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IT IS SO ORDERED.

Dated: December 15, 2025

Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	Case No. 24-50592
	:	Chapter 13
JEFFREY O. PRICE AND	:	Judge Mina Nami Khorrami
MYKESHA S. PRICE,	:	
	:	
Debtors.	:	

OPINION AND ORDER DENYING CREDITOR TELHIO CREDIT UNION, INC.'S AMENDED MOTION TO MODIFY CHAPTER 13 PLAN (DKT. NO 59) AND CREDITOR TELHIO CREDIT UNION, INC.'S AMENDED MOTION TO REQUEST THAT THIS COURT SEVER JEFFREY O. PRICE'S BANKRUPTCY AND DISMISS IT UNDER RULE 1016(b) (DKT. NO 60)

I. Introduction

On July 31, 2024, the Debtors'[1] chapter 13 plan was confirmed. Sadly, just five days later, on August 4, 2024, Mr. Price passed away. The issues before the Court arise from Mr. Price passing and Mrs. Price becoming the sole owner of their residence pursuant to a right of survivorship contained in the deed. The first issue is whether the joint cases of the Debtors should

[1] The Debtors are Jeffrey O. Price ("Mr. Price") and MyKesha S. Price ("Mrs. Price"). They will be collectively, the "Debtors" where appropriate.

be severed and Mr. Price's case should be dismissed, and the second related issue is whether the confirmed Plan should be modified to increase the dividend to certain unsecured creditors.[2]

A hearing on the Motions (the "Hearing") was held on July 8, 2025. Christal Caudill appeared on behalf of Mrs. Price, Sebastian West appeared on behalf of Telhio, and Jeffrey Sams appeared on behalf of Education First Credit Union ("EFCU").[3] At the end of the Hearing, the parties requested the opportunity to submit supplemental briefing, and the Court granted leave to do so.[4] That supplemental briefing was completed on August 22, 2025.[5] For the reasons below, the Motions are denied.

II. **Jurisdiction and Venue**

The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio,

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[2] These issues were raised in two motions filed by Telhio Credit Union. Inc. ("Telhio"). The operative filings are as follows:
(1) *Creditor Telhio Credit Union, Inc.'s Amended Motion To Modify Chapter 13 Plan* (the "Motion to Modify") (Dkt. No. 59), together with *Debtor, Mykesha Price's Objection To Telhio Credit Union, Inc.'s Amended Motion To Modify Chapter 13 Plan (Rel Doc No. 59)* (Dkt. No. 66) ("Mrs. Price's Objection to Motion to Modify"), the *Response Of Creditor Education First Credit Union To Telhio Credit Union, Inc.'s Motion To Modify Chapter 13 Plan Or Request To Sever Jeffrey O. Price's Bankruptcy And Dismiss It Under Rule 1016(b) (Rel Doc 52)* ("EFCU's Objection to Motion to Modify") (Dkt. No. 58), and *Creditor Telhio Credit Union, Inc.'s Reply To Debtor Mykesha Price's Objection To Telhio's Amended Motion To Modify Chapter 13 Plan (Rel Doc No. 66)* (Dkt. No. 68); and
(2) *Creditor Telhio Credit Union, Inc.'s Amended Motion To Request That This Court Sever Jeffrey O. Price's Bankruptcy And Dismiss It Under Rule 1016(b)* (the "Motion to Dismiss") (Dkt. No. 60), together with *Debtor, Mykesha Price's Objection To Telhio Credit Union, Inc.'s Amended Motion To Request To Sever Jeffrey O. Price's Bankruptcy And Dismiss It Under Rule 1016(b) (Rel Doc Nos. 60)* (Dkt. No. 67) ("Mrs. Price's Objection to Motion to Dismiss"). The Motion to Modify and the Motion to Dismiss will be referred to collectively where appropriate as the "Motions."

[3] Andrew Stimmel, counsel for Chapter 13 Trustee (the "Trustee"), appeared at the Hearing but took no position.

[4] At the request of the parties, the Court took judicial notice of Docket Nos. 1, 18, 23, 34, and 54 on the docket in this case, and Debtor's Exhibit 1 was admitted into evidence.

[5] The supplemental filings tendered after the Hearing are: *Creditor Telhio Credit Union, Inc.'s Supplemental Brief On Issues Raised During Hearing Held On July 8, 2025 (Rel Doc No. 59, 60, 66-69, 74)* ("Telhio's Supplemental Brief") (Dkt. No. 75); *Debtor, Mykesha Price's Reply Brief To Creditor Telhio Credit Union, Inc.'s Brief In Support Of Its Amended Motion To Modify Chapter 13 Plan And Motion To Sever Jeffrey O. Price's Bankruptcy And Dismiss It Under Rule 1016 (Rel Doc Nos. 59, 60, 66-69,74-75)* ("Mrs. Price's Supplemental Brief") (Dkt. No. 76); and *Memorandum Of Creditor Education First Credit Union In Response To Creditor Telhio Credit Union, Inc.'s Supplemental Brief On Issues Raised During Hearing Held On July 8, 2025 (Rel Doc Nos. 59, 60, 66-69, 74, 75)* ("EFCU's Supplemental Brief") (Dkt. No. 77).

referring all bankruptcy matters to this Court. A motion to modify a confirmed plan under 11 U.S.C. § 1329 is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (L) and (O). A motion to dismiss a debtor's case because of death or incompetency under Rule 1016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue properly lies in this Court under 28 U.S.C. §§ 1408 and 1409.

III. <u>Findings of Fact</u>[6]

The Debtors filed a joint voluntary petition commencing this bankruptcy case under Chapter 13 of the Bankruptcy Code on February 21, 2024 (the "Petition Date"). Petition, Dkt. No. 1. On May 6, 2024, the Debtors filed the *Second Amended Chapter 13 Plan* (the "Plan") (Dkt. No. 25), which included a notice of the right to object within 21 days of service and a certificate of service showing that it was served on all parties in interest, including Telhio. Plan 10-14, Dkt. No. 25. On July 31, 2024, the Court entered an order confirming the Plan (the "Confirmation Order"). Order Confirming Chapter 13 Plan and Awarding Attorney Fees, Dkt. No. 41.[7]

The Debtors were joint owners of residential real property located at 909 Grandon Avenue, Bexley, Ohio 43209 (the "Property"). Schedule A/B ¶ 1.1, Dkt. No. 1.[8] The parties have all acknowledged that the Debtors owned the Property as joint tenants with rights of survivorship. Mot. to Modify 5, Dkt. No. 59; Telhio's Supp. Br. 1-2, Dkt. No. 75; Mrs. Price's Obj. to Mot. to Modify 3, Dkt. No. 66; EFCU Supp. Br. 2 and Ex. E, Dkt. No. 77. The Property was subject to five judgment liens at the time the Plan was confirmed, two of which are treated as secured claims

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[6] These findings of fact are made pursuant to Rule 52(a) of the Federal Rules of Civil Procedure (the "Civil Rules"), incorporated by Bankruptcy Rule 9014(c).

