

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B).

The motion will be denied.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. See, Certificate of Service, ECF No. 30. Future motions may be denied summarily for failure to use Form EDC 7-005 as required by LBR 7005-1.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied.