

**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: SEPTEMBER 21, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [19-22509](#)-A-13 **IN RE: ULISES MEZA**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [[67](#)]

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

No Ruling

2. [21-22911](#)-A-13 **IN RE: CURTIS KNAPPENBERGER**
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF USAA FEDERAL SAVINGS BANK
8-19-2021 [[11](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

3. [21-22712](#)-A-13 **IN RE: MIRANDA WESTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-1-2021 [[16](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
9/7/21 INSTALLMENT FEE PAID \$79

Final Ruling

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

4. [16-20018](#)-A-13 **IN RE: JOJIE GOSELAW**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [[178](#)]

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

No Ruling

5. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[GC-2](#)

CONTINUED OBJECTION TO CLAIM OF HOME POINT FINANCIAL
CORPORATION, CLAIM NUMBER 4
4-12-2021 [[69](#)]

JULIUS CHERRY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

This motion is continued to November 2, 2021, at 9:00 a.m. Order,
ECF No. 102.

6. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[GC-3](#)

CONTINUED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
4-21-2021 [[74](#)]

JULIUS CHERRY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

This motion is continued to November 2, 2021, at 9:00 a.m. Order,
ECF No. 101.

7. [21-21652](#)-A-13 **IN RE: MARIA PAGTAKHAN**
[GW-2](#)

MOTION TO CONFIRM PLAN
8-30-2021 [[48](#)]

GEOFF WIGGS/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Confirm Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks confirmation of an amended chapter 13 plan.

DISCUSSION

To provide proper notice of a motion to confirm a chapter 13 plan prior to confirmation the motion shall comply with both Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, and LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. To comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

This motion was served on August 30, 2021. See debtor's certificate of service, ECF No. 50. Debtor only provided 22 days' notice instead of the requisite 35 days.

The motion will be denied without prejudice as the debtor failed to give proper notice of the motion pursuant to LBR 9014-1(f)(1) which requires that parties in interest shall be served at least thirty-five (35) days prior to the hearing.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

The debtor's motion to confirm has been presented to the court. Service of the motion did not comply with the requirements of LBR 9014-1(f)(1).

IT IS ORDERED that the motion is denied without prejudice.

8. [18-23858](#)-A-13 **IN RE: ROBERT/JUNE ROSENBERGER**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [\[28\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to November 16, 2021, at 9:00 a.m.

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 \$1,017.02.

A modified plan has been filed in this case. The scheduled hearing on the modification is November 16, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to November 16, 2021, at 9:00 a.m.

9. [18-23961](#)-A-13 **IN RE: LISA XIONG**
[DPC-2](#)

MOTION TO DISMISS CASE
8-24-2021 [[32](#)]

MARK SHMORGON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); Debtor filed opposition to motion

Disposition: Continued to October 19, 2021, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors' plan exceeds the maximum plan length of 60 month pursuant to 11 U.S.C. § 1322(d). The trustee contends that the plan is projected to continue for 69 months.

A modified plan has been filed in this case. The scheduled hearing on the modification is October 19, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 19, 2021, at 9:00 a.m.

10. [21-22861](#)-A-13 **IN RE: MEGAN EKOMAYE**
[BLG-1](#)

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
9-1-2021 [[14](#)]

CHAD JOHNSON/ATTY. FOR DBT.

No Ruling

11. [18-27062](#)-A-13 **IN RE: ASHLEY SOLBERG**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [[42](#)]

MATTHEW GILBERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
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 \$1,243.00.

The debtor's opposition states that delinquency 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 \$1,243.00.

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 \$1,243.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

12. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [[177](#)]

MARK WOLFF/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

13. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[WW-8](#)

MOTION TO MODIFY PLAN
8-17-2021 [[188](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [18-26063](#)-A-13 **IN RE: SANDRA ESPINOSA**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [[23](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
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 \$900.00.

The debtor's opposition states that \$1,500.00 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.

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 \$900.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

15. [21-20864](#)-A-13 **IN RE: HEATH/CHRISTIAN FULKERSON**
[GMR-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR MOTION FOR
TURNOVER OF PROPERTY
6-22-2021 [\[80\]](#)

No Ruling

16. [19-23669](#)-A-13 **IN RE: JACK/MARYANNE JODOIN**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [\[87\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Chapter 13 trustee moves to dismiss this case on two grounds.

