



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: TUESDAY
DATE: MARCH 7, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION

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. However, 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. [19-24300](#)-A-13 **IN RE: MARK/CANDY GRAY**
[DPC-2](#)

MOTION TO DISMISS CASE
2-1-2023 [\[58\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to April 4, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: February 20, 2023 - timely

Motion to Modify Plan Filed: February 20, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,616.00, with another payment of \$1,544.00 due February 25, 2023.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is April 4, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan 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 April 4, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

2. [21-23302](#)-A-13 **IN RE: JESUS VALDEZ ALONZO AND ISABEL
ALVAREZ-VALDEZ
[DPC-1](#)**

MOTION TO DISMISS CASE
2-7-2023 [\[23\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: February 21, 2023 - timely

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

MOTION TO DISMISS

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$8,940.00, with another payment of \$3,980.00 due February 25, 2023.

DEBTOR OPPOSITION

"A court need not consider pro se motions filed by a party who is represented by counsel." *Deal v. Countrywide Home Loans, Inc.*, 2013 WL 3786339, at *1 (N.D. Cal. July 17, 2013).

The debtors filed their petition on September 21, 2022. The debtors are represented by attorney Mohammad Mokarram. See Petition, ECF No. 1. No substitution of attorney has been filed and no motion to withdraw as attorney of record has been filed in this case. Nonetheless, the debtors have filed a timely pro se opposition to the motion. See Written Response/Opposition to Motion to Dismiss Case, ECF No. 27.

The court will not consider the opposition filed by the debtors as they are represented by counsel. Even if the court were to consider the opposition filed by the debtors it is not admissible as evidence. The debtors' statements in the opposition are not submitted under oath and the court gives the opposition no weight. Fed. R. Evid. 603.

FURTHER DEBTOR OPPOSITION

On February 27, 2023, counsel for the debtors filed a further opposition, ECF No. 28. In the opposition counsel explains that the

debtors filed the opposition to the motion while counsel was absent from the office on vacation.

Given these unique circumstances the court will hear the matter. The court will hear from the trustee regarding the status of the plan payments. If the payments are not current the court will dismiss the case.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. 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 debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

3. [23-20002](#)-A-13 **IN RE: AMANDA CASTORENA AND SUMMER PRATT**
[KR-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-21-2023 [\[25\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.
THE GOLDEN 1 CREDIT UNION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject Property: 2017 KIA OPTIMA

MOOTNESS OF REQUEST FOR STAY RELIEF

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 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." 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 . . . terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral"

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.

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 Golden One Credit Union's motion for relief from the automatic stay has been presented to the court. Having considered the motion,

any oppositions or replies, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

4. [22-22103](#)-A-13 **IN RE: DIANE/ANDREW GARCIA**
[DPC-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
2-6-2023 [[29](#)]

HARRY ROTH/ATTY. FOR DBT.

Tentative Ruling

Motion: Convert or Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

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 CONVERSION

The chapter 13 trustee moves to convert this case to Chapter 7 or to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to convert the case. Payments under the plan are delinquent in the amount of \$3,261.68 with a further payment of \$1,892.92 due February 25, 2023.

The trustee further requests conversion because the debtors have failed to file an amended Chapter 13 plan after the court sustained an objection to confirmation on December 6, 2022. A review of the court's docket shows that the debtors have not filed a plan since that date.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, *whichever is in the best interests of creditors and the estate*, for cause, including—

...

11 U.S.C. § 1307(c) (emphasis added).

The Chapter 13 trustee requests conversion of this case to Chapter 7 although the case has not previously been converted because he contends there are nonexempt assets which could be liquidated by a Chapter 7 trustee for the benefit of creditors. The Chapter 13 trustee's motion alleges that the debtors have nonexempt assets as follows:

According to the Trustee's records, Schedule A/B shows \$141,206.23 in non-exempt equity in the assets listed, more specifically identified as Debtors (sic) real property located at 517 Daniels Street, Woodland, CA 95695, household goods, electronics, camping equipment, clothing, jewelry, pets, cash, bank accounts, CalPERS pension and 2021 tax refund,

Motion to Convert, 2:12-17, ECF No. 29.

As such the court finds that conversion to Chapter 7 is in the best interests of the creditors and the estate in this case. As the debtors have failed to defend the motion the court will grant the trustee's motion and convert the case to Chapter 7.

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 convert or 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 because of the delinquency under the chapter 13 plan in this case and because the debtors have failed to file an amended Chapter 13 plan. The court hereby converts this case to Chapter 7.

5. [22-22903](#)-A-13 **IN RE: ISMAEL/SYLIVIA QUIRARTE**
[PSB-1](#)

MOTION TO CONFIRM PLAN
1-16-2023 [[26](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Unclear and Uncertain Plan Provisions

Ally Financial (2020 Hyundai) has been moved to Class 1 since the loan will mature after the bankruptcy is complete. Ally Financial shall receive a monthly dividend of \$71.99 for months 2-36 Consumers Credit Union (2018 Dodge) has been moved to Class 1 since the loan will mature after the bankruptcy is complete. Ally Financial shall receive a monthly dividend of \$97.89 for months 2-36

First Amended Chapter 13 Plan, Section 7.02, 3.07, ECF No. 31.

The proposed plan omits a monthly payment to Consumers Credit Union and provides two different monthly payments to Ally Financial. Correction may not be made in the order confirming the plan.

Absent clear terms feasibility of the proposed plan is speculative. The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6) and will deny confirmation 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 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.

6. [18-25604](#)-A-13 **IN RE: RHONDA SMITH**
[DPC-2](#)

MOTION TO DISMISS CASE
2-7-2023 [[66](#)]

JAMES SHEPHERD/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This case was dismissed on March 3, 2023, ECF No. 72. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

7. [20-23204](#)-A-13 **IN RE: SHERRIE CAPERELLO**
[DPC-1](#)

MOTION TO DISMISS CASE
2-7-2023 [\[19\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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 chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,995.00 with a further payment of \$1,025.00 due February 25, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

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 because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

8. [22-21405](#)-A-13 **IN RE: JENNIFER NEELY**
[DPC-1](#)

MOTION TO DISMISS CASE
2-7-2023 [[40](#)]

JUSTIN KUNEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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 chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are

delinquent in the amount of \$3,004.00 with a further payment of \$751.00 due February 25, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

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 because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

9. [23-20006](#)-A-13 **IN RE: KIMBERLY PROCK**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
2-8-2023 [\[17\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c) (4), 9014-1(f) (2); written opposition filed by debtor

Disposition: Continued to April 4, 2023, at 9:00 a.m.

Order: Civil minute order

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

The Chapter 13 trustee objects to confirmation of the proposed plan on multiple bases including the debtor's failure to provide Social Security information, disagreement with the debtor's calculations under 11 U.S.C. §1325(b), and incorrect information in Schedules I and J. In response the debtor has filed a response, amended schedules, amended means test calculations and a declaration of the debtor. The court notes that the debtor failed to include the docket control number on the declaration filed in support of the plan and schedules.

The court will continue the hearing on the trustee's objection to allow the trustee to review the documents filed in response to his objection and to file a status report apprising the court of the status of his objection.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies,

IT IS ORDERED that the hearing on the trustee's objection is continued to April 4, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than March 21, 2023, the Chapter 13 trustee shall file and serve a status report regarding his

objection to confirmation. No further filings by either party will be allowed regarding the objection to confirmation.

10. [21-22108](#)-A-13 **IN RE: NICHELLE LACEWELL**
[DPC-1](#)

MOTION TO DISMISS CASE
1-27-2023 [[25](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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 chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,920.00 with a further payment of \$480.00 due February 25, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

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 because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

11. [23-20010](#)-A-13 **IN RE: DEVONA WHITE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-8-2023 [\[12\]](#)

MARY TERRANELLA/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).

FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS

The debtor has failed to provide the trustee with required documents. See 11 U.S.C. § 521(e) (2).

The debtor failed to produce the following documents: tax return or transcript of most recently filed tax return.

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

The court will sustain the trustee's objection.

FAILURE TO FILE TAX RETURNS

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

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

11 U.S.C. § 1325(a) (9).

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

11 U.S.C. § 1308(a).

If the debtor has not filed 2019-2021 tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a) (9) and 1308.

GOOD FAITH

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

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The court notes that as of February 28, 2023, the following documents have not yet been amended or provided: Attachment to Schedules I and J indicating business income and expenses; Amended Schedule J showing reduction in household size.

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.

12. [22-20612](#)-A-13 **IN RE: BRITTANY/STEVEN UREN**
[ALF-2](#)

MOTION TO CONFIRM PLAN
1-20-2023 [\[40\]](#)

ASHLEY AMERIO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

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 and two creditors oppose the motion, objecting to confirmation.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

MATHEMATICAL FEASIBILITY

The trustee and creditors Brittney Sterling and Vincent Sterling oppose confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 111 months to fund as proposed.

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

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

13. [20-24713](#)-A-13 **IN RE: BONITA BROOKS**
[MET-3](#)

CONTINUED MOTION TO SELL
12-14-2022 [[91](#)]

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

14. [20-24713](#)-A-13 **IN RE: BONITA BROOKS**
[MET-4](#)

MOTION TO MODIFY PLAN
1-31-2023 [\[108\]](#)

MARY TERRANELLA/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 and creditor

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Unclear Provisions Regarding Attorney Compensation

The trustee opposes the motion because the proposed attorney compensation conflicts with other documents filed in the case, and does not align with the amounts paid by the trustee pursuant to the previously confirmed plan. Unless the amount is corrected the plan does not fund as proposed.

Plan Relies on Sale Motion

Feasibility of the plan relies upon the granting of the motion to sell real property. The debtor has a motion to sell real property scheduled for hearing (MET-3). Unless the motion to sell is granted the plan will not fund. The trustee points out that the contract between the debtors and the prospective buyers expired on October 23, 2022.

Distribution of Sale Proceeds

The trustee also opposes the motion because the plan does not provide appropriately for payment of sale proceeds regarding the Class 1 obligation of LoanCare, LLC. Specifically, the debtors have not indicated the amount which is required to be paid to the plan from the sale proceeds to satisfy payment of the creditor's claim.

Opposition is also filed by LoanCare, LLC, which indicates that the plan is unclear regarding the timing of the sale and uncertainty exists regarding payment of proceeds to satisfy LoanCare's claim.

DEBTOR REPLY

On February 26, 2023, the debtor filed a reply.

Attorney Compensation

The debtor has offered to correct the compensation discrepancy in the order granting the motion. The court will hear from the trustee regarding the proposed order and whether it resolves his opposition.

Sale Proceeds and Payment of Class 1 Obligation

The debtor has submitted Exhibits consisting of an estimated closing statement, and loan pay off documents. See ECF No. 120. The court will hear from the trustee and the creditor to determine if their oppositions have been resolved.

The court notes that the debtor's opposition does not address the issue of whether the contract for purchase of the real property has expired.

Absent confirmation from the trustee and the objecting creditor that the plan is feasible the court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

15. [22-23014](#)-A-13 **IN RE: DANIEL/VICKI JACOBS**
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL HOME
LOAN MORTGAGE CORPORATION
12-14-2022 [[13](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
THERON COVEY/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from January 24, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on Federal Home Mortgage Loan Corporation's Objection to Confirmation was continued from January 24, 2023, to allow the objecting creditor to provide evidence in support of its objection no later than February 14, 2023. See Order, ECF No. 21.

On January 25, 2023, the objecting creditor filed a claim, Claim No. 4. The claim indicates that \$931.25 was owed in arrears (as of the petition date) on the creditor's loan which is secured by the debtors' residence at 339 W. H Street, Dixon, California. The Chapter 13 Plan provides for the creditor's claim to be paid in Class 4. See Chapter 13 Plan, ECF No. 3.

Similarly, the court ordered that not later than February 21, 2023, the debtors and the Chapter 13 trustee were to file and serve a response, if any, to the objection. Absent a response the court indicated it would rule on the objection without further notice or hearing. See Order, ECF No. 21. Neither the debtors nor the Chapter 13 trustee have filed any pleadings in response to the objection to confirmation.

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) (5) (B) (ii): Improper Classification of Secured Claim

The creditor objects to confirmation, contending that since the debtors were delinquent on the residential home mortgage payment on the date of the petition that 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 \$931.25. Compare Claim No. 4 (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 those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

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 expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). 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.

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.

Federal Home Mortgage Loan Corporation'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.

16. [23-20117](#)-A-13 **IN RE: JONI GRISHAM**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-15-2023 [[13](#)]

MARY TERRANELLA/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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce One Main Financial's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

ADDITIONAL PROVISIONS ARE UNCLEAR AND UNCERTAIN

The additional provisions in the debtors' plan provides:

Class 1 mortgage arrears of secured creditor
Specialized Loan Servicing shall be paid through a
refinance to close within 18 months.

Chapter 13 Plan, Section 7, ECF No. 3.

The plan proposes no monthly payment on the arrears owed to
Class 1 creditor Specialized Loan Servicing.

The Chapter 13 trustee requests clarification that he will be the
disbursing agent for payment of the Class 1 arrears to Specialized
Loan Servicing through the anticipated refinance. The court agrees
with the trustee that the arrears should be disbursed by the
trustee, just as they would be disbursed had the plan provided for
ongoing monthly disbursements as is typically required.

Without this clarification the plan is not feasible under 11 U.S.C.
§ 1325(a)(6). The court will allow the debtors to make this
clarification in the order confirming 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.

17. [23-20117](#)-A-13 **IN RE: JONI GRISHAM**
[MET-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
2-17-2023 [\[17\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral [Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2003 Toyota Corolla

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).

The debtor seeks an order valuing the collateral of One Main Financial, a 2003 Toyota Corolla, at \$2,000.00.

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2003 Toyota Corolla. The debt owed to the respondent is not secured by a purchase money security interest.

See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$2,000.00.

SERVICE AND NOTICE

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

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

In this case service of the motion was proper, however the memorialization of the service is incorrect.

Rule 7004 Service

Service of the motion on the lienholder is required in accordance with Rule 7004. While service on the lienholder is properly accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in this matter should indicate that service is made on the lienholder pursuant to Rule 7004. Parts 6 and 7 are incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as the special notice creditors, and the United States Trustee. See Certificate of Service, ECF No. 20.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2003 Toyota Corolla has a value of \$2,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,000.00 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.

18. [19-22618](#)-A-13 **IN RE: RANDY WHITE**
[DPC-1](#)

MOTION TO DISMISS CASE
2-8-2023 [[72](#)]

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c) (1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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 confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,596.00, with another payment of \$1,282.00 due February 25, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. 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. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c) (1), (6). The court hereby dismisses this case.

19. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[CRG-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW,
LLP FOR CARL R GUSTAFSON, DEBTORS ATTORNEY(S)
1-26-2023 [\[95\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approval of Compensation

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

Disposition: Denied without prejudice

Order: Civil minute order

Carl Gustafson seeks an order approving compensation. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is dated January 13, 2023. See Certificate of Service, ECF No. 100.

Service of the motion occurred on January 26, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. 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:

Carl Gustafson's Motion for Approval of Compensation has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

20. [22-20528](#)-A-13 **IN RE: AMANDA PAULSEN**
[MWB-3](#)

MOTION TO CONFIRM PLAN
1-19-2023 [[78](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order confirming her Chapter 13 Plan. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate

of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

On January 30, 2023, the debtor filed an Amended Notice of Hearing and a Certificate of Service evidencing service of the Amended Notice. The matrix attached to the certificate of service is dated January 17, 2023. See Certificate of Service, ECF No. 91. Service of the motion occurred on January 30, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

VIOLATION OF LBR 9014-1(c)

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

The docket control number used in this motion was used in a previous motion by the debtor - a motion to confirm plan filed on January 19, 2023, ECF No. 78.

DISMISSAL OF ACTION FOR FAILURE TO COMPLY WITH LOCAL RULES

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

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

Because the debtor has failed to comply with LBR 7005-1 the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

21. [22-23031](#)-A-13 **IN RE: ANDREW COLLIER**
[CYB-1](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
1-31-2023 [[18](#)]

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

Final Ruling

Motion: Value Collateral

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

Disposition: Granted

Order: Civil minute order

Gross Value Scheduled Property: \$31,044.97 (Amended Schedule A/B)

Encumbrances: \$17,625.00 (purchase money security interest of Capital One Auto Finance against motor vehicle)

Value of IRS Collateral: \$13,419.97

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).

FACTS

The IRS has filed Claim No. 1 as follows: 1) Secured - \$268,898.41; 2) Unsecured Priority - \$98,636.10; and 3) General Unsecured - \$17,727.75. Prior to the filing of the instant Chapter 13 case the Internal Revenue Service recorded two tax liens against the debtor in Sacramento County. See Exhibit B, ECF No. 20. The liens attached to all the assets of the debtor. By this motion the debtor seeks to value the secured portion of the IRS claim at \$13,419.97.

The debtor owns no real property, and the gross value of his assets on Schedule A/B total \$31,044.97. See Amended Schedules A/B, ECF No. 13. The debtor owns a 2017 Ford Explorer XLT Vehicle valued at \$17,625.00, which is encumbered by a senior lien, a purchase money security interest held by Capital One Auto Finance. See Schedule D, ECF No. 1. The Capital One Auto Finance obligation exceeds the value of the vehicle. For purposes of the calculation valuing the

collateral of the IRS only, the amount of the Capital One Auto Finance Loan equals the value of the vehicle or \$17,625.00.

The debtor has specifically excluded from the calculation in valuing his collateral the amount held in a 401(k) account with Downey Brand, LLP, Employee Retirement Plan, with an estimated balance of \$173,000.00. See Declaration, ECF No. 21. The debtor contends that the 401(k) account is an ERISA qualified plan and is not an asset of the bankruptcy estate. See Amended Schedule A/B, No. 21, ECF No. 13.

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.*

401(k) Excluded From Valuation of Collateral For Bankruptcy Purposes

An ERISA qualified plan is not property of the bankruptcy estate. 11 U.S.C. § 541(c)(2), *Patterson v. Shumate*, 504 U.S. 753 (1992). If the debtor's 401(k) plan is an ERISA plan it is not part of the bankruptcy estate.

Because the debtor's 401(k) is not property of the bankruptcy estate the value in the 401(k) plan cannot be used to secure the IRS's claim under § 506(a). *U.S. I.R.S. v. Snyder*, 343 F.3d 1171, 1179 (9th Cir. 2003).

However, the IRS may enforce its lien rights at the conclusion of the bankruptcy to the extent it's claim is not satisfied by payment through the plan.

Although exclusion of Snyder's interest in the plan from the bankruptcy estate precludes the IRS from attaining secured status *in the bankruptcy proceeding*, the IRS's liens against Snyder's interest are not extinguished or otherwise affected. *The liens continue to exist, but outside of bankruptcy.* See *In re Taylor*, 289 B.R. 379, 383-84 (Bankr.N.D.Ind.2003) ("[T]he fact that a creditor does not hold a lien upon property of the estate does not mean there is no underlying right to payment; *only that the claim is not 'secured' in the bankruptcy sense of the word.*")

U.S. I.R.S. v. Snyder, 343 F.3d 1171, 1179 (9th Cir. 2003) (emphasis added).

After deducting the amount of the senior lien of Capital One Auto Finance, the court finds the value of the debtor's assets listed in Amended Schedules A/B is \$13,419.97.

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 the collateral of the Internal Revenue Service 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 all assets listed in Schedules A/B, and excluding the debtor's 401(k) plan at Downey Brand, LLP, Employee Retirement Plan, has a value of \$31,041.97. A senior lien exists and is held by Capital One Auto Finance against the 2017 Ford Explorer in an amount equal to or greater than the value of the vehicle. The respondent has a secured claim in the amount of \$13,419.97 which is 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 secured portion of its claim.

22. [18-27132](#)-A-13 **IN RE: STUART KOPPLE**
[DPC-4](#)

MOTION TO DISMISS CASE
2-1-2023 [[193](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

The Chapter 13 trustee has filed a motion to dismiss under 11 U.S.C. § 1307(c)(1), (6). For the following reason the court will allow the withdrawal of the motion.

TRUSTEE WITHDRAWAL - Fed. R. Civ. P. 41

On February 13, 2023, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 197.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

No party in interest has appeared in this matter and the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

23. [23-20035](#)-A-13 **IN RE: MONICA PRATHER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-9-2023 [[32](#)]

Tentative Ruling

If the filing fee has not been paid by the date of the hearing the case will be dismissed.

24. [23-20035](#)-A-13 **IN RE: MONICA PRATHER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-9-2023 [[33](#)]

Tentative Ruling

If the filing fee has not been paid by the date of the hearing the case will be dismissed.

25. [22-22837](#)-A-13 **IN RE: KYLE FARRIS AND GRACIELA
JARAMILLO-FARRIS
[DPC-2](#)**

MOTION TO DISMISS CASE
2-7-2023 [[46](#)]

RICHARD KWUN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file plan

Best Interests of Creditors/Estate: Dismiss

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 chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$8,613.78 with a further payment of \$ 4,306.89 due February 25, 2023.

The trustee also moves for dismissal because the debtors have failed to file an amended Chapter 13 plan and move for confirmation. The court sustained an objection to confirmation on January 10, 2023, and no new plan has yet been filed.

The court finds that each of these bases constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). The court will grant the motion.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under

this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

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 because of the delinquency under the chapter 13 plan, and the debtors' failure to file an amended Chapter 13 plan in this case. The court hereby dismisses this case.

26. [23-20040](#)-A-13 **IN RE: YAROSLAV TKACHUK**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-8-2023 [\[15\]](#)

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that

the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

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

Multiple Unsuccessful Prior Chapter 13 Cases

The debtor has filed 3 previous Chapter 13 cases from 2016 through 2018. Each of the previous cases was dismissed without plan completion. Plan confirmation was achieved in only one of the prior 3 cases.

The Chapter 13 trustee contends that the debtor's lack of success in the previous cases, requires a showing of changed circumstances in this case to determine the feasibility of the instant plan.

Plan Fails to Cure Mortgage Arrears

The trustee objects to the provisions contained in Section 7 of the proposed plan. See Chapter 13 Plan, ECF No. 7.

