



**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: WEDNESDAY
DATE: JANUARY 3, 2024
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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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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PRE-HEARING DISPOSITION INSTRUCTIONS

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. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[JNV-7](#)

MOTION TO MODIFY PLAN
11-9-2023 [\[129\]](#)

JASON VOGELPOHL/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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$115.00. The plan cannot be confirmed if the plan payments are not current.

Plan Terms Conflict with Supporting Evidence

The declarations of the debtor and debtor's counsel conflict with the terms of the proposed plan. The declarations do not include plan payments for the entire plan term, and do not incorporate a provision requiring the payment into the plan of tax refunds which exceed \$2,000.00 per month. As such the debtor has not proven the feasibility of the plan.

Mortgage Payments are not Equal to Amounts Required

The plan is supported by supplemental Schedules I and J which were signed under penalty of perjury and filed on November 9, 2023. Schedules I and J, ECF No. 128. Schedule J lists a real property payment of \$475.38 per month and lists \$331.42 in additional payments for real property taxes. This totals \$806.80 per month. The trustee contends that the taxes in the amount of \$331.42 have increased to \$499.67 pursuant to the mortgage payment change filed by the secured creditor on April 21, 2023. Thus, Schedule J does not account for the required mortgage payment.

Because the court finds the proposed modified is not feasible it need not address the remaining issues raised in the trustee's opposition. 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.

2. [23-23218](#)-A-13 **IN RE: LISSA VARGAS**
[DPC-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-26-2023 [\[18\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Exemptions

Notice: Continued from November 21, 2023

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

BURDEN OF PROOF

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

Further, the preponderance-of-the-evidence standard applies. *See In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

The hearing on the trustee's objection to the debtor's claim of exemptions was continued to allow the debtor to file written opposition to the objection. The debtor has failed to oppose the objection and the court sustains the objections as follows.

EXEMPTION EXCEEDS STATUTORY LIMIT

The debtor claims an exemption in three motor vehicles under Cal. Civ. Proc. Code § 704.010: 1) 2012 GMC Sierra 1500 in the amount of \$120,000; 2) 2019 Honda Rebel in the amount of \$3,000; and 3) 2022 Honda Rancher 4x4 in the amount of \$1.00.

The maximum amount which can be claimed under C.C.P. § 704.010 is \$7,500.00. The debtor's claimed exemptions exceed the statutory limit of \$7,500.00. As the trustee contends, it is impossible to determine how the debtor apportions the exemption between the three

vehicles. Accordingly, the exemption in each of the vehicles is disallowed and the objection is sustained.

The court notes that the debtor attempted to amend Schedule C on October 26, 2023, ECF No. 17. However, the amendment is not signed by the debtor under penalty of perjury as required, nor is a properly executed Amendment Cover Sheet attached to the purported Schedule C. Accordingly, the attempt to amend the Schedules was ineffective as the filing does not comply with Fed. R. Bankr. P. 1008.

TRAILER IS NOT HOUSEHOLD GOOD

The trustee objects to the debtor's exemption of a 2008 Trident 5x7 trailer under C.C.P. § 704.020 in the amount of \$400.00. C.C.P. § 704.020 allows a debtor to claim exempt "[h]ousehold furnishings, appliances, provisions, wearing apparel, and other personal effects". *Id.* Absent any contrary evidence from the debtor the court concludes that the trailer does not fall into the category of items exempt under C.C.P. § 704.020. Accordingly, the court will disallow the exemption and sustain the objection.

DEBTOR ENTITLEMENT TO EXEMPTION NOT PROVEN

The debtor has claimed exempt \$5,487.00 deposited into a savings account under C.C.P. § 706.051. This section provides:

b) Except as provided in subdivision (c), the portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter.

(c) The exemption provided in subdivision (b) is not available if any of the following exceptions applies:

(1) The debt was incurred pursuant to an order or award for the payment of attorney's fees under Section 2030, 3121, or 3557 of the Family Code.

(2) The debt was incurred for personal services rendered by an employee or former employee of the judgment debtor.

(3) The order is a withholding order for support under Section 706.030.

(4) The order is one governed by Article 4 (commencing with Section 706.070) (state tax order).

Cal. Civ. Proc. Code § 706.051(b), (c).

Because the debtor has declined to oppose the trustee's objection the court lacks sufficient information to find that the debtor is entitled to the claimed exemption. Accordingly, the exemption will be disallowed, and the objection will be sustained.

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 objection to the debtor's claim of exemptions 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 debtor's exemptions claimed under Cal. Civ. Proc. Code §§ 704.010, 704.020, and 706.051 will be disallowed as indicated in this ruling.

3. [23-23218](#)-A-13 **IN RE: LISSA VARGAS**
[DPC-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
10-26-2023 [\[24\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 21, 2023

Disposition: Sustained and confirmation denied

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 hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the debtor to file written opposition to the objection. The debtor has failed to oppose the objection. Accordingly, the court sustains the trustee's objection as follows.

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 debtor has proposed a 4.70% payment to unsecured creditors which equals approximately \$3,532.14. The trustee calculates that the debtor's nonexempt assets are valued at \$13,387. Thus, the plan fails the liquidation test.

The court sustains the trustee's objection based upon the plan's failure to meet the liquidation test under 11 U.S.C. § 1325(a)(4). Accordingly, the court need not reach the remaining issues raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

4. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[CDL-1](#)

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE
CORPORATION
11-24-2023 [\[41\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Toyota Corolla S Plus

Value: \$8,480.00

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 Regional Acceptance Corporation, a 2016 Toyota Corolla S Plus, at \$8,480.00.

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 2016 Toyota Corolla S Plus. 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 \$8,480.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Toyota Corolla S Plus has a value of \$8,480.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8,480.00 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.

5. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[CDL-2](#)

MOTION TO CONFIRM PLAN
11-24-2023 [\[46\]](#)

COLBY LAVELLE/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN NOT SERVED WITH MOTION

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

LBR 3015-1(d)(1) (emphasis added).

In support of this motion to confirm the debtor has filed a Certificate of Service, ECF No. 49. The certificate does not list the Chapter 13 Plan as a document which was served on interested parties. See Section 4, *id.*

LBR 3015-1(d)(1) requires that the debtor serve the plan under consideration with a motion to confirm. The purpose of the rule requiring service of the plan with a motion to confirm is to assure adequate notice of the plan terms upon all interested parties. If the plan is not served notice is not properly accomplished.

The court will deny the motion for improper service under LBR 3015-1(d)(1).

CIVIL MINUTE ORDER

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

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

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

6. [19-24633](#)-A-13 **IN RE: MANUEL LOPEZ AND PAMELA CORREA LOPEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
9-20-2023 [\[79\]](#)

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

Final Ruling

Motion: Dismiss Case
Notice: Continued from December 5, 2023
Disposition: Denied
Order: Civil minute order

The hearing on this motion was continued from December 5, 2023, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (PGM-4) has been granted.

The trustee has filed a status report, ECF No. 110, indicating that he no longer wishes to pursue his 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.

7. [19-24633](#)-A-13 **IN RE: MANUEL LOPEZ AND PAMELA CORREA LOPEZ**
[PGM-4](#)

CONTINUED MOTION TO MODIFY PLAN
10-24-2023 [\[83\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: Continued from December 5, 2023
Disposition: Granted
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 hearing on the debtors' motion was continued to allow the parties to augment the evidentiary record. The debtors filed additional evidence. On December 18, 2023, the Chapter 13 trustee filed a status report stating that he reviewed the evidence and no longer opposes the motion to modify. Status Report, ECF No. 110.

Accordingly, the court will grant the motion.

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.

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 granted. The debtor shall submit an order confirming the modified plan which has been approved by the Chapter 13 trustee.

8. [23-23039](#)-A-13 **IN RE: DALIA MUNIZ**
[DPC-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-1-2023 [\[17\]](#)

LEN REIDREYNOSO/ATTY. FOR DBT.

Final Ruling

Objection: Exemptions

Notice: Continued to December 5, 2023

Disposition: Withdrawn by moving party

Order: Civil minute order

The Chapter 13 trustee's objection to the debtor's claim of exemptions was continued to allow the parties to clarify the record.

TRUSTEE REPLY – Fed. R. Civ. P. 41

The trustee filed a timely request to withdraw his objection under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

Here, the Chapter 13 trustee has signaled his abandonment of his objection to the debtor's exemptions. 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 objection 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 trustee's objection to exemptions is withdrawn.

9. [23-20245](#)-A-13 **IN RE: CHERYL ADLER**
[GC-3](#)

MOTION TO MODIFY PLAN
11-13-2023 [\[60\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to January 30, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*,

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,587.11. The plan cannot be confirmed if the plan payments are not current.

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 debtor has proposed a 5% payment to unsecured creditors. The trustee calculates that the debtor's nonexempt assets are valued at \$13,025, and would require payment of 22.63% to pass liquidation.

As the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4) the court need not address the remaining issues raised in the trustee's opposition.

DEBTOR REPLY

On December 24, 2023, the debtor filed a timely reply and additional documents. Neither the court nor the trustee have had ample opportunity to review the reply and the additional documents. The court will continue the hearing in this matter to allow the trustee to file additional written response. The court may rule on this matter without further notice or hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this motion will be continued to January 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than January 16, 2024, the Chapter 13 trustee shall file and serve a written response to the debtor's evidence filed December 24, 2023. At a minimum the trustee shall apprise the court regarding the status of payments under the proposed Chapter 13 plan. The court may rule on this matter without further notice or hearing.

IT IS FURTHER ORDERED that the evidentiary record will close after January 16, 2024.

10. [20-21047](#)-A-13 **IN RE: PAUL DENNO AND SANDRA MURRAY**
[CK-2](#)

CONTINUED MOTION TO MODIFY PLAN
10-27-2023 [\[264\]](#)

CATHERINE KING/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from December 5, 2023

Disposition: Granted

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 opposed the motion, objecting to the modification.

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 hearing on the debtors' motion to modify the plan was continued to allow the parties to meet and confer regarding the trustee's opposition to the motion. On December 19, 2023, the parties filed a joint status report indicating that the trustee's opposition had been resolved. Status Report, ECF No. 282.

The report states that the parties have agreed to put the terms contained in the status report into the order confirming the modified plan. The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

The debtors shall submit an order confirming the modified plan which contains the provisions agreed upon in the Status Report. The order must be approved by the Chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

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 granted. The debtors shall submit an order confirming the modified plan which contains the provisions agreed upon in the Status Report, ECF No. 282 and which has been approved by the Chapter 13 trustee.

11. [23-21248](#)-A-13 **IN RE: CHRISTOPHER SEWARD**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
10-23-2023 [\[27\]](#)

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from November 21, 2023

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from November 21, 2023, to allow for hearing on the debtor's motion to confirm the chapter 13 plan. The motion to confirm, (FF-1) has been granted.

Accordingly, 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 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.

12. [23-21248](#)-A-13 **IN RE: CHRISTOPHER SEWARD**
[FF-1](#)

MOTION TO CONFIRM PLAN
11-20-2023 [\[35\]](#)

GARY FRALEY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed November 20, 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 confirmation of the First Amended Chapter 13 Plan, ECF No. 39. The plan is supported by Schedules I and J filed, November 20, 2023, ECF Nos. 41, 42. The Chapter 13 trustee has filed a non-opposition to the motion, 46.

CHAPTER 13 PLAN CONFIRMATION

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

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

13. [23-23651](#)-A-13 **IN RE: LESLIE BAKER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-6-2023 [\[32\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

14. [23-23651](#)-A-13 **IN RE: LESLIE BAKER**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
11-21-2023 [\[26\]](#)

MARC VOISENAT/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified

plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

15. [23-23658](#)-A-13 **IN RE: NATHANIEL DIAS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-6-2023 [[14](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to January 30, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record, and for the Chapter 13 trustee to properly provide notice to all parties which have filed a request for special notice.

SERVICE AND NOTICE

Special Notice Creditors

The objection will be continued to allow the Chapter 13 trustee to serve the objection on creditors which have filed a request for special notice.

The following parties filed a request for special notice: Nationstar Mortgage, LLC. See ECF No. 9.

The certificate of service indicates that special notice parties were served with the objection. See Certificate of Service, p. 2, No. 5, ECF No. 17. However, there is no attachment which lists the special notice creditors which were served.

Notice

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special*

notice and those who are directly affected by the requested relief.

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

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).

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to January 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elect not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than January 16, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than January 16, 2024. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than January 16, 2024.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than January 23, 2024. The evidentiary record will

close after January 23, 2024. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

IT IS FURTHER ORDERED that no later than January 8, 2024, the trustee shall file and serve a notice of continued hearing and the objection on all parties which have filed a request for special notice.

16. [23-23663](#)-A-13 **IN RE: VALERIE WILLIAMS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-6-2023 [\[16\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 27, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elect not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than January 30, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response

to the objection not later than January 30, 2024. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than January 30, 2024.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

17. [23-23676](#)-A-13 **IN RE: BARBARA MORAN-SMITH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-6-2023 [\[29\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 27, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elect not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than January 30, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than January 30, 2024.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

18. [23-23676](#)-A-13 **IN RE: BARBARA MORAN-SMITH**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MORTGAGE ASSETS
MANAGEMENT, LLC
11-20-2023 [[26](#)]

MICHAEL HAYS/ATTY. FOR DBT.
FANNY WAN/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: Continued to February 27, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Mortgage Assets Management, LLC, objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) concede the objection then the debtor(s) shall file and serve a statement of non-opposition no later than January 30, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024. The response shall specifically address each issue raised in creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than January 30, 2024.

IT IS FURTHER ORDERED that the creditor shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

19. [23-22977](#)-A-13 **IN RE: JEFFREY VAN DEN OEVER**
[CLB-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
10-26-2023 [\[18\]](#)

CHAD BUTLER/ATTY. FOR MV.
DEBTOR DISMISSED: 12/07/23

Final Ruling

This case was dismissed on December 7, 2023. This Objection is removed from the calendar as moot. No appearances are required.

20. [23-22977](#)-A-13 **IN RE: JEFFREY VAN DEN OEVER**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
10-31-2023 [\[22\]](#)

DEBTOR DISMISSED: 12/07/23

Final Ruling

This case was dismissed on December 7, 2023. This Objection is removed from the calendar as moot. No appearances are required.

21. [23-23778](#)-A-13 **IN RE: SYBILLE WASSNER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
12-6-2023 [\[17\]](#)

KEVIN TANG/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 27, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elect not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than January 30, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than January 30, 2024.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

22. [23-22080](#)-A-13 **IN RE: MICHAEL/ANGELIQUE VALERA**
[DPC-2](#)

MOTION TO DISMISS CASE
12-1-2023 [\[44\]](#)

ERIC SCHWAB/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: December 20, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - 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 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 \$13,227.25.00 with one payment(s) of \$3,273.25 due prior to the hearing on this 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 in this case. The court hereby dismisses this case.

23. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[DPC-5](#)

AMENDED MOTION TO DISMISS CASE
12-4-2023 [\[207\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 20, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(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)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,988.00.

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.

24. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-18-2023 [\[27\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

25. [23-23218](#)-A-13 **IN RE: LISSA VARGAS**
[DPC-3](#)

MOTION TO DISMISS CASE
12-19-2023 [\[32\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 30, 2024, at 9:00 a.m.

Order: Civil minute order

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

The court will continue the hearing on the trustee's motion to allow the debtor to file written opposition to 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.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to January 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than January 8, 2024, the Chapter 13 trustee shall file and serve a status report regarding the status of the plan payments.

IT IS FURTHER ORDERED that no later than January 17, 2024, the debtor shall file and serve opposition, if any to the trustee's motion. The court may rule on this matter without further notice or hearing.