

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

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

DAY: TUESDAY
DATE: JULY 13, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

COURT REOPENING

As of July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

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. [21-21700](#)-A-13 **IN RE: DARYL TSUTSUI**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE MONEY STORE INC.
6-16-2021 [\[22\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

No Ruling

2. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[DPC-3](#)

MOTION TO DISMISS CASE
6-14-2021 [\[93\]](#)

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

[Since posting its original rulings, the court has changed its intended ruling on this matter].

No Ruling

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

MOTION TO VALUE COLLATERAL OF OVATION SALES FINANCE TRUST
6-29-2021 [\[39\]](#)

RICHARD JARE/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

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

Disposition: Granted

Order: Prepared by the moving party consistent with this ruling's instructions

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 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).

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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as a 3 ton Package Heat Pump with 5kw strips. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$1,500.00.

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 non-vehicular, personal property collateral 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 3 ton Package Heat Pump with 5kw strips has a value of \$1,500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$1,500.00 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.

4. [19-27805](#)-A-13 **IN RE: PHILLIP ROBERTS**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[46\]](#)

ASHLEY AMERIO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,100.00.

The debtor's opposition states that the debtor intends to cure the delinquency by the hearing date. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$1,100.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1,100.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

5. [21-20806](#)-A-13 **IN RE: JEFFREY/NIKEA HARRISON**
[DPC-1](#)

MOTION TO DISMISS CASE
6-2-2021 [\[33\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

[Since posting its original rulings, the court has changed its intended ruling on this matter].

Final Ruling

Since the trustee requested the court to drop this motion from the calendar, ECF No. 43, the court shall drop this matter from the calendar as moot.

6. [19-27010](#)-A-13 **IN RE: MARY CARTER**
[DPC-3](#)

MOTION TO DISMISS CASE
6-9-2021 [\[54\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$11,156.33.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

7. [20-22712](#)-A-13 **IN RE: BRYAN JONES**
[DPC-3](#)

MOTION TO DISMISS CASE
6-9-2021 [\[39\]](#)

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8,700.00.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this

case. This delinquency constitutes cause to dismiss this case. 11
U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

8. [20-23613](#)-A-13 **IN RE: PHILLIP CARRERA**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[21\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$12,161.40.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

9. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[DPC-2](#)

MOTION TO DISMISS CASE
6-7-2021 [\[84\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

10. [16-20018](#)-A-13 **IN RE: JOJIE GOOSELAU**
[PGM-11](#)

MOTION TO SELL AND/OR MOTION TO WAIVE RULE 6004 (H)
6-16-2021 [\[182\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Sell Property [Real Property]

Notice: LBR 9014-1(f)(2); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below
and approved as to form and content by the Chapter 13 trustee

Property: 1701 Baines Avenue, Sacramento, CA 95835

Buyer: Asim Ahmed

Sale Price: \$749,000.00

Sale Type: Private sale subject to overbid opportunity

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).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is property of the estate because the debtor's confirmed plan provides that property of the estate will not revert in debtors upon confirmation. ECF No. 137. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds

a proper reorganization purpose for this sale. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. The order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale. The order shall also contain language requiring the creditor Wells Fargo Bank's claim to be paid in full through the sale prior to releasing of its lien on the property, and the creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that the Loan is paid in full at the time the sale is finalized.

11. [16-20118](#)-A-13 **IN RE: LESTHER GASTELUM AND ALMA SAQUELARES**
[DPC-2](#)

MOTION TO DISMISS CASE
6-7-2021 [\[177\]](#)

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

No Ruling

12. [21-21421](#)-A-13 **IN RE: DANIEL GIFFIN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-26-2021 [\[16\]](#)

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).

F.R.B.P. 4002(b) (1) (B)

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor failed to provide proof of his social security number at the meeting of the creditor, F.R.B.P. 4002(b)(1)(B).

11 U.S.C. § 1325(a) (6)

The debtor must show that the proposed chapter 13 plan is feasible and must show ability to comply with its terms. 11 U.S.C. § 1325(a)(6). The debtor is delinquent \$1,315.00 and therefore hasn't shown feasibility of the plan.