The plan calls for payments of \$1,000.00 per month. Creditor Shellpoint Mortgage is provided for in Class 1 of the plan, and Section 3.07 of the plan indicates that the required monthly payment to Shellpoint Mortgage is \$3,933.25. The plan makes no provision in Section 3.07 for payment of mortgage arrears.

The provisions proposed by the debtor in the Additional Provisions of the plan at Section 7 are locally known as the "Ensminger Provisions". This court does not approve these provisions as there is no provision for payment of mortgage arrears within a reasonable time as required by Section 1322(b)(5). Moreover, the proposed

provisions place an unreasonable administrative burden upon the Chapter 13 trustee.

Additionally, the plan fails to state whether the trustee, or the debtor, is to make the required adequate protection payment to Shellpoint, the mortgage creditor.

Finally, the plan payment, of \$1,000.00, does not provide adequate protection to the creditor, Shellpoint, of \$3,933.25 each month. The proposed change to the monthly payment to the creditor is an impermissible modification of the 11 U.S.C. § 1322(b)(2), absent a written stipulation by the creditor.

The court will sustain the trustee's objections.

CIVIL MINUTE ORDER

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

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

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

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

27. [23-20045](#)-A-13 **IN RE: DRINA HOCKETT**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
1-25-2023 [[14](#)]

PATRICIA WILSON/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).

PLAN FEASIBILITY

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

Schedules I and J

Schedules I and J do not support the debtor's ability to fund the plan. Schedule I list total monthly income of \$781.00, ECF No. 1. Schedule J shows expenses, excluding a plan payment, of \$781.00, *id.* The debtor lacks the ability to make a plan payment in any amount. The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Class 1 Payment

The proposed plan calls for monthly payments of \$75.00. See Chapter 13 Plan, ECF No. 8. Section 3.07 of the plan provides for ongoing monthly mortgage payments of \$1,463.00, as well as arrearage payments of \$851.45. These payments are impossible given the plan payment of \$75.00.

While the proposed plan does call for the sale of the real property, it does not provide a sale date, and as the court has previously discussed the plan payment is insufficient to adequately protect the Class 1 creditor pending the sale.

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.

28. [23-20045](#)-A-13 **IN RE: DRINA HOCKETT**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-15-2023 [\[19\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the

terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")" *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Schedules I and J

Schedules I and J do not support the debtor's ability to fund the plan. Schedule I list total monthly income of \$781.00, ECF No. 1. Schedule J shows expenses, excluding a plan payment, of \$781.00, *id.* The debtor lacks the ability to make a plan payment in any amount. The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Class 1 Payment

The proposed plan calls for monthly payments of \$75.00. See Chapter 13 Plan, ECF No. 8. Section 3.07 of the plan provides for ongoing monthly mortgage payments of \$1,463.00, as well as arrearage payments of \$851.45. These payments are impossible given the plan payment of \$75.00.

While the proposed plan does call for the sale of the real property, it does not provide a sale date, and as the court has previously discussed the plan payment is insufficient to adequately protect the Class 1 creditor pending the sale.

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.

29. [18-23651](#)-A-13 **IN RE: THOMAS HURST**
[PGM-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FIRE VICTIM TRUST AWARD
2-7-2023 [\[104\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

30. [22-20152](#)-A-13 **IN RE: BRIDGET ARMSTEAD**
[DPC-2](#)

MOTION TO DISMISS CASE
2-7-2023 [\[35\]](#)

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

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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 chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount \$3,163.00 with a further payment of \$385.00 due February 25, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section,
on request of a party in interest or the United States

trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

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 because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

31. [23-20052](#)-A-13 **IN RE: VANESSA TURINCIO-FUENTES**
[BLG-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
1-24-2023 [[12](#)]

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Hyundai Elantra

Value: \$6,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order valuing the collateral of Ally Financial, a 2017 Hyundai Elantra, at \$6,000.00.

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2017 Hyundai Elantra. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$6,000.00.

SERVICE AND NOTICE

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

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

In this case service of the motion was proper, however the memorialization of the service is incorrect.

Rule 5 Service

Service of the motion on the lienholder and/or its attorney is required in accordance with Rule 7004, as indicated in the certificate of service filed in this matter, ECF No. 15. However, service on the remaining parties is properly accomplished by first class mail under Fed. R. Civ. P. 5. The Certificate of Service in this matter should indicate that service is made on the lienholder pursuant to Fed. R. Bankr. P. 7004 but also indicate service on the other parties under Rule 5. Thus, Parts 6 and 7 are incorrectly completed as service under Rule 5 is not indicated. Here the certificate only indicates service under Fed. R. Bankr. P. 7004. See Certificate of Service, Section 6, 7, ECF No. 15.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2017 Hyundai Elantra has a value of \$6,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$6,000.00 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.

32. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
2-2-2023 [[30](#)]

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

33. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RICHARD
TEAGUE
2-2-2023 [[34](#)]

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

34. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-1](#)

MOTION TO AVOID LIEN OF RICHARD TEAGUE
1-27-2023 [[23](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

35. [22-23156](#)-A-13 **IN RE: KELLY JONES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-9-2023 [[15](#)]

THOMAS AMBERG/ATTY. FOR DBT.
2/9/23 INSTALLMENT FEE PAID \$78

Final Ruling

The \$78.00 installment fee has been paid. The Order to Show Cause will be discharged, and the case will remain pending. No appearances are required.

36. [23-20256](#)-A-13 **IN RE: JOSEPH STEMPECK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-10-2023 [[11](#)]

DEBTOR DISMISSED: 2/14/23

Final Ruling

This case was dismissed on February 14, 2023. Accordingly, the court will remove this matter from the calendar as moot. No appearances are required.

37. [20-20658](#)-A-13 **IN RE: BERNARDO/RACHAEL HUBBARD**
[DPC-4](#)

MOTION TO DISMISS CASE
2-7-2023 [[78](#)]

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: February 21, 2023

Opposition Filed: February 21, 2023 - timely

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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 confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$3,220.53, with another payment of \$2,967.87 due February 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtors, ECF Nos. 82, 84. The declaration states that the debtors have initiated a payment via TFS and that the plan payments are believed to be current. See Declaration, ECF No. 84.

The court will hear from the trustee regarding the status of the plan payments. If the payments are still delinquent the court intends to issue the following order. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. 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. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

38. [23-20059](#)-A-13 **IN RE: WILLIS MARSH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
2-13-2023 [\[23\]](#)

MARK SHMORGON/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: Overruled in part; Sustained in part and confirmation denied

Order: Civil minute order

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

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

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

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

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and
(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

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

The trustee objects to confirmation because the debtor failed to provide proof of his Social Security information as required. The court will sustain the objection unless the trustee has received the information prior to the hearing date on this objection.

TRUSTEE STATUS REPORT

On February 27, 2023, the trustee filed a status report. In his report the trustee indicates that the debtor has provided the necessary Social Security information. See Status Report, ECF No. 27. The court will overrule this portion of the objection.

Feasibility

The trustee also reports that payments under the proposed plan are now delinquent in the amount of \$1,254.00. *Id.* The plan may not be confirmed if the plan payments are delinquent. The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

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 overruled in part and sustained in part. The court denies confirmation of the chapter 13 plan.

39. [19-21366](#)-A-13 **IN RE: ANTHONY/BARBARA WATSON**
[DPC-4](#)

MOTION TO MODIFY PLAN
2-1-2023 [[63](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
DEBTORS DISMISSED: 2/8/23

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The debtors move for modification of their chapter 13 plan. The plan, notice of hearing, and motion were served on February 1, 2023, ECF No. 72. This provides only 34 days' notice to all parties in interest.

The debtors did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires at least 21 days' notice of the time fixed for filing objections to a proposed modification of a plan. To comply with both Federal Rule of Bankruptcy Procedure 3015-(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(2). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

40. [22-21567](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-24-2023 [[22](#)]

CATHERINE KING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY LLC VS.
RESPONSIVE PLEADING

Final Ruling

This case was dismissed on February 23, 2023. Accordingly, the motion will be removed from the calendar as moot.

41. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[FEC-2](#)

ORDER TO SHOW CAUSE
1-23-2023 [[155](#)]

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

This is the court's Order to Show Cause Regarding Attorney Fees. On February 22, 2023, additional hearings related to this matter were continued. Accordingly, the court will continue the hearing in this matter to April 4, 2023, at 10:30 a.m.

On March 1, 2023, counsel for the debtors filed a declaration, ECF No. 187. Given the unique circumstances presented in the declaration,

IT IS ORDERED that no later than March 21, 2023, counsel for the debtors may file and serve additional evidence and argument in this matter.

IT IS FURTHER ORDERED that the hearing in this matter is continued to April 4, 2023, at 9:00 a.m.

42. [22-21973](#)-A-13 **IN RE: BEATRICE EATON**
[MEV-2](#)

MOTION TO CONFIRM PLAN
1-24-2023 [\[46\]](#)

MARC VOISENAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without Prejudice

Order: Civil minute order

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

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

For the following reasons the court will deny the motion without prejudice.

NO PLAN HAS BEEN FILED

"The debtor shall file a plan". 11 U.S.C. § 1321.

The debtor seeks confirmation of her Third Amended Chapter 13 Plan. See Motion to Confirm Third Amended Chapter 13 Plan, ECF No. 46. No such document appears on the court's docket. The last plan filed by the debtor was a Second Amended Chapter 13 Plan, filed November 10, 2022, ECF No. 20.

Because the debtor has failed to file a further amended plan there is no plan before the court. Attaching the proposed plan to another document is not sufficiently filing the plan. The plan must appear on the court's docket so that the court, the trustee, and all other interested parties may accurately and easily locate the document for examination.

PLAN ATTACHED TO NOTICE OF HEARING IS IMPROPERLY ATTACHED AS EXHIBIT

Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings *shall be filed as separate documents.*

LBR 9004-2(c) (1) (emphasis added).

The debtor attached a Third Amended Plan to the Notice of Hearing in this matter. See ECF No. 47. However, it is not properly attached as an exhibit in this case. Attaching an exhibit to another document contravenes LBR 9004-2(c) (1) which requires that all exhibits be filed as separate documents.

Debtor's reply argument that the proposed plan was served is also flawed. The Certificate of Service filed in support of the motion to confirm does not identify the Third Amended Plan as a document served on the responding parties. See Certificate of Service, Section 4, ECF No. 49.

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 good cause appearing,

IT IS ORDERED that the motion is denied without prejudice. The court denies confirmation of the chapter 13 plan.

43. [18-24875](#)-A-13 **IN RE: REGINA WIDICK**
[DPC-2](#)

MOTION TO DISMISS CASE
2-1-2023 [[102](#)]

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

The Chapter 13 trustee moved to dismiss this case because the debtor defaulted in plan payments under the confirmed plan. At the same time the debtor filed a motion to modify her plan, (TLA-3). The trustee filed a non-opposition to the debtor's motion to modify, ECF No. 108. The court has granted the debtor's motion to modify, TLA-3.

Accordingly, the court will deny the trustee's motion to dismiss.

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 good cause appearing,

IT IS ORDERED that the motion is denied.

44. [18-24875](#)-A-13 **IN RE: REGINA WIDICK**
[TLA-3](#)

MOTION TO MODIFY PLAN
1-31-2023 [\[96\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Third Modified Chapter 13 Plan, filed January 31, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks approval of her Third Modified Chapter 13 Plan, ECF No. 98. The plan is supported by Amended Schedules I and J, filed on January 31, 2023, ECF No. 95. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 108.

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a) (5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on

modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

45. [22-23380](#)-A-13 **IN RE: HOLLY CRANSHAW**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-16-2023 [\[24\]](#)

HOLLY CRANSHAW/ATTY. FOR MV.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997).

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$480.00 with another payment of \$480.00 due on February 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

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

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a 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).

Schedules I and J

Debtor's proposed plan calls for monthly payments of \$480.00. On January 10, 2023, the debtor amended her Schedule I which reflects income of \$2,281.00. See Amended Schedule I, ECF No. 11. The debtor's previously filed Schedule J (which has not been amended) reflects expenses of \$2,782.00. See Schedule J, ECF No. 1. The debtor's schedules show that she does not have any funds with which to fund a plan. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

The court sustains each of the trustee's previous feasibility objections and finds that the plan is not feasible under 11 U.S.C. § 1325(a) (6).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Capital One Auto Finance's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

LIQUIDATION

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

. . .

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

. . .

11 U.S.C. § 1325(a) (4).

The trustee further objects to the proposed plan, which pays 0% to unsecured creditors, contending that it fails the liquidation test. This is due in part because the debtor has failed to claim any of her scheduled assets as exempt in Schedule C. See Schedule C, ECF No. 1. The court agrees with the trustee and sustains the objection. The plan does not satisfy the requirements of 11 U.S.C. § 1325(a) (4).

GOOD FAITH

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

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The court notes that as of February 23, 2023, the following documents have not yet been amended: 1) Chapter 13 Plan regarding correct classification of unsecured creditors; 2) Chapter 13 Plan regarding the revesting of estate assets; 3) Schedule A/B which fails to disclose a 2014 Mustang which is provided for in the Chapter 13 Plan; 4) Schedule H is incomplete; 5) Schedule J reflects a \$1,787.00 monthly expense for tuition and tutor an expense which the debtor admitted at the meeting of creditors was incorrect; and 6) Incorrect Social Security Number on the Petition.

Each of these inaccuracies prevents the court, the trustee, and creditors from properly evaluating the debtor's proposed plan. The court finds that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

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.

46. [22-23380](#)-A-13 **IN RE: HOLLY CRANSHAW**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
2-16-2023 [\[20\]](#)

MARJORIE JOHNSON/ATTY. FOR MV.

Final Ruling

Objection: Creditor's 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

Capital One Auto Finance objects to confirmation of the debtor's plan. For the following reasons the objection will be overruled.

SERVICE AND NOTICE

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

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

Matrix Attachments

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the *Clerk of the Court's Official Matrix*, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a) (emphasis added).

In this case the objecting creditor has failed to attach the required matrixes for the list of ECF Registered Users, and list of persons who have filed Requests for Special Notice. See Certificate of Service, ECF No. 23. Instead, counsel has typed the following on the attachment "TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)". *Id.*

Preparing the required matrixes on the court's website is straightforward and requires little time. Counsel for the objecting creditor is referred to the court's website at www.caeb.uscourts.gov. From the home page, proceed to the section

titled "Information for Attorneys" and open the "Attorney Home Page" link. After opening the "Attorney Home Page", a list appears in the top section. The final two items on the list provide instruction and a link to a tool for the attorney's use in compiling an official "Matrix of Registered Users of the Electronic Filing System" and an official matrix for "List of Entities Requesting Special Notice". These matrixes are then attached to the certificate of service.

Dismissal of Action for Failure to Comply with Local Rules

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

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

Because the objecting creditor has failed to comply with LBR 7005-1 the court will overrule the objection to confirmation.

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.

Capital One Auto Finance's objection to confirmation has been presented to the court. Because of the procedural deficiencies discussed in the court's ruling,

IT IS ORDERED that the objection is overruled.

47. [22-23082](#)-A-13 **IN RE: TIMOTHY WILLIAMS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-8-2023 [[39](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

If the debtor has not paid the filing fee by the date of this hearing the case will be dismissed.

48. [22-23082](#)-A-13 **IN RE: TIMOTHY WILLIAMS**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
1-24-2023 [[29](#)]

PETER MACALUSO/ATTY. FOR DBT.
TIMOTHY WILLIAMS/ATTY. FOR MV.

No Ruling

49. [23-20382](#)-A-13 **IN RE: STACY TUCKER**
[MET-1](#)

MOTION TO EXTEND OR REINSTATE AUTOMATIC STAY
2-13-2023 [[12](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Debtor Stacy Tucker seeks an order extending the automatic stay under 11 U.S.C. § 3632(c)(3). Absent opposition, which may be presented at the hearing on the motion, the court intends to issue the following order.

EXTENSION OF THE STAY

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

The court notes that while the debtor has filed numerous prior Chapter 13 cases, that only one case has been pending during the last year. Additionally, the debtor has described the following

extraordinary circumstances in explaining the dismissal of her previous Chapter 13 case: 1) illness with Covid-19 which resulted in the debtor's inability to earn any money for a period of one month; 2) death of a close family member; and 3) water pipe damage to home resulting in a \$4,000.00 unanticipated but necessary expense. See Declaration of Debtor, ECF No. 14. The debtor also indicates that the necessary repairs to her home have been paid.

The court has reviewed the debtor's schedules, plan, and statements filed in this case and notes the following additional facts which support the granting of the motion: 1) reduction in household size since the previous case; 2) increased income since the most recently filed Schedule I in the previous case; and 3) absence of any mortgage debt or secured automobile debt.

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

CIVIL MINUTE ORDER

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

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

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

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

50. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[DPC-7](#)

MOTION TO DISMISS CASE
2-7-2023 [\[155\]](#)

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

Final Ruling

The case was dismissed on March 1, 2023. See Order, ECF No. 162. Accordingly, the motion to dismiss will be removed from the calendar as moot. No appearances are required.

51. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-6](#)

ORDER TO SHOW CAUSE
2-7-2023 [\[264\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

52. [18-20687](#)-A-13 **IN RE: ROBERT WILSON AND PATRICIA KING**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
1-9-2023 [\[40\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from February 22, 2023

Disposition: Continued to April 18, 2023, at 9:00 a.m.

Order: Civil minute order

ORAL ARGUMENT

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

DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that payments are delinquent in the amount of \$3,404.02, with another payment of \$620.00 due January 25, 2023.

The debtors filed an opposition to the trustee's motion. The opposition is accompanied by a declaration of the debtors. See ECF Nos. 46, 47. The debtors state that they have made a partial payment toward the plan delinquency. The debtors further state that the payment due February 25, 2023, is the final payment due under the plan and request a continuance of the hearing on the motion to dismiss to complete the plan.

The court continued the hearing on this motion to March 7, 2023, at 9:00 a.m. to allow the debtors to complete plan payments.

TRUSTEE STATUS REPORT

On February 28, 2023, the trustee filed a status report, ECF No. 51. The trustee reports that the debtors have made one additional payment since the last hearing in the amount of \$1,000.00 which posted to the debtors' case on February 28, 2023.

The trustee further reports that the debtors' plan is not yet completed and that a balance of \$637.03 is still owed. The trustee indicates his willingness for a further continuance to allow the debtors to complete the plan.

Because the trustee has requested it the court will grant one final continuance of this motion to dismiss. If the trustee has received the final plan payment by the date the trustee's status report is due the court will deny the motion. If the final plan payment has not been received by the same date the court will grant the motion and 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.

IT IS ORDERED that the Chapter 13 trustee's motion to dismiss is continued to April 18, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than April 4, 2023, the Chapter 13 trustee shall file a status report apprising the court of the status of payments received under the plan, and whether the plan is completed.

53. [21-22994](#)-A-13 **IN RE: JUSTIN/CHRISTINA BORGES**
[DPC-2](#)

MOTION TO DISMISS CASE
2-7-2023 [\[87\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

The Chapter 13 trustee has filed a motion to dismiss under 11 U.S.C. § 1307(c)(1), (6). For the following reason the court will allow the withdrawal of the motion.

TRUSTEE WITHDRAWAL - Fed. R. Civ. P. 41

On February 27, 2023, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 94. In the request the trustee also states that all payments due under the plan have been paid and the plan is completed, which confirms the information provided by the debtors in their opposition to the motion.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

The debtors have appeared in this matter. However, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

54. [22-20196](#)-A-13 **IN RE: MARY FALCONER**
[BLG-2](#)

MOTION TO MODIFY PLAN
1-24-2023 [\[36\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed January 24, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks an order approving her First Modified Chapter 13 Plan, ECF No. 38. The plan is supported by amended Schedules I and J, filed January 24, 2023, ECF No. 35. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 43.

CHAPTER 13 PLAN MODIFICATION

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

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

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

55. [22-21396](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-2](#)

MOTION TO MODIFY PLAN
1-26-2023 [\[46\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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).

ORAL ARGUMENT

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a “factual determination” as to the plan’s “reasonable likelihood of success.” *First Nat’l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to “be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan.” *Id.* As one court summarized feasibility, “Thus, a plan is not feasible and is not confirmable if a debtor’s income will not support the plan’s proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) (“[T]he debtors showed no

disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")" *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Conflicting Plan Terms

First, the trustee contends that the plan contains conflicting terms regarding the plan length. The court agrees. Section 2.03 of the plan calls for a 60-month term. See Chapter 13 Plan, Section 2.03, ECF No. 48. However, the additional provisions of the plan at Section 7 provide as follows: "Plan payments of \$3,460.00 per month will commence January 25, 2023 (sic) for 53 months". *Id.*, Section 7. As the trustee points out, given the petition date of June 1, 2022, the provisions in Section 7 call for a 59-month plan.

Second, the plan provides "Debtor has paid of (sic) total of \$16,324.70 through December 2022". However, the trustee's records show that payments received do not match those in the plan.

Because the proposed Chapter 13 Plan contains conflicting terms the court, the trustee, and creditors cannot determine the length of the plan or the amount to be paid pursuant to the plan. The court finds that the proposed plan is not feasible under 11 U.S.C. § 1325(a)(6).

These defects cannot be corrected by an order as this does not provide adequate notice to creditors. A further modified plan is required. The court will deny the motion.

DEBTOR REPLY

On February 24, 2023, the debtor filed a reply to the trustee's opposition offering to correct the incorrect plan length and amounts in the order modifying the plan. See Reply, ECF No. 57. As the court has previously discussed in this ruling this does not provide adequate notice to creditors and the debtor must file a new 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 debtors' 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.

56. [22-22598](#)-A-13 **IN RE: MAYRA PALACIOS**
[DPC-2](#)

MOTION TO DISMISS CASE
2-7-2023 [[36](#)]

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

Opposition Due: February 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

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 chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$1,300.00 with a further payment of \$650.00 due February 25, 2023.

On January 24, 2023, the court denied confirmation of the debtor's most currently filed plan. The debtor has failed to file a further amended plan.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under

chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including-

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

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 because of the delinquency under the chapter 13 plan, and the debtors' failure to file an amended plan in this case. The court hereby dismisses this case.