DISCUSSION

Plan Delinquency

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 \$550.00.

Plan Exceeds 60 Months

The trustee further contends Debtors are in material default pursuant to §6.04 of the plan which provides, "If Debtor defaults under this plan, or if the plan will not be completed within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1.". According to the Trustee's calculations the Plan will complete in 85 months.

Debtors' Opposition

The debtors' opposition, ECF No.91, states that the debtors anticipate filing a modified Plan to resolve the issues the debtors cannot resolve by objection to claim. The debtors request the court deny the motion to dismiss or at the least set it for a date corresponding to the motion to confirm or sometime thereafter.

In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$550.00.

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. Moreover, a modified plan has not yet been filed.

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 debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$550.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). Moreover, the plan length currently exceeds the maximum 60 months allowed pursuant to 11 U.S.C. § 1322 (d). The court hereby dismisses this case.

17. [16-23970](#)-A-13 **IN RE: RUSSELL/VICTORIA THOMPSON**
[WW-4](#)

OBJECTION TO CLAIM OF DITECH FINANCIAL LLC, CLAIM NUMBER 8
8-11-2021 [\[64\]](#)

MARK WOLFF/ATTY. FOR DBT.
DEBTOR DISMISSED: 08/02/2019

Final Ruling

Objection: Objection to Claim [Based on Waiver of the Right to the Remaining Balance]

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

Disposition: Continued to November 16, 2021, at 9:00 a.m.

Order: Civil minute order

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

Debtor objects to the claim of Ditech Financial LLC, Claim No. 8-1 except as to amounts already paid by the chapter 13 trustee. The basis of the debtor's objection is that Ditech Financial LLC has stopped cashing checks tendered by the chapter 13 trustee, has returned checks sent by the trustee and has failed to respond to inquiries by both the chapter 13 trustee and the debtor's counsel. See Objection to Claim of Ditech Financial LLC ECF No 64, 1:21-26.

Debtor also states that her counsel attempted to resolve the matter by reaching out to an attorney who represents Ditech. The attorney for Ditech was unable to provide any information to resolve the matter. See Objection to Claim of Ditech Financial LLC, ECF No. 64, 3:17-22.

The chapter 13 trustee has filed a reply, ECF No. 69 and a Declaration of Neil Enmark in Support of Trustee's Response to Debtor's Objection to Allowance of Claim, ECF No. 70. The trustee's filed documents support the position of the debtor regarding the payments returned to the trustee and lack of response to inquiries regarding the account.

The debtor asks the court to sustain the objection and disallow the claim of Ditech Financial LLA, Claim No. 8-1, except to the extent that such claim was paid. Debtor further requests that the court order that the deed of trust securing Claim 8-1 is void.

ADDITIONAL INFORMATION REQUIRED

Neither debtor's objection nor the trustee's response have provided enough information in support of the objection. Prior to rendering a decision, the court requires an accounting from the trustee regarding the amounts paid to Ditech Financial LLC. Specifically required is a detailing of the amounts which have been paid on the claim as follows: the amount of principal paid on the secured claim; the amount of interest paid on the secured claim; and the amount paid, if any, as an unsecured claim.

The court will continue the hearing until November 16, 2021, at 9:00 a.m. On or before October 19, 2021, the trustee shall file with the court **admissible evidence** detailing the information requested. The debtor may file any further evidence, not later than November 2, 2021.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that debtor's objection to Claim No. 8-1 is continued until November 16, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that on or before October 19, 2021, the trustee shall file with the court **admissible evidence** detailing the following information as it relates to Claim 8-1: the amount of principal paid on the secured claim; the amount of interest paid on the secured claim; and the amount paid, if any, as unsecured. The debtor may file any further evidence, not later than November 2, 2021.

18. [19-20771](#)-A-13 **IN RE: MARTIN HERNANDEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
8-24-2021 [[103](#)]

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to November 16, 2021, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1322(d) as the plan will not complete within 60 months. The trustee contends that the plan will take 68 months to complete.

A modified plan has been filed in this case. The scheduled hearing on the modification is November 16, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to November 16, 2021, at 9:00 a.m.

19. [18-24875](#)-A-13 **IN RE: REGINA WIDICK**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [[62](#)]

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 5, 2021, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

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 \$1,600.00 in plan payments.

A modified plan has been filed in this case. The scheduled hearing on the modification is October 5, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 5, 2021, at 9:00 a.m.

20. [19-27775](#)-A-13 **IN RE: RANKIN LYMAN**
[PGM-2](#)

MOTION FOR COMPENSATION FOR PETER G MACALUSO, DEBTORS
ATTORNEY(S)
8-24-2021 [\[56\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 13 case, attorney Peter Macaluso, the applicant, requests that the court allow compensation in the amount of \$1,500.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

ADDITIONAL FEES IN CHAPTER 13 CASES

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

Applicant seeks approval for post confirmation work, which was actual, reasonable, and necessary to maintain the case. This case was directly impacted by COVID-19 and the modified plan filed extended the term of the case to 84 months, pursuant to the CARES

Act. Counsel opted for the "no look" fees in this case and brought the case to confirmation as required, the case having been confirmed on March 18, 2020. Neither Debtor nor Counsel could have anticipated the global pandemic that has occurred.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

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

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

Peter Macaluso's application for allowance of compensation has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows additional compensation in the amount of \$1,500.00. The amount of \$1,500.00 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

21. [17-21377](#)-A-13 **IN RE: RICHARD/JENNIFER LARSON**
[DPC-2](#)

MOTION TO DISMISS CASE
8-24-2021 [\[54\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); Debtor filed opposition

Disposition: Continued to October 5, 2021, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

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 \$1,699.39.

The trustee further alleges that the chapter 13 plan exceeds 60 months which violates 11 U. S. C. § 1322(d). The trustee contends the plan will take 68 months to complete.

A modified plan has been filed in this case. The scheduled hearing on the modification is October 5, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 5, 2021, at 9:00 a.m.

22. [17-21878](#)-A-13 **IN RE: ANTHONY METZ**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [25]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); Debtor filed opposition

Disposition: Granted

Order: Civil minute order

Chapter 13 trustee moves to dismiss this case.

DISCUSSION

Plan Delinquency

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 \$895.00.

The debtor's opposition states that the debtor has paid the delinquent plan payments after the trustee filed the present motion to dismiss. The trustee has filed a reply, ECF No. 32, indicating that the plan payments are now current.

Plan Exceeds 60 Months

The chapter 13 trustee also moves to dismiss this case, asserting that the plan does not complete within 60 months which exceeds the maximum amount of time allowed under 11 U.S.C. §1322(d). The trustee contends that the plan will take 67 months to complete.

The debtor's opposition states that the plan overextension is due to a larger than anticipated IRS claim. The debtor proposes to resolve the plan overextension by paying \$5,500 as an additional payment into to the plan. Debtor contends he has the ability from his income as a real estate agent to make the payment, having received sufficient funds from a real estate commission on August 30th, 2021.

The chapter 13 trustee has also addressed the debtor's proposal to cure the plan overextension in his reply, ECF No. 32. The trustee indicates he does not oppose a minor modification allowing a \$5,500.00 lump sum payment should the court permit the minor modification.

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

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 to dismiss is granted. The plan is overextended which violates the provisions of 11 U.S.C. § 1322(d). The case is dismissed.

23. [15-25581](#)-A-13 **IN RE: JOSE/VILMA SANTOS**
[DPC-1](#)

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

PETER LAGO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Prepared by the movant

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).

PLAN EXCEEDS 60 MONTHS

The chapter 13 trustee moves to dismiss this case, asserting that Debtors are in material default pursuant to §5.03 of the plan which provides, "If Debtor defaults under this plan, or if the plan will not be completed within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

The trustee contends that the confirmed Plan reflects a commitment period of 60 months. However, the trustee calculates that the plan will take 73 months to complete, and that August 2021, is the 73rd month of the plan. As the debtors' petition was filed July 13, 2015, the plan exceeds the maximum amount of time allowed under 11 U.S.C. §1322(d).

PLAN DELINQUENCY

The trustee also moves to dismiss the case for cause as the payments under the plan are delinquent.

The trustee states that his records reflect the last plan payment received from the Debtors posted on August 21, 2020, month 61 of the plan in amounts totaling \$2,656.73. As of August 2020, Debtor's mortgage payments and plan payments were current, but amounts remained to be paid for prepetition mortgage arrears and unsecured claims.

The Trustee emailed Debtor's counsel at plago@msn.com, to advise of the cases status, but receive no response. The Trustee's records

reflect that the total amount due through August 2021, including mortgage payments from September 2020 through August 2021, is \$23,000.00. If Debtors believed they had completed their plan payments with their payment that posted in August 2020, and began making their mortgage payments directly, then the total amount due to complete the plan is \$1,750.00.

Under either scenario the plan payments are delinquent at least \$1,750.00, and the debtors have failed to defend the motion to dismiss or otherwise appear in this matter.

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 \$1,750.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). Additionally, the debtors have failed to complete their plan payments within the 60 months required by 11 U.S.C. § 1322(d). The court hereby dismisses this case.

24. [19-20882](#)-A-13 **IN RE: HENRY RODRIGUEZ**
[PGM-3](#)

CONTINUED MOTION TO VALUE COLLATERAL OF PERSOLVE, LLC
7-31-2021 [\[78\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

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

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 respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor proposes to value the collateral of Persolve, LLC. At the prior hearing on this matter, counsel for debtor, Mr. Macaluso presented to the court a courtesy copy of the creditor's opposition as the opposition was never filed. The copy was returned to Mr. Macaluso and the court ordered the opposition to be filed. See *Civil Minute Order August 31, 2021, ECF No. 92*.

The court further ordered that not later than September 7, 2021, counsel for Persolve, LLC, Kevin W. Yeam, State Bar #126519, will file with the U.S. Bankruptcy Court the opposition to the debtor's motion to value collateral. *Id.*

No opposition has been filed by or on behalf of Persolve, LLC.

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 diamond bracelet, a diamond ring, a ring and a men's ring, all purchased at Jared, the Galleria of Jewelry. 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 \$350.00.

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 diamond bracelet; a diamond ring; a ring; and a men's ring, all purchased at Jared, the Galleria of Jewelry. has a value of \$350.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$350.00 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.

25. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[DPC-3](#)

MOTION TO DISMISS CASE
8-24-2021 [[89](#)]

CHAD JOHNSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); Debtor filed opposition

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 \$3,952.71.

The trustee further contends that the plan will not complete within 60 months but rather will take 65 months to complete. The plan overextension violates 11 U.S.C. § 1322(d).

The debtor's opposition states that the debtor will be current under the terms of her current confirmed plan by the date of the hearing and that the debtor will work with counsel on a minor modification to address the over-extension of the plan. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in plan payments and the overextension of the plan term.

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. Moreover, the plan overextension has not been cured as of this date.

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 \$3,952.71. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). Moreover, the debtor's plan will not complete in the maximum allowed length of 60 months. The court hereby dismisses this case.

26. [21-22384](#)-A-13 **IN RE: NORMAN MASTERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-2-2021 [[42](#)]

ROBERT MCCANN/ATTY. FOR DBT.
DEBTOR DISMISSED: 9/4/2021

Final Ruling

The case has been dismissed; the matter is dropped as moot.

27. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[TBG-5](#)

MOTION TO CONFIRM PLAN
8-17-2021 [\[241\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Confirm Second Amended Plan

Notice: LBR 9014-1(f)(1); Trustee filed opposition; Creditor filed opposition

Disposition: Denied

Order: Civil minute order

Debtor moves for an order confirming her Second Amended Plan, ECF No. 238. The motion is opposed by the chapter 13 trustee, ECF No. 249, and creditors Carmelita Mancina and Houria El Massioui. Creditors Mancina and Massioui have requested a continuance.

NOTICE OF THE MOTION WAS PROPER

Creditors Mancina and Massioui contend that service of the motion was improper. They are mistaken.

The notice required for a motion to confirm a chapter 13 plan is 35 days. Fed. R. Bankr. P. 2002(a)(9); LBR 9014-1(f)(1). The calculation of time is explained in LBR 3015-1 as follows:

*(d)(1) Procedure to Confirm Modified Plans.
Modified Plans Proposed Prior to Confirmation.* If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. *In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing (emphasis added).*

LBR 3015-1.

The Certificate of Service on this motion, ECF No. 248, states that the motion was served by mail on August 17, 2021. The hearing was noticed for September 21, 2021, and sufficient notice of the hearing has been given.

CHAPTER 13 PLAN CONFIRMATION

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

11 U.S.C. § 1325(a)(6): Feasibility

The trustee objects to confirmation contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The trustee contends payments under the plan are delinquent in the amount of \$1,600.00 which represents approximately 1 plan payment(s). Koo decl. 2:1-4, ECF No. 250.

The debtor's reply, ECF No. 265, states that this delinquency has been cured. Ardelean decl. ¶ 2, ECF No. 266.

The court finds the debtor's declaration less credible than that of trustee's counsel, Kristen Koo. The court does not doubt that the debtor made a payment of \$1,600 on August 25, 2021, as the debtor declares. But the court believes that payment was credited properly to the previous month's payment due, finds that the debtor is, in fact, delinquent under payments due \$1,600 and, from that, infers a lack of feasibility.

11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory 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 "not less than 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).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in

the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$5,169.14. Compare Claim No. 14 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), aff'd, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) aff'd sub. nom., *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date

because as a matter of law and of statute those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. *All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.*

...

(b) Maintaining payments. *Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not accepted this treatment in the plan. 11 U.S.C. § 1325(a)(5)(A). The creditor's silence is not evidence of acceptance. In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

11 U.S.C. § 1325(a)(4): Liquidation

The trustee opposes the plan alleging that the plan fails the liquidation test of § 1325(a)(4). The trustee contends that the debtor has non-exempt equity in assets totaling \$41,181.41. The Second Amended Plan (the Plan) proposes to pay 2.29% to unsecured creditors which the trustee estimates equals approximately \$16,783.13. The debtor responds that the Plan is based on disposable monthly income, not the liquidation test. See Debtor's Reply In Support of Motion to Confirm Second Amended Plan, ECF No. 265, 3:1-2.

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

...

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

11 U.S.C. §1325(a)(4).

The debtor appears to argue that if the plan satisfies the disposable income test of 11 U.S.C. §1325(b) then the requirements of §1325(a) are inapplicable. This is incorrect. Each of the requirements of § 1325(a) must be met regardless of the outcome of the disposable income test under § 1325(b). "The plan must comply with Chapter 13 and all other applicable provisions of the Code, including applicable provisions of Chapters 1, 3 and 5. [11 USC §§ 103(a), 1325(a)(1)]." *California Practice Guide: Bankruptcy*, Kathleen P. March, Esq., Judge Alan M. Ahart (Ret.) & Janet A. Shapiro, Esq., Chapter 13, Confirmation Requirements, 13:644, (December 2020 Update). The plan must satisfy the liquidation test.

Alternatively, the debtor also argues that she has met the best interests of creditors test because the trustee's calculation does not account for the attorney fees which have been approved in the chapter 13 case. Such a position is contrary to long-settled Chapter 13 law. *Jensen v. Dunivent (In re Dewey)*, 237 B.R. 783, 788 (B.A.P. 10th Cir. 1999) (Chapter 13 administrative expenses may not be deducted in making the hypothetical Chapter 7 analysis); *In re Goudreau*, 530 B.R. 783, 787 (Bankr. D. Kan. 2015) ("[T]his does not mean that Debtors' Chapter 13 attorney fees are such a priority claim for purposes of the hypothetical liquidation"); Keith M. Lundin, *Lundin On Chapter 13*, § 90.1, at ¶ 32 ("The Bankruptcy Appellate Panel for the Tenth Circuit has carefully explained that the administrative expenses deducted to determine hypothetical liquidation value under § 1325(a)(4) do not include the administrative expenses of the Chapter 13 case).

As a result, the court finds that the \$30,087.92 in compensation awarded to debtor's attorney are excluded from the calculation

presented by debtor and that the plan fails the best interests of creditors test and contravenes § 1325(a)(4). See Reply in Support of Motion to Confirm Second Amended Plan, ECF No. 265, 3:3-20.

Consequently, the court will deny debtor's motion to confirm the Second Amended Plan. As the court has denied confirmation based upon the chapter 13 trustee's opposition it need not reach the remaining issues raised in the opposition of creditors Carmelita Mancia and Houria El Massioui.

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 Second Amended 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.

28. [21-20686](#)-A-13 **IN RE: ALICE RANSOM**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [\[43\]](#)

ANH NGUYEN/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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

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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor has filed a statement of non-opposition to the trustee's motion to dismiss, ECF No. 49.

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 7 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

The trustee also alleges that payments are not current under the proposed plan. The trustee contends that the delinquency is \$180.00.

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 this chapter 13 case has been presented to the court. Having entered the default of 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 court hereby dismisses this case.

29. [20-23991](#)-A-13 **IN RE: VINCENT/NORMA CAMPISI**
[DPC-2](#)

MOTION TO DISMISS CASE
8-24-2021 [[60](#)]

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); Debtor filed opposition
Trustee filed Ex-Parte Motion to Dismiss Trustee's Motion to Dismiss

Disposition: Removed from calendar

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). The default of the responding party is entered. The court considers the record,

accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 13 trustee 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 \$1,385.00.

The debtor's opposition states that the debtor has filed a modified plan and a motion to confirm the modified plan. The hearing on the motion is set for October 5, 2021, at 9:00a.m.

The trustee filed an Ex-Parte Motion to Dismiss Trustee's Motion to Dismiss on September 7, 2021, ECF No. 74. In the request to dismiss his motion the trustee indicates that the debtors are current with plan payments pursuant to the modified plan.

At the trustee's request, and as the issues in the trustee's motion to dismiss have been resolved the court will drop this motion from the calendar.

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.

30. [20-25492](#)-A-13 **IN RE: MARIA DEL SOCORRO/RENE ORTIZ**
[DPC-2](#)

MOTION TO DISMISS CASE
8-30-2021 [[119](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f) (2); opposition not 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). 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).

DISMISSAL

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 \$8,977.00.

NON-COMPLIANCE WITH LOCAL RULES

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

The trustee has used a docket control number to identify the instant motion DPC-2. This same docket control number was used previously by the trustee for a Notice of Motion and Motion to Dismiss filed on April 20, 2021, ECF Nos. 78 and 79.

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 \$8,977.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

31. [20-22794](#)-A-13 **IN RE: WILLIAM LOPEZ AND GEIZOL VILANOVA**
[BLG-2](#)

MOTION TO MODIFY PLAN
7-12-2021 [\[51\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY – 11 U.S.C. § 1325(a) (6)

Plan Delinquency

The trustee contends that the payments pursuant to the proposed modified plan are delinquent in the amount of \$498.00. Thus, it appears that the debtor cannot make the payments required under 11 U.S.C. § 1325(a) (6).

Failure to File Business Income and Expense Statement

The trustee objects to the plan as the debtors have failed to file a current statement of business income and expenses as required per Supplemental Schedule I, line 8a. The trustee observes that the most recently filed business income and expense statement was filed on July 14, 2021. This means the income and expense information is outdated. Without this information the trustee cannot assess the ability of the debtors to make payments under their proposed 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 modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

32. [20-22794](#)-A-13 **IN RE: WILLIAM LOPEZ AND GEIZOL VILANOVA**
[DPC-1](#)

CONTINUED 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); Debtor filed opposition

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 stated would modify the plan. The debtor filed a modified plan and a motion to confirm the plan. This matter was continued until this date for the hearing on the modified plan. However, the court has denied confirmation of the modified plan, BLG-2, in part because the debtors are not current under the proposed modified plan.

As the plan payments are delinquent the court will dismiss the case.

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.

33. [21-21694](#)-A-13 **IN RE: DAVID CASTRO**
[DPC-2](#)

MOTION TO DISMISS CASE
8-24-2021 [[28](#)]

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).

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case as there is currently no plan pending for the trustee to administer. The Trustee objected to confirmation of the debtor's original plan. The trustee's objection was sustained at hearing on July 13, 2021, ECF No. 26. The Debtor has failed to file an amended move for confirmation of a plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 4.5 months, yet a plan has not been confirmed and the debtor has taken no steps to file an amended plan for over two months. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of 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 court hereby dismisses this case.

34. [18-26996](#)-A-13 **IN RE: LISA COLLINS**
[DPC-1](#)

MOTION TO DISMISS CASE
8-24-2021 [[19](#)]

SETH HANSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

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).

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 \$6,400.00.

The debtor has failed to file opposition to the motion or otherwise defend the motion.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is 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 \$6,400.00. This

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