[7] Although the parties did not request it, the Court takes judicial notice of Plan and the Confirmation Order. Plan, Dkt. No. 25; Confirmation Order, Dkt. No. 41. The Plan and the Confirmation Order have independent legal significance in that they set forth the governing terms of the relationship between the Debtors and their creditors after the Plan was confirmed. *See, e.g. In re Wells*, 536 B.R. 264, 266-67 (Bankr. E.D. Ark. 2015) (taking judicial notice of confirmed plan and confirmation order in connection with a post-confirmation motion for relief from stay).

[8] Telhio has asserted that the Debtors owned the property as joint tenants with rights of survivorship. And EFCU likewise asserts that the Debtors held the Property as joint tenants with right of survivorship.

that will be paid in full, and three of which will be avoided upon discharge under 11 U.S.C. § 522(f). The liens of EFCU, in the amount of $18,518.90, and Brickhouse OPCo, LLC, in the amount of $1,416.69, are allowed as Class 2 secured claims that will be paid in full at nine percent interest over the life of the Plan. Plan ¶ 5.2.1, Dkt. No. 25. The judgment liens of Unifund CCR, LLC (in the amount of $8,496.71), Bank of America (in the amount of $30,413.03), and Cavalry SPVI, LLC (in the amount of $9,592.12) will be avoided under § 522(f) because they impair the Debtors' exemptions in the Property, effective upon discharge. Plan ¶ 5.4.2, Dkt. No. 25.

The Plan calls for the Debtors to pay the Trustee $997 per month. All unsecured creditors are placed into Class 4 and will be paid a dividend of two percent on their allowed claims. *Id.* ¶¶ 2.2, 5.4. The Plan does not distinguish unsecured creditors based on whether Mr. or Mrs. Price is liable for their claims – it simply provides that all Class 4 claims will receive a two percent dividend. *Id.* The Plan provides that all property of the estate revests in the Debtors upon confirmation. *Id.* ¶ 12. The effective date of the Plan is "the date on which the order confirming the Plan is entered." Plan ¶ 11, Dkt. No. 25. Finally, the Plan contains a nonstandard provision that provides:

> Confirmation of the plan shall have no res judicata effect on the Trustee's right to assert her position under 11 U.S.C. §1325(b)(1) with respect to administering, for the benefit of unsecured creditors, any additional funds turned over to the Trustee throughout the duration of the Plan, including without limitation, funds received pursuant to paragraphs 8.2 or 9.2, or any remaining funds pursuant to paragraph 10.2.

Plan ¶ 13, Dkt. No. 25.

Despite the death of her husband, Mrs. Price testified that, as shown by her amended Schedules I and J, she has the financial means to make the $997 monthly payment for the life of the Plan. Am. Sch. I ¶ 8g, Dkt. No. 54; Am. Sch. J ¶¶ 11, 24, Dkt. No. 54. Although Mrs. Price receives a portion of Mr. Price's pension, she testified that the household is no longer subject to the high medical expenses that Mr. Price's illness required, and expenses have otherwise been reduced because there are now only two people in the household. *Id.*[9] Mrs. Price has made every payment under the Plan since Mr. Price's death over a year ago. *See* Ex. 1.

Telhio filed an unsecured Proof of Claim against both Debtors in the amount of $157,156.70. In January 2024, Telhio obtained a judgment against Mrs. Price and recorded a judgment lien against her interest in the Property, but this judgment lien was avoided under 11 U.S.C. § 547 as a preferential transfer. *Price v. Telhio Credit Union, Inc. (In re Price)*, No. 2:24-ap-02065, 2025 Bankr. LEXIS 1814 (Bankr. S.D. Ohio July 24, 2025).

The Debtors each claimed a $161,375.00 homestead exemption in the Property, for a total exemption of $332,750.00. Sch. C ¶ 2, Dkt. No. 1. No objections to any of the Debtors' claimed exemptions were filed. As noted previously, Mrs. Price testified that Mr. Price died on August 4, 2024, five days after the Plan was confirmed on July 30, 2024.

IV. <u>Positions of the Parties</u>

In its Motion to Dismiss, Telhio asserts that Mr. Price's case should be severed from Mrs. Price's case, and that Mr. Price's case should then be dismissed because further administration of his case is neither possible nor in the best interests of the parties. In its Motion to Modify, Telhio proposes three modifications. First, it seeks to have EFCU's secured claim reclassified to become an unsecured claim because Telhio asserts that Mr. Price's death caused EFCU to lose its secured status. Second, Telhio argues that all creditors whose claims are only asserted against Mr. Price should receive nothing on their claims. Finally, Telhio asserts that Mr. Price's death caused his

[9] Mr. Price was receiving a pension of $3,224.23 per month before he passed. Sch. I ¶ 8g, Dkt. No. 1. Mrs. Price receives $1,930.84 per month as a survivor's benefit from Mr. Price's pension, which is approximately sixty percent of what Mr. Price received. Am. Sch. I ¶ 8g, Dkt. No. 54. Medical costs have decreased from $458 per month to $50. Sch. J. ¶ 11, Dkt. No. 1; Am. Sch. J. ¶ 11, Dkt. No. 54. The Amended Schedule J reflects other significant expense reductions as well, resulting in monthly net income of $997. *Id.*

exemption in the Property to become ineffective, thereby freeing up substantial nonexempt equity. Telhio asserts that Mrs. Price should be forced to modify the Plan to use that nonexempt equity to pay her creditors. In contrast, Mrs. Price disputes that severance or dismissal is appropriate here, asserting that further administration of the Plan is both possible and in the best interests of the parties. She also disputes that any modification of the Plan is permissible or warranted here.

EFCU took no position on the Motion to Dismiss or on the Motion to Modify except regarding the treatment of its secured claim. EFCU disputes that its secured claim was rendered unsecured by Mr. Price's death. It asserts that its claim must remain secured and must be paid in full under the Plan. The chapter 13 trustee did not respond to either of the Motions and took no position on either of the Motions.

The Court will first address the Motion to Dismiss and will then proceed to the Motion to Modify.

V. <u>Legal Analysis</u>

A. The Motion to Dismiss

The court's authority to dismiss a case when a debtor dies during a chapter 13 case is governed by Bankruptcy Rule 1016(b), which provides:

> (b) Chapter 11, 12, or 13 Case. Upon the debtor's death or incompetency in a Chapter 11, 12, or 13 case, the court may dismiss the case or may permit it to continue if further administration is possible and is in the parties' best interests. If the case continues, it must proceed and be concluded in the same manner as though the death or incompetency had not occurred.

Bankruptcy Rule 1016(b) vests the Court with considerable discretion when a debtor dies while a chapter 13 case is pending. *In re Wells*, 660 B.R. 311, 317 (Bankr. E.D. Wash. 2024); *In re Ward*, 652 B.R. 250, 257 (Bankr. D.S.C. 2023); *In re Perkins*, 381 B.R. 530, 537-37 (Bankr. S.D. Ill. 2007); *In re Sandford*, 619 B.R. 380, 393 (Bankr. E.D. Mich. 2020). The Court must consider, based on these facts, whether further administration of the case is (1) possible, and (2) is in the best interests of the parties. [10] *Ward*, 652 B.R. at 256; *In re Waring*, 555 B.R. 754, 761 (Bankr. D. Colo. 2016).

Under Rule 1016(b), a significant consideration is whether the plan had been confirmed before the debtor passed away. *Waring*, 555 B.R. at 763. The general rule in the "mainstream of bankruptcy jurisprudence" is that a chapter 13 debtor who dies after confirmation but before the completion of payments "may be able to obtain a discharge if either someone else completes the payments or an undue hardship is demonstrated." *Id*. (collecting cases).

> The debt adjustment plan is the key of the Chapter 13 process. It is the document that sets the terms making possible "further administration." Once the terms are defined and confirmed in a Chapter 13 plan, it might be possible to "further administer" a bankruptcy case even though the debtor died if there is a source of payments or sufficient payments have been made such that a discharge may be warranted.

Waring, 555 B.R. at 765; *see also Ward*, 652 B.R. at 258 ("Further administration appears possible where a surviving joint debtor has the ability to complete all payments due under the original confirmed plan to the discharge stage of the case.") (citation modified).

Here, the Plan was confirmed before Mr. Price's death. The Plan therefore "sets the terms making possible 'further administration.'" *Waring*, 555 B.R. at 765. "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). Confirmation of a chapter 13 plan "alters the status quo

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[10] Rule 1016(b) says "best interests of the *parties*." (emphasis added). This word choice is significant, because "the parties" indicates that the Court may consider interests other than those of the creditors, such as a joint debtor or even the interests of a non-debtor spouse. *In re Conn*, No. 13-62278, 2015 Bankr. LEXIS 1925, at *4-5 (Bankr. N.D. Ohio June 12, 2015); *In re Dickerson*, No. 10-60680, 2012 Bankr. LEXIS 6086, at *5-6 (Bankr. N.D. Ohio Mar. 6, 2012) (both considering the interests of the debtor's spouse).

and fixes the rights and obligations of the parties." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 135 S. Ct. 1686, 191 L.Ed.2d 621 (2015).

For this reason, a confirmed plan is often described as establishing a new contract between debtors and their creditors. *Ford Motor Credit Co. v. Bankr. Est. of Parmenter (In re Parmenter)*, 527 F.3d 606, 610 (6th Cir. 2008) ("The parties entered into a contract, and the bankruptcy court ratified it. Therefore, *res judicata* applies.").[11] "Once a plan is confirmed, it is treated as the exclusive and transcendent relationship between the debtor and the creditor. It follows that a creditor cannot thereafter assert any other interest than that provided for him in the confirmed plan." *Salt Creek Valley Bank v. Wellman (In re Wellman)*, 322 B.R. 298, 301 (B.A.P. 6th Cir. 2004) (citation modified); *Storey v. Pees (In re Storey)*, 392 B.R. 266, 270 (B.A.P. 6th Cir. 2008). Furthermore, after the confirmation order is final, parties may not assert arguments that could have been asserted at confirmation. *Ruskin v. DaimlerChrysler Servs. N. Am., L.L.C. (In re Adkins)*, 425 F.3d 296, 302 (6th Cir. 2005); *Storey*, 392 at 270.

The Plan here provides that the Debtors would be jointly responsible for a payment of $997 per month to cover their obligations under the Plan. Plan ¶ 2.1, Dkt. No. 25. Despite the death of her husband, Mrs. Price testified that, as shown by her amended Schedules I and J, she has the financial means to make those payments going forward. This is supported by the fact that Mrs. Price has made every payment under the Plan since Mr. Price's death over a year ago. Thus, the Court finds that further administration of Mr. Price's case is possible because Mrs. Price, as a joint

[11] The Sixth Circuit has noted that the term "res judicata" can be somewhat misleading in this context. "Although the courts often invoke the term 'res judicata' in describing the § 1327(a) bar to relitigation, it should be recognized that this statutorily derived bar equates to neither traditional claim preclusion nor traditional issue preclusion." *In re Welch*, No. 97-5080, 1998 WL 773999, at *2 n.1 (6th Cir. Oct. 11, 1998). "Under § 1327, as it has been interpreted, an issue is precluded if it *could have been decided* at confirmation, whether or not it was actually decided." *Welch*, 1998 WL 773999, *2 n.1; *see also In re Beach*, 1:23-cv-00258-KWR-JMR, 2024 WL 638668, at *8-9 (D.N.M. Feb. 15, 2024) (discussing the differences between traditional preclusion principles and preclusion under § 1327(a)).

debtor, can satisfy their joint obligations under the Plan. *See In re Anthony*, 669 B.R. 511, 531-32 (Bankr. S.D. Ohio 2025) (holding that "the best evidence of feasibility comes from the fact that the Debtor has made all his payments under the Plan since the Petition was filed.") The remaining question here is a determination of the best interests of the parties – an issue that implicates the binding effect of confirmation under 11 U.S.C. § 1327(a).

Given the binding effect of confirmation under § 1327(a), courts considering the application of Bankruptcy Rule 1016(b) in a joint case have held that "if the plan's funding is not dependent upon the debtor's earned income, it might be preferable ('in the best interests of the parties') to simply let whatever it was that had been set in motion continue." *In re Shepherd*, 490 B.R. 338, 340 (Bankr. N.D. Ind. 2013); *Wells*, 660 B.R. at 319. And this conclusion is logical since a confirmed plan "is treated as the exclusive and transcendent relationship between the debtor and the creditor." *Wellman*, 322 B.R. at 301. Here, none of the creditors objected to confirmation, and the Plan was confirmed before Mr. Price passed away. Since the Plan was confirmed without any objection and Mrs. Price is able to continue making the Plan payments, the best interests of the parties are served simply by allowing the Plan to continue.

Telhio asserts that it is unfair for claims against Mr. Price to be paid from Mrs. Price's income. Mot. to Dismiss 6, Dkt. No. 60 ("Debtor's income should not be used to pay any creditors who solely claim amounts against [Mr. Price]."). But such treatments are typical in joint chapter 13 cases such as this case. Telhio could and should have raised this issue before confirmation. Under the Plan, the Debtors were both jointly obligated to pay $997 monthly to fund the plan.[12] Their unsecured nonpriority claims were all placed in Class 4, which pays all unsecured claims the same two percent dividend, regardless of whether Mr. or Mrs. Price was responsible for the claim.

[12] Although ¶ 2.1 states that "the Debtor" shall make these payments, ¶ 1 provides that 'Debtor' means either a single debtor or joint debtors as applicable.". Plan ¶¶ 1, 2.1, Dkt. No. 25.

Likewise, their joint incomes would fund the payment to the claims of the secured creditors. In other words, the Plan has always called for part of Mrs. Price's income to pay Mr. Price's separate debts, because the Plan treated the Debtors' combined net income as a single pool from which all claims would be satisfied. It follows that if any creditor had an issue with this treatment, that issue had to be raised at confirmation. It is too late for Telhio to object to this treatment now.

Accordingly, the Court concludes that the best interests of the parties are served by allowing the Plan to continue to its conclusion. Since further administration is both possible and in the best interests of the parties, the Motion to Dismiss is therefore denied.

B. The Motion to Modify

1. Legal Standards for Motions to Modify

Modification of a confirmed chapter 13 plan is governed by 11 U.S.C. § 1329. Section 1329(a) sets forth the permissible types of modification:

> (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—
> (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
> (2) extend or reduce the time for such payments;
> (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
> (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance . . . .

11 U.S.C. § 1329(a). Furthermore, § 1329(b) provides that "[s]ections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section." 11 U.S.C. § 1329(b).

The Sixth Circuit has repeatedly confirmed that only the four types of modifications that are listed in § 1329(a) are permissible. *Chrysler Fin. Corp. v. Nolan (In re Nolan)*, 232 F.3d 528, 532 (6th Cir. 2000); *Ruskin v. DaimlerChrysler Servs. N. Am., L.L.C. (In re Adkins)*, 425 F.3d 296, 299 (6th Cir. 2005); *Ford Motor Credit Co. v. Parmenter (In re Parmenter)*, 527 F.3d 606, 609 (6th Cir. 2008); s*ee generally Storey v. Pees (In re Storey)*, 392 B.R. 266, 271-72 (B.A.P. 6th Cir. 2008) ("the Sixth Circuit Court of Appeals has addressed modifications under § 1329 on three separate occasions and in each instance has reiterated the necessity of only permitting modifications that strictly fall within the parameters of § 1329, due in part to the binding effect of confirmation under § 1327.") (citing *Nolan*, *Adkins*, and *Parmenter*).

Further, "§ 1327 precludes modifications of a confirmed plan under § 1329 to address issues that were or could have been decided at the time the plan was originally confirmed." *Storey*, 392 B.R. at 272-73 (citing *Cline v. Welch (In re Welch)*, No. 97-5080, 1998 WL 773999, at *2 (6th Cir. Oct. 11, 1998); *Pees v. Citimortgage, Inc. (In re Crum)*, 438 B.R. 734, 745 (Bankr. S.D. Ohio 2010); *see also In re Smith*, 102 F.4th 643, 653-54 (3rd Cir. 2024); *In re Guillen*, 972 F.3d 1221, 1228 (11th Cir. 2020).

Finally, even where all these requirements are established, bankruptcy courts retain discretion to deny modifications. *Guillen*, 972 F.3d at 1229 ("Even where modified plans satisfy these express limits, the statute reserves to the discretion of the bankruptcy court whether to confirm a modified plan."); *Conte v. Hill (In re Hill)*, Nos. 24-10264, 24-10265, 2025 WL 2179249, at *3 (11th Cir. Aug. 1, 2025) ("*nothing* prevents a bankruptcy court from refusing to confirm a modified plan put before it . . . .") (citation modified); *see also Ellison*, 620 B.R. at 600-601 ("There is no absolute right of any party to modify a confirmed plan."); *In re McAllister*, 510 B.R. 409, 430-31 (Bankr. N.D. Ga. 2014) and *In re Sullivan*, 596 B.R. 325, 333-34 (Bankr. N.D. Tex. 2019). Although § 1329 does not provide standards to guide the exercise of that discretion, courts consider the fairness of the proposed modification, viewed considering all the debtor's circumstances. *McAllister*, 510 B.R. at 431. And they consider "the two fundamental concepts of a fresh start for debtors and fairness to creditors." *Id*. (quoting *In re Forte*, 341 B.R. 859, 869-70 (Bankr. N.D. Ill. 2005)); *see also Sullivan*, 596 B.R. at 334.

2. Modifying A Plan To Change The Treatment of Secured Claims Is Not Permitted

In the Sixth Circuit, a motion to modify under § 1329 cannot be used to change the treatment of secured claims in the plan. *Nolan*, 232 F.3d at 532. Such a change is not one of the permitted modifications listed in § 1329(a). 232 F.3d at 532-33 ("Section 1329(a)(1) should not be read so broadly as to authorize the reclassification of claims."). Such a modification would also violate the requirement in § 1325(a)(5)(B), which "mandates that a secured claim is fixed in amount and status and must be paid in full once it has been allowed." *Nolan*, 232 F.3d at 533. Therefore, "for section 1325(a)(5)(B)(ii) to provide any protection to the creditor when the debtor chooses to retain her collateral, *the secured claim must not be subject to modification throughout the life of the plan*." *Adkins*, 425 F.3d at 302 (citation modified).[13]

The Debtors were joint owners of the Property. They held title to the Property as joint tenants with right of survivorship, a form of ownership governed by Ohio Rev. Code § 5302.20. The deed itself was not admitted in evidence at the Hearing, and the Debtors' Schedule A/B simply states that the Property was jointly owned by the Debtors without specifically referencing the right of survivorship. As mentioned, the parties have all acknowledged in their briefs that the Property was held subject to a right of survivorship. Telhio has asserted that the Debtors owned the property as joint tenants with right of survivorship. Mrs. Price has acknowledged that the Property is held

[13] Although both *Nolan* and *Adkins* involved motions filed by the debtor, courts have applied these principles to motions filed by other parties. *See, e.g., Pees v. CitiMortgage, Inc. (In re Crum)*, 479 B.R. 734, 745 (Bankr. S.D. Ohio 2012) (applying *Nolan* to motion to modify filed by trustee).

under a survivorship deed. And EFCU likewise asserts that the Debtors held the Property as joint tenants with right of survivorship.

Clear and unambiguous statements of counsel can be treated as evidentiary admissions, even though as a rule they are not evidence. *Kay v. Minacs Grp. (USA), Inc.*, 580 F. App'x 327, 331 (6th Cir. 2014) ("Under federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court.") (citation modified); *In re Stephenson*, 205 B.R. 52, 55 (Bankr. E.D. Pa. 1997); *In re Alexander*, 284 B.R. 626, 629 (Bankr. N.D. Ohio 2002). Taking these statements as judicial admissions of each of the parties, the Court finds that Mr. and Mrs. Price held the Property as joint tenants with right of survivorship under Ohio law.[14]

The parties dispute whether the provisions of Ohio Rev. Code § 5203.20(C) caused EFCU's judgment lien to lapse upon Mr. Price's death.[15] Although the parties have presented the Court with a complicated question of Ohio law that has divided the Ohio courts, the Court concludes that the issue is determined by the Plan and federal bankruptcy law, and not Ohio law. The Plan provides that EFCU has a Class 2 secured claim that will be paid in full. Plan ¶ 5.2.1. The rights of the parties are governed by the Plan, and not by Ohio law. *In re Peterson*, 581 B.R.

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[14] The documents attached to the parties' memoranda were not admitted in evidence and therefore cannot be considered by the Court. *In re Dorlaque*, 658 B.R. 489, 513-14 (Bankr. E.D. Mo. 2024) (collecting cases); *In re Vill. Gate, LLC*, No. 24-10180, 2024 WL 4236407, at *8 (Bankr. S.D. Ohio Sept. 17, 2024) (refusing to consider documents attached to a post-hearing brief but not admitted in evidence at the hearing). Considering matters that were not admitted in evidence or properly the subject of judicial notice is error. *Summitt Comm. Bank v. David (In re David)*, 629 B.R. 804, 812-14 (E.D. Va. 2021).

[15] The parties have extensively briefed the issues of whether Ohio Rev. Code §§ 5302.20(C), 5302.22 and/or 5302.23 govern the impact of Mr. Price's death upon EFCU's secured claim. They rely on two Ohio appellate cases involving virtually identical fact patterns. In both cases, a mortgage was taken out by only one joint tenant at the time the joint tenancy was created. When that joint tenant later died so that the entire fee vested in the surviving tenant, the Ohio courts were asked to determine whether the mortgage liens retained any validity after death of the mortgagor. *Fannie Mae v. Winding*, 10 N.E.3d 799 (Ohio Ct. App. 2014), relied on by Mrs. Price and EFCU, held that the mortgage continued to be a valid obligation upon the half interest in the property held by the party who signed the mortgage, though it was never a valid obligation against the interest held by the other party. *CitiMortgage, Inc. v. Brown*, 45 N.E.3d 258, 260-61 (Ohio Ct. App. 2015), relied on by Telhio, reached the opposite conclusion. It held that the death of the mortgagor joint tenant extinguished the mortgage entirely, under Ohio Rev. Code § 5302.20(C)(2) because the mortgage was conditioned upon her survival. *Brown* specifically rejected the holding in *Winding*. *Brown*, 45 N.E.3d at 262-63. Neither case bears directly upon the situation before the Court – the impact of a death of a joint tenant upon judgment liens that were in effect *prior* to the creation of the joint tenancy.

789, 795 (Bankr. D. Md. 2018) ("Thus, as amongst the parties bound by the Chapter 13 Plan this court must look to the terms of the plan, not to Illinois law."); *In re Ivory*, 146 B.R. 27, 28 (Bankr. D. Or. 1992) ("While the debtor's property rights in this context are determined by state law, once the bankruptcy petition was filed, the manipulation of those rights is governed by federal bankruptcy law.") (citation modified). This result flows directly from the binding effect of confirmation under § 1327(a). After all, upon confirmation the Plan becomes the "exclusive and transcendent relationship" between the Debtors and their creditors. *Wellman*, 322 B.R. at 301.

This principle is illustrated in *Adkins*, where the secured creditor had obtained relief from the automatic stay, repossessed the car, and sold it. The debtors sought to modify the plan to reclassify the remaining deficiency claim as unsecured to match the result that would occur outside of bankruptcy. The Sixth Circuit held that the binding effect of the confirmed plan meant that the deficiency claim must remain a secured claim under the confirmed plan until paid in full, even though the result was at odds with state law. 425 F.3d at 305. "We recognize the frustration certain commentators have with our allowing a secured claim to remain classified as 'secured' following the sale of the underlying collateral." *Id*. (citation modified). The court rejected this criticism because "there exists no provision in the Code applicable to this case that would allow a reclassification of the deficiency given the 'binding effect' of the confirmed plan under 11 U.S.C. § 1327." *Adkins*, 425 F.3d at 305.

Thus, even assuming Telhio is correct that Mr. Price's passing invalidated EFCU's judgment lien, it would not alter the outcome in this case, because the rights of the parties are determined by the confirmed Plan. Upon confirmation, the Plan became the "exclusive and transcendent" relationship between the Debtors and their creditors. *Wellman*, 322 B.R. at 301. As a result, no creditor could "thereafter assert any other interest than that provided" in the Plan. *Id*.

The Plan requires that EFCU's secured claim be paid in full. *Nolan* and *Adkins* prohibit modifying the Plan to alter the treatment of EFCU's secured claim, and *Adkins* makes clear that this outcome is dictated by federal bankruptcy law, even where state law would treat the claim as unsecured. Accordingly, because nothing in the Plan suggests that Mr. Price's death would have any effect upon EFCU's secured claim, that secured claim cannot be modified. Since bankruptcy law prohibits the relief sought by Telhio, the Court will not need to address the issues of Ohio law.

3. Telhio Cannot Modify The Plan To Change The Treatment of Only a Portion of Class 4

Telhio's second proposed modification is also foreclosed by the confirmed Plan, and the provisions of §§ 1327(a), 1329(a) and 1329(b). This modification proposes to modify the claims of those creditors who have claims solely against Mr. Price so that those claims will receive nothing and the other unsecured creditors will receive a slightly higher dividend. Telhio Supp. Br. 8, Dkt. No. 75 (noting that not paying those creditors with claims solely against Mr. Price frees up more money for those creditors who hold joint claims or claims solely against Mrs. Price). For many reasons, this modification is not permitted.

"Section 1329(a)(1) should not be read so broadly as to authorize the reclassification of claims." *Nolan*, 232 F.3d at 533; *see also Parmeter*, 527 F.3d at 609-10 (refusing to approve modification of plan that would reclassify a lease claim to be paid by debtors into an administrative priority claim to be paid by the trustee, to the detriment of other creditors). Therefore, § 1329(a) does not permit reclassifying some Class 4 general unsecured claims so that they receive a higher dividend, to the detriment of other Class 4 general unsecured claims that will have their dividend reduced to zero. In this regard, *Parmenter* emphasized not only the language of § 1329(a) but also relied on the overriding goals of the bankruptcy system:

> Our conclusion also respects the goals of obtaining a maximum and equitable distribution for creditors and ensuring a "fresh start" for individual debtors, which the Supreme Court has often said are at the core of federal bankruptcy law. If we permitted Ford's claim, we would assuredly upset the reasonable expectations of other creditors--first by allowing Ford's claim to trump other claims and second by potentially depleting many of the estate's assets designated for other creditors. Because the Parmenters assumed the lease and took responsibility for making lease payments, the other creditors had no reason to expect that Ford would step ahead of them in line if a default occurred.

Id. at 609-10 (citation modified).

Moreover, if this relief were granted, some members of Class 4 would receive nothing, while other members of Class 4 will receive a meaningful dividend. 11 U.S.C. § 1322(a)(3) requires that "if the plan classifies claims, it shall provide the same treatment for each claim within a particular class." Telhio's proposed modification would result in some members of Class 4 receiving nothing while others receive a dividend, in violation of § 1322(a)(3). And since § 1329(b) requires that modifications comply with § 1322(a), Telhio's proposed modification cannot be approved.

Finally, Telhio's proposal to reclassify the Class 4 claims asserted solely against Mr. Price must be rejected because it relies on an argument that could have been raised at confirmation. The Plan draws no distinction among Class 4 claims based on liability of Mr. Price, Mrs. Price, or both. If Telhio objected to all unsecured claims in Class 4 receiving the same treatment, the time to assert that objection was at confirmation. A motion to modify cannot be based on an argument that could have been raised at confirmation. *Adkins*, 425 F.3d at 302; *Storey*, 392 B.R. at 270.

4. The Plan Cannot Be Modified To Require Sale of the Property

The third relief requested by Telhio is for a recalculation of the best interest test under § 1325(a)(4) on the theory that Mr. Price's passing extinguished his exemption in the Property, such that there is now significant equity in the Property. In essence, Telhio asserts that the best interest dividend requirement of § 1325(a)(4) must be recalculated. There are many difficulties with this argument.

The first difficulty is that Telhio has not cited to a single case that supports modification of the Plan the way Telhio requests. In fact, on the issue of recalculating the best interest dividend, none of the three briefs Telhio has filed in support of the Motion to Modify cite any caselaw. For several reasons, the Court rejects Telhio's argument.

First, the best interest test of § 1325(a)(4) prohibits confirmation of a plan unless all creditors will receive at least as much under the plan as they would if the case had been filed under chapter 7. But § 1325(a)(4)'s best interest test "is a *prerequisite* of confirmation." *In re Koffah*, No. 18-41820-EJC, 2025 Bankr. LEXIS 3106, at *16 n.2 (Bankr. S.D. Ga. Nov. 25, 2025). Section 1325(a)(4) "does not, by itself, *require* a plan to be modified." *Id.* The only reason Telhio has asserted in support of modification of the Plan is its argument that Mr. Price's death means that there is now substantial nonexempt equity in the Property such that Telhio will receive less under the Plan than if the case had been filed under chapter 7. Telhio's Supp. Br. 9, Dkt. No. 75. But as *Koffah* illustrates, § 1325(a)(4) is a confirmation prerequisite and not a reason for modification.

Telhio's argument is also flawed because it equates the change in ownership of the Property with increased net income. A common reason for modification of a confirmed plan is a change in the debtor's income. Courts generally are willing to consider modifications based on changes in net income because they affect the debtor's ability to make the plan payments. *See*, *e.g.*, *In re Scholl*, 605 B.R. 163, 182-83 (Bankr. S.D. Ohio 2019) ("Congress intended chapter 13 plans to be modifiable based on a debtor's increased or decreased 'ability to pay' during the life of the plan.") (citation modified). But the focus of the inquiry is "a debtor's actual, post-confirmation income and expenses." *Id*. at 183 (citation modified). Mrs. Price's net disposable income did not change when Mr. Price died. While her testimony indicated that Mrs. Price remains able to make the $997 monthly payment under the Plan, it also revealed that she cannot pay anything more. *See also* Am. Sch. I/J, Dkt. No. 54.

When the change in circumstances does not result in a change in disposable income, courts generally decline to permit modifications under § 1329, particularly modifications that would force debtors to sell property or incur debt against their will. *See, e.g., In re Bernades*, 267 B.R. 690, 695 (Bankr. D.N.J. 2000) (holding that a creditor's motion to increase the dividend, which was explicitly based on the debtor selling his residence, was not feasible where the debtor had no present intention to sell and no ability to pay a higher dividend if he did not sell or refinance the property); *In re Trumbas*, 245 B.R. 764, 767-68 (Bankr. D. Mass. 2000) (holding that debtor could not be forced to sell or refinance her home to contribute unrealized appreciation into the plan: "a court cannot confirm a modified plan that . . . forces the debtor to obtain a second job or to involuntarily incur new debt."). In fact, even where a prepetition residence has been sold, without forcing the debtor to sell against her will, courts have held that the resulting proceeds are not income that a debtor can be forced to pay to creditors. *In re Elassal*, 654 B.R. 434, 445 (Bankr. E.D. Mich. 2023) ("a debtor's homestead is a capital asset and the sale of a capital asset does not create disposable income pursuant to § 1325.") (citation modified).

Furthermore, changes that are based on "an intrinsic benefit (or risk) of ownership" are not unexpected windfalls that would warrant modifying a plan to force the debtor to sell or mortgage the asset. *Trumbas*, 245 B.R. at 767-68; *In re Jacobs*, 263 B.R. 39, 49 (Bankr. N.D.N.Y. 2001); *In re Euler*, 251 B.R. 740, 747 (Bankr. M.D. Fla. 2000). This results from the binding effect of the confirmed plan under § 1327(a), which forecloses a motion to modify based on issues that could have been foreseen and addressed at confirmation. *Jacobs*, 263 B.R. at 48 (collecting cases).

Thus, where a chapter 13 debtor owns real property, a party that is concerned about the property appreciating over the life of the plan, how such appreciation will be handled is an issue that must be raised before confirmation. *Id.*[16] Parties concerned about such issues must object or negotiate with the debtor before confirmation to obtain a plan provision that addresses the issue. *Id.*

The issue of what would happen under the plan if one of the Debtors should pass away prior to completing the Plan is like the issue of potential appreciation of the debtor's residence in *Jacobs* or the possibility that the debtor's spouse might be ordered to pay some of their joint debts in *Wilson*. The Debtors disclosed the fact that Mr. Price was suffering from an illness that imposed on the Debtors substantial and ongoing monthly medical costs of $458.00. *See* Sch. J ¶¶ 11, 24, Dkt. No. 1 (disclosing medical expenses of $458 per month and stating that "Mr. Price is ill and his monthly medical expenses are high" to explain those expenses). Under these circumstances, it cannot be said that the possibility of Mr. Price's passing (thereby triggering the right of survivorship) was so unlikely that it could not be anticipated. If Telhio, or any creditor, were concerned about this issue, they should have objected to the Plan.[17]

Paragraph 12 of the Plan provides that the property of the estate revested in the Debtors upon confirmation. Telhio asserts that 11 U.S.C. § 541(a)(5)(A) brought the interest in the Property that Mrs. Price acquired under the right of survivorship back into the estate. Telhio did

[16] This principle similarly applies when a debtor is involved in a divorce proceeding before confirmation – modification is not permitted just because the debtor's spouse pays joint debts pursuant to a divorce decree after the plan has been confirmed. *In re Wilson*, 157 B.R. 389, 390-91 (Bankr. S.D. Ohio 1993) ("The Court believes that where a debtor is separated or involved in divorce proceedings at the time of a creditor's meeting or confirmation hearing, the fact that the non-filing spouse might be ordered by a Domestic Relations Court to pay a joint debt is not unanticipated under objective standards.").