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.

13. [20-24927](#)-A-13 **IN RE: BANISHA EVANS**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[24\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$14,679.00.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

14. [19-26928](#)-A-13 **IN RE: CHINDA LEE**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[19\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2,500.00.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

15. [20-21929](#)-A-13 **IN RE: THOMAS/LAURETTA HALL**
[CYB-2](#)

MOTION TO INCUR DEBT
6-25-2021 [\[40\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Tentative Ruling

Motion: Approve New Debt [Vehicle Loan]

Notice: LBR 9014-1(f)(2); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party

Vehicle: 2018 Ford Escape

Loan Terms: \$528.67 per month, 13.7% interest, 71 months

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 debtors seek to incur new debt to finance the purchase of a vehicle. The debtors have been preapproved by creditor Consumer Portfolio Services, Inc. to incur this new debt for the purchase of the subject vehicle and the trustee filed a non-opposition to this motion, ECF No. 45. The debtors have indicated they can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion, and the trustee will approve the order as to form and content.

16. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY KELLY
WILLIAMS
5-20-2021 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
JOSEPH CAFFREY/ATTY. FOR MV.

No Ruling

17. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-19-2021 [[19](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

18. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[JWC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY KELLY WILLIAMS
6-24-2021 [[33](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
JOSEPH CAFFREY/ATTY. FOR MV.

Tentative Ruling

Objection: Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

When the chapter 13 plan is filed within 14 days of the petition and no motion to confirm is required, see LBR 3015-1(c)(1), the court's local rules require an objection to plan confirmation to be filed and served within 7 days after the first date set for the meeting of creditors, see LBR 3015-1(c)(4). The notice of the meeting of creditors includes notice of this deadline.

The deadline for filing an objection to confirmation was May 20, 2021. But the objection was filed on June 24, 2021. The court will overrule this objection as untimely.

19. [19-26942](#)-A-13 **IN RE: DEBORAH RUNNELS**
[DPC-2](#)

MOTION TO DISMISS CASE
6-9-2021 [\[33\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,655.00.

The debtor's opposition states that the debtor has paid \$1,233.00 after the trustee filed the present motion to dismiss. The debtor also states that the balance will be paid prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$2,422.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,422.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

20. [21-20842](#)-A-13 **IN RE: DEVIN DARRAH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-14-2021 [\[25\]](#)

RICHARD JARE/ATTY. FOR DBT.
06/14/21 INSTALLMENT FEE PAID \$78

Final Ruling

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

21. [20-21944](#)-A-13 **IN RE: HUGO THOMPSON**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[30\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

22. [15-21845](#)-A-13 **IN RE: JOSEPH BARNES**
[DPC-2](#)

MOTION TO DISMISS CASE
6-7-2021 [\[300\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
DEBTOR DISCHARGED: 09/22/2016
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$6,881.00.

The debtor's opposition states that the debtor "intends to file" a modified plan prior to the hearing, ECF No. 304. Up until 7 days before the hearing, no modified plan was filed. In effect, the

debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$6,881.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$6,881.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

23. [21-21347](#)-A-13 **IN RE: ALSESTER COLEMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-22-2021 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

If the remaining \$1 from the first installment payment has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

24. [21-21347](#)-A-13 **IN RE: ALSESTER COLEMAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-26-2021 [\[16\]](#)

PETER MACALUSO/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).

11 U.S.C. § 1325(a)(6)

A chapter 13 debtor is required to propose a feasible plan and to demonstrate ability to comply with its terms. 11 U.S.C. § 1325(a)(6). Here the debtor is \$1,400.00 delinquent. The debtor has not shown ability to comply with a feasible plan.

11 U.S.C. § 521(e)(2)

The debtor has failed to provide the trustee with a required 2019 tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

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.

25. [19-26448](#)-A-13 **IN RE: DUANE OTT**
[DPC-2](#)

MOTION TO DISMISS CASE
6-9-2021 [\[41\]](#)

MARC VOISENAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$13,100.61.

The debtor's opposition states that the debtor's renewed unemployment claim and the money expected from his tax refunds should make him current by the hearing date. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$13,100.61.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this

case. Payments are delinquent in the amount of \$13,100.61. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

26. [20-21551](#)-A-13 **IN RE: GINA VASQUEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
6-7-2021 [\[18\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$9,568.41.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

27. [18-27962](#)-A-13 **IN RE: GUILLERMO MIRALRIO**
[RPZ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-4-2021 [[90](#)]

W. SHUMWAY/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
CITIBANK, N.A. VS.

RESPONSIVE PLEADING

No Ruling

28. [20-20963](#)-A-13 **IN RE: RYAN REED**
[DPC-1](#)

MOTION TO DISMISS CASE
6-7-2021 [[22](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee filed a Supplemental Ex Parte Motion requesting that the court drop this matter, ECF No. 30, the court will drop this matter from the calendar as moot. The court will issue a civil minute order.

29. [20-23565](#)-A-13 **IN RE: RICHARD EDDINGER**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-8-2021 [[18](#)]

NIKKI FARRIS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
MEDALLION BANK VS.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing

set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Id.* at 68 n.22 (quoting *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant’s claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan’s term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract”

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant’s personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

30. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-3](#)

MOTION TO DISMISS CASE
6-9-2021 [\[122\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

31. [21-22273](#)-A-13 **IN RE: DAVID/MELANIE CHAO**
[MMN-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-25-2021 [\[14\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.

No Ruling

32. [16-23076](#)-A-13 **IN RE: LEILA MONDARES**
[DPC-1](#)

MOTION TO DISMISS CASE
6-7-2021 [\[29\]](#)

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

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); debtor's non-opposition filed

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). 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).

DELINQUENCY

Cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2,111.60.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [20-20080](#)-A-13 **IN RE: CHRISTOPHER BOZZOLI**
[DPC-1](#)

MOTION TO DISMISS CASE
6-7-2021 [\[29\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$6,115.51.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

34. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[DPC-2](#)

MOTION TO DISMISS CASE
6-9-2021 [\[50\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$990.00.

The debtor's opposition states that the debtor intends to be current by the hearing. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$990.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$990.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

35. [21-20686](#)-A-13 **IN RE: ALICE RANSOM**
[AVN-1](#)

MOTION TO CONFIRM PLAN
6-4-2021 [\[31\]](#)

ANH NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative 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.

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms.

Courts have historically found balloon payments or otherwise that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they are contingent on a speculative event to take place during the life of the plan, See *In Re Gavia* 24 BR 573,574 (9th Cir. BAP 1982).

Here the debtor admits in the plan's nonstandard provisions, Plan, Section 7, ECF No. 35, that a lump sum payment of \$70,174.18 will become due to the Bank of New York Mellon on July 1, 2021. The Bank of New York Mellon has filed Proof of Claim No. 6. The nonstandard provision does not clearly explain when the lump sum will be paid, but express three alternatives: A) a loan modification will be obtained with Bank of America, (who may be the servicer based on Claim #6), B) the debtor will refinance, or C) the debtor will sell the property." *Id.* The plan does not indicate by what date these events will occur. The Bank of New York Mellon previously objected to the plan based on the lump sum payment due on July 1, 2021, ECF No. 21, and the court sustained the objection, based on feasibility given the lump payment based on speculative events, due of over \$70,000.00, ECF No. 28. The plan appears to be overly speculative. The debtor failed to show feasibility under 11 U.S.C. §1325(a)(6).

COMPLIANCE WITH RULE 9013

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking a statement of

the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

The motion states that "Class 3 Creditor Bank of America (The Bank of New York Mellon) shall be paid outside the plan," ECF No. 31. The debtor's declaration duplicates the statement identified in the motion, ECF No. 33. However, the plan shows that Bank of America-Bank of New York Mellon is listed in Class 4, and the debtor will make ongoing payments to the creditor, ECF No. 35. The debtor did not state with particularity how the creditor will be treated under the plan.

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.