[17] The Plan, in fact, contains a nonstandard provision that preserves the chapter 13 Trustee's ability to assert the Trustee's position that certain funds acquired postpetition are property of the estate and are therefore subject to administration. Plan ¶ 13, Dkt. No. 25. This provision is not relevant here. The provision provides an exception to res judicata solely in favor of the Trustee, and the Trustee is not seeking modification here. The provision applies only to "funds," and the transformation of the title to the Property resulting from Mr. Price's passing did not result in Mrs. Price obtaining any extra funds.

not cite any case law holding that § 541(a)(5)(A) applies to a transfer resulting from a right of survivorship. Section 541(a)(5)(A) brings into the estate any interest in property a debtor acquires in the 180 days following the petition date by "bequest, devise, or inheritance." These terms are not defined in the Bankruptcy Code, so courts interpreting these terms generally look to state law, as well as to sources such as Black's Law Dictionary. *In re Vetsch*, 620 B.R. 150, 157 (Bankr. W.D. Wash. 2020). A "bequest" is a gift by will of personal property, a "devise" is a gift by will of real property, and an "inheritance" is property which passes under the law of intestate succession. *Id*. (citing Black's Law Dictionary (11th ed. 2019)); *In re Roth*, 289 B.R. 161, 166 (Bankr. D. Kan. 2003) (same).[18] In other words, "bequest, devise, or inheritance" all refer to property passing through the estate of another. *Id*.

Under Ohio law, when an interest in property is acquired through a right of survivorship upon the death of a joint owner, that interest does not pass into the decedent's estate. *In re Est. of Ault*, 609 N.E.2d 568, 569-70 (Ohio Ct. App. 1992) (holding that where property is held in a joint tenancy with a right of survivorship, the death of one joint tenant vests the decedent's interest in the survivor by operation of law and not through the decedent's estate). As a result, that interest is not acquired by "bequest, devise, or inheritance." Rather it is simply acquired by operation of law as an incident of the right of survivorship. *Birney v. Smith (In re Birney)*, 200 F.3d 225, 229 (4th Cir. 1999); *In re Hamacher*, 535 B.R. 180, 183 (Bankr. E.D. Mich. 2015); *In re Alderton*, 179 B.R. 63, 65-66 (Bankr. E.D. Mich. 1995); *In re Bradby*, 455 B.R. 476, 484 (Bankr. E.D. Va. 2011). Therefore, when Mr. Price's interest in the Property vested in Mrs. Price upon his death, she did

[18] Ohio law is similar, although it does not rigorously enforce the distinction between "bequest" and "devise" such that both terms now simply refer to a gift by will of property, whether real or personal. *See Park Nat'l. Bank of Newark v. Dillon*, 165 N.E.2d 829, 831-32 (Ohio Ct. App. 1959) (noting that historically, "devise" related to gifts of real property in a will, and "bequest" related to gifts of personal property in a will, but the more modern usage is that the terms interchangeably refer to any gift of property under a will). And "an inheritance is the right to succeed to the estate of a person who dies intestate." *Elliott v. Shaw*, 23 Ohio Dec. 662, 664 (Ohio C.P. 1913) (citation modified).

not acquire that interest by "bequest, devise, or inheritance," and § 541(a)(5)(A) did not bring that interest back into the bankruptcy estate.

Telhio also asserts that 11 U.S.C. § 1306 brought Mr. Price's interest in the Property back into the estate because it passed to Mrs. Price upon his death. Section 1306(a) provides that, in chapter 13, property of the estate includes not only property included in the estate under § 541, but it also includes property acquired by the debtor until the case is closed, dismissed, or converted to another chapter. *See* 11 U.S.C. § 1306(a). Courts hold that these property interests must be "new" property and not simply a transformation of existing property. For example, proceeds of a postpetition sale are viewed simply as a transformation of the prepetition property interest and not as new property. *In re Elassal*, 654 B.R. 434, 442-43 (Bankr. E.D. Mich. 2023) (collecting cases). *Ellasal* held that this was true even though the property sold for more than its valuation as determined at confirmation. *Id*. at 442. The court held that any other outcome would conflict with the "chapter 13 bargain" under which a debtor pays creditors out of future income in exchange for keeping their prepetition property. *Id.* at 440, 442-43. And perhaps more closely on point, in *Bradby*, the court held that a property interest acquired under a right of survivorship by one debtor when her joint debtor spouse passed away after they had sought chapter 13 relief was simply a transformation of a preexisting property interest, but was not "new property" that § 1306(a) brought into the estate. 455 B.R. at 484.

Next, Telhio simply assumes that Mr. Price's homestead exemption became ineffective on his death – an assumption that is contradicted by abundant authority that Telhio did not address. "Changes in either a debtor's factual circumstances or the law after the petition date do not change the status of an exemption properly claimed as of the petition filing date." *In re Lude,* 291 B.R. 109, 110 (Bankr. S.D. Ohio 2003); *In re Guikema*, 329 B.R. 607, n.8 (Bankr. S.D. Ohio 2005);

Rockwell v. Hull (In re Rockwell), 968 F.3d 12, 18 (1st Cir. 2020); *see also* Ohio Rev. Code § 2329.66(D)(1) (providing that Ohio exemptions are determined in bankruptcy cases as of the petition date).

Thus, the death of a debtor does not impact exemptions claimed before that debtor's passing. *In re Brown*, 807 F.3d 701, 709 (5th Cir. 2015) ("Thus, when a debtor dies during the pendency of his bankruptcy case, he does not become ineligible for exemptions that were available to him on the petition date. A debtor's post-petition death has no effect on the exemptions available to him."); *Armstrong v. Peterson (In re Peterson)*, 897 F.2d 935, 937-38 (8th Cir. 1990) ("Peterson's homestead exemption became fixed and vested on the date of filing. Peterson's death, which occurred eight months after the date of filing, is irrelevant for determining his right to a homestead exemption."). And the surviving spouse has a right to claim the benefit of the exemption claimed in a homestead by the deceased spouse. *Armstrong*, 897 F.2d at 937-98; *In re Friedman*, 38 B.R. 275, 276-77 (Bankr. E.D. Pa. 1984); *In re Costello*, 72 B.R. 841, 844 (Bankr. E.D.N.Y. 1987). Because Mr. Price's claim of exemption would remain valid after his death, his death did not create any new equity in the Property.

Finally, Telhio's argument presupposes that it is proper to redetermine the best interest test after confirmation, an issue that has sharply divided the courts and commentators. Section 1325(a)(4) states that the test is to be determined "as of the effective date of the plan." The Plan here provides that its effective date is the date of confirmation. Plan ¶ 11, Dkt. No. 25. Many courts hold that the only "effective date of the plan" is the original confirmation date, even when the plan is modified. *In re Forbes*, 215 B.R. 183, 188-89 (B.A.P. 8th Cir. 1997); *In re Baker*, 620 B.R. 655, 661 (Bankr. D. Colo. 2020); *In re Gibson*, 415 B.R. 735, 738 (Bankr. D. Ariz. 2009). These courts reason that, because § 1329(b)(2) requires that unless the Court disapproves a proposed modification, "the plan as modified becomes the plan," Congress contemplated that the "effective date of the plan" is always the original confirmation date. 215 B.R. at 188. They also reason that if Congress had intended that each modification of a plan would reset the "effective date of the plan," it would have said so. But Congress did not speak of confirmation of a modified plan, it spoke of "approval" and "disapproval." According to these courts that suggests that Congress did not view an order modifying a plan as creating a new effective date, and as such, the best interest test is always calculated as of the date of the original plan. *Id*. at 188-90; *Gibson*, 415 B.R. at 738-39; *Baker*, 620 B.R. at 661-62.

In contrast, other courts hold that the best interest test should be applied as though § 1329(b)(2) provided that approval of a modification establishes a new "effective date of the plan." *In re Barbosa*, 236 B.R. 540 (Bankr. D. Mass. 1999), *aff'd sub nom. Barbosa v. Solomon*, 243 B.R. 562 (D. Mass 2000), *aff'd*, 235 F.3d 31 (1st Cir. 2000); *In re Scholl*, 605 B.R. at 182-83.[19] The leading commentator on bankruptcy has articulated its view of the flaws in the *Barbosa* approach, and argues that the court should not recalculate the best interest test at the time of modification because:

> The best-interests test turns on what would have happened had the debtor filed a chapter 7 case instead of a chapter 13 case. If a chapter 7 case had been filed, only property of the estate under section 541 would have been available to creditors and not the additional property that became property of the estate under section 1306(a). Therefore, property acquired after the petition, other than the limited types that become property of the estate under section 541, is not relevant to application of section 1325(a)(4) to a proposed plan modification. To hold otherwise, a court would have to find the best-interests test to be a constantly fluctuating standard, subject not only to property coming into the estate and leaving the estate but also to changes in the value of estate property. Indeed, if a case is converted from chapter 13 to chapter 7, property of the estate ordinarily is based on the property the debtor had on the date of the petition, and not the date of conversion. The policy behind this provision, that a debtor should not be discouraged from filing a chapter 13 case

[19] The Court recognizes that two decisions in this district have followed *Barbosa* to hold that the best interest test must be recalculated at the time of modification. *Scholl*, 605 B.R. at 185 (citing *In re Jefferson*, 299 B.R. 468, 470-71 (Bankr. S.D. Ohio 2003)).

> by the possibility that property acquired during the case could be lost to creditors who would have no right to it had the debtor initially filed a chapter 7 case, is equally applicable. For similar reasons, the acquisition or liquidation of assets should not be grounds for modification, at least if those assets do not produce additional ongoing income for the debtor.

8 COLLIER ON BANKRUPTCY ¶ 1329.05[3] (Richard Levin & Henry J. Sommer eds.,16th ed. 2025); *see also Baker*, 620 B.R. at 662-63 (quoting Collier with approval).

Telhio has not addressed this divide in the case law. It simply asserts that the best interest dividend should be recalculated without any analysis. It has not provided the Court with any argument here why it should follow cases such as *Barbosa* and *Scholl* rather than cases such as *Baker* and the analysis from Collier that it adopts. The Court is reluctant to determine an issue that has generated substantial disagreement nationally without the benefit of more extensive briefing than is the case here. Since the Court has identified several other reasons why the Motion to Modify must be rejected, the Court notes the issue but will, under the principle of judicial restraint, reserve the issue for another day. "Under the principle of judicial restraint, the Court need not decide more issues than are necessary to dispose of the matter before the Court." *In re SCS Logistics, Inc.*, 671 B.R. 224, 251 (Bankr. S.D. Ohio 2025) (citation modified).

For all of these reasons, the Court concludes that Telhio has not established an adequate legal basis for any of its proposed modifications to the Plan, and therefore the Motion to Modify cannot be granted.

5. In the Alternative, the Court Denies the Motion to Modify in its Discretion

Although the Court has found that the Motion to Modify cannot be granted, the Court separately concludes that, as a discretionary matter, it would not approve the modifications in any event. For many of the same reasons that the Court has denied the Motion to Dismiss, the Court concludes that the most appropriate outcome here is to permit Mrs. Price to complete the Plan as originally confirmed.

This is not a time when Mrs. Price received an unjustified windfall. As another court noted in a somewhat analogous situation:

> This is not a "windfall" case. A windfall occurs when a debtor receives an unanticipated, fortuitous, and significant benefit without earning it or planning it. Examples of windfalls include a debtor's winning the lottery or receiving a substantial inheritance or life insurance proceeds upon the death of someone other than a spouse.
>
> The situation here differs dramatically in nature and degree from such "windfall" circumstances. A debtor in her 40's with stable employment receiving significant proceeds upon the death of a parent is in a far different situation than Mr. McAllister because she has continuing income for her support and the opportunity in future years to save for her retirement years. Mr. McAllister, in contrast, has neither. And surely Mr. McAllister would prefer to have his wife instead of the insurance money. His situation is a tragedy, not a windfall.

In re McAllister, 510 B.R. 409, 432-33 (Bankr. N.D. Ga. 2014). As with the insurance policy in *McAllister*, the Property here was the Debtors' primary asset, held as a joint tenancy to protect the interests of the household. Mrs. Price has suffered a tragedy. She has not received a windfall.

The Motion to Modify seeks, in effect, to force Mrs. Price to sell the Property or to mortgage it and use some proceeds to fund a higher payout to creditors. Telhio has not cited a single case approving so drastic a remedy, and the cases located by the Court's independent research all hold that chapter 13 debtors should not be forced to sell property or incur debt to pay increased obligations under a modified plan. *Jacobs*, 263 B.R. at 47-48 (collecting cases). The only change in circumstance here since confirmation is that Mrs. Price has suffered a tragic loss. The Court declines to exercise its discretion in a manner that would compound that tragedy by forcing the sale of the Property.

VI. Conclusion

For all these reasons, the Motion to Dismiss and the Motion to Modify are DENIED.

IT IS SO ORDERED.

Copies to:

Default list plus
Jeffrey Sams, Counsel for Education First Credit Union