36. [17-26989](#)-A-13 **IN RE: CARRIE BAILON MACDONALD**
[DPC-1](#)

MOTION TO DISMISS CASE
6-7-2021 [\[49\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

[Since posting its original rulings, the court has changed its intended ruling on this matter].

Final Ruling

Since the trustee requested the court to drop this motion from the calendar, ECF No. 55, the court shall drop this matter from the calendar as moot.

37. [20-22892](#)-A-13 **IN RE: RONALDO/ELWINA RIVERA**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$7,800.00.

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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor 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 debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

38. [20-25492](#)-A-13 **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
4-20-2021 [[78](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

39. [20-25492](#)-A-13 **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**
[PGM-2](#)

CONTINUED MOTION TO CONFIRM PLAN
5-14-2021 [[88](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

40. [20-23693](#)-A-13 **IN RE: CARL CHILDS**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
5-5-2021 [[39](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

41. [20-23693](#)-A-13 **IN RE: CARL CHILDS**
[MET-2](#)

MOTION TO MODIFY PLAN
6-1-2021 [[47](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

42. [20-22794](#)-A-13 **IN RE: WILLIAM LOPEZ AND GEIZOL VILANOVA**
[DPC-1](#)

MOTION TO DISMISS CASE
6-9-2021 [\[44\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$4,000.00.

The debtor's opposition states that the debtor intends to become current by the hearing date. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$4,000.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$4,000.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

43. [21-21694](#)-A-13 **IN RE: DAVID CASTRO**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
6-17-2021 [\[20\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

11 U.S.C. § 1325(a)(5)

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. The Bankruptcy Code mandates that the plan's treatment satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Here the creditor who holds Claim No. 2-1 is owed prepetition arrears in the amount of \$14,353.30. The creditor has been placed in the debtor's plan under Class 4. None of the creditor's prepetition arrears were accounted for. Since the plan misclassifies the creditor in Class 4 (whose creditors' claims should have no

prepetition defaults) and fails to provide for a cure of the creditor's prepetition arrears, the plan cannot be confirmed as proposed.

11 U.S.C. § 1325(a) (6)

A chapter 13 debtor must propose a feasible plan and must demonstrate ability to comply with its terms. 11 U.S.C. § 1325(a) (6). The debtor's Schedule J indicates a disposable income of \$300.00 per month, all of which he has committed to the plan payments. If the debtor's plan accounts for the secured creditor's prepetition arrears (\$14,353.30), the debtor's plan would not be feasible.

CIVIL MINUTE ORDER

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

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

Wells Fargo Bank, N.A.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c) (1).

44. [21-21694](#)-A-13 **IN RE: DAVID CASTRO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-16-2021 [\[16\]](#)

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).

11 U.S.C. § 1325(a)(5)

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. The Bankruptcy Code mandates that the plan's treatment satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Here the creditor Wells Fargo Bank, N.A., who holds Claim No. 2-1 is owed prepetition arrears in the amount of \$14,353.30. The creditor has been placed in the debtor's plan under Class 4. None of the creditor's prepetition arrears were accounted for. Since the plan misclassifies the creditor in Class 4 (whose creditors' claims should have no prepetition defaults) and fails to provide for a cure of the creditor's prepetition arrears, the plan cannot be confirmed as proposed.

11 U.S.C. § 1325(a)(6)

A chapter 13 debtor must propose a feasible plan and must demonstrate ability to comply with its terms. 11 U.S.C. § 1325(a)(6). The debtor's Schedule J indicates a disposable income of \$300.00 per month, all of which he has committed to the plan payments. If the debtor's plan accounts for the secured creditor's prepetition arrears (\$14,353.30), the debtor's plan would not be feasible.

CIVIL MINUTE ORDER

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

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

The 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.

45. [20-21695](#)-A-13 **IN RE: DEANNA MENDES**
[DPC-1](#)

MOTION TO DISMISS CASE
6-7-2021 [\[18\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee requested the court to drop this matter, ECF No. 31, the court will drop this matter from the calendar as moot.

46. [21-22195](#)-A-13 **IN RE: OKHARINA HOLMES**
[CYB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-21-2021 [\[11\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling