

**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 4, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[JNV-4](#)

CONTINUED MOTION TO MODIFY PLAN
10-26-2022 [\[70\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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 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).

The hearing on this motion was continued to allow the debtor to properly serve the motion on creditors which filed a request for special notice and to file a reply to the trustee's opposition. The debtor has served the motion on the required parties as ordered and filed a reply.

TRUSTEE OPPOSITION

The Chapter 13 trustee opposed the motion on three bases under 11 U.S.C. § 1325(a)(6): 1) the plan did not properly provide for payments made to Flagstar Bank under the previously confirmed plan; 2) plan feasibility was premised upon the granting of a motion to modify a mortgage loan; and 3) the plan incorrectly stated amounts paid to the trustee resulting in an over payment of \$470.00.

DEBTOR REPLY

The debtor filed a reply, ECF No. 88. The reply proposes to resolve the opposition raised by the Chapter 13 trustee as follows:

Motion to Modify Mortgage

This motion was granted on November 23, 2022. See Civil Minute Order, ECF No. 84. The trustee's opposition has been resolved regarding this issue.

Flagstar Bank Payments

The court will approve the motion to modify only if the order granting the motion contains the following language: "all payments made by the Chapter 13 trustee to Flagstar Bank pursuant to the previously confirmed plan(s) are allowed in the amounts paid."

Overpayment in Plan Terms

The court finds the additional language requested by the Chapter 13 trustee to be a de minimus modification of the plan noticed to all parties in this matter. As such the court will approve the addition of the following language in the order granting this motion: "The total amount paid into the plan through month 12 (October 2022) is \$6,417.00, with payments beginning in November 2022 of \$385.00 for the remaining 48 months of the Plan."

Absent further objection by the Chapter 13 trustee at the hearing the court will grant the motion with the changes in the order as indicated in this ruling.

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 court grants the motion with the changes in the order as indicated in its ruling.

2. [22-22002](#)-A-13 **IN RE: IMELDA DEL ROSARIO**
[MJD-2](#)

MOTION TO CONFIRM PLAN
11-17-2022 [\[56\]](#)

MATTHEW DECAMINADA/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

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).

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. 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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,085.00, with an additional payment due December 25, 2022. The plan cannot be confirmed if the plan payments are not current.

Prior Objection to Confirmation

The trustee's previous objection to confirmation was sustained as the debtor failed to properly account for income in her Schedule I and Form 122C.

Both Schedule I and Form 122C have been amended. However, the trustee opposes confirmation as the Amended Schedule I fails to disclose pension income the debtor receives in the amount of \$274.75 per month and Amended Form 122C fails to include a calculation which includes income derived from rental income of \$600.00 per month and family contribution of \$900.00 per month. The court notes that the pension income appears on the Amended Form 122C but not on Amended Schedule I. See ECF No. 61. The court also notes that the family contribution of \$900.00 appears on the Amended Schedule I but not in the Form 122C calculation. *Id.* No explanations have been proffered regarding these inconsistencies.

The correct information must appear on all schedules. If the schedules have been amended and are properly completed the motion to confirm and the declaration in support of the motion, should explain the changes from the previous schedules and address any inconsistencies between the various documents filed. The declaration in support of the motion does not mention the receipt of, or discontinuation of, pension income. See Declaration, ECF No. 59. Without accurate information in the debtor's schedules and Form 122C the trustee is unable to complete his analysis of the plan under 11 U.S.C. 1325. This not only impacts the feasibility of the plan but whether the plan is proposed in good faith, or whether the debtor is paying all income in to the plan as required. 11 U.S.C. §§ 1325(a)(3), (6) and (b).

The court also notes that the debtor has resolved what appears to be a potential objection to the plan by Real Time Resolutions. The parties have filed a stipulation with the court. See Stipulation, ECF No. 68. The stipulation purports to change provisions in the debtor's proposed plan regarding interest paid to the creditor through the plan and includes substantial additional provisions. Despite this the Chapter 13 trustee was not a party to the stipulation. This is required prior to the court approving the proposed stipulation.

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.

3. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
7-18-2022 [\[32\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to February 7, 2023, at 9:00 a.m.

Order: Civil minute order

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is February 7, 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 without further notice or 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 February 7, 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.

4. [22-22110](#)-A-13 **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-28-2022 [\[70\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
11/28/22 INSTALLMENT FEE PAID \$14

Final Ruling

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

5. [22-22110](#)-A-13 **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**
[MET-1](#)

MOTION TO CONFIRM PLAN
11-21-2022 [\[56\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

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 debtors seek confirmation of their Chapter 13 Plan. The motion will be denied as follows.

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 form Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the

bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1 (emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

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).

The movants have failed to use Form EDC 7-005 in memorializing service in this matter, but rather have created their own version of the form. This is not in compliance with LBR 7005-1, as only the court's form must be used. Neither of the certificates of service filed in support of this motion comply with LBR 7-005. See Certificate of Service, ECF Nos. 62, 69. The motion will be denied without prejudice.

SPECIAL NOTICE CREDITORS

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).

The court also notes counsel's improper memorialization of service of the motion on the special notice creditors in this matter. Counsel has attached a copy of the request for

special notice to the certificate of service. This is not in compliance with LBR 7-005. The rule requires that the Clerk of the Court's Official Matrix for persons who have filed Requests for Special Notice be used in this instance.

Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

CIVIL MINUTE ORDER

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

The debtor's motion to confirm Chapter 13 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.

6. [20-23811](#)-A-13 **IN RE: DENISE BATTS**
[PGM-4](#)

MOTION TO SELL
12-1-2022 [[99](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This case was dismissed on December 20, 2022. This motion is removed from the calendar as moot. No appearances are required.

7. [22-22911](#)-A-13 **IN RE: JACQUELINE BUTTLE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-15-2022 [[23](#)]

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.

8. [22-22913](#)-A-13 **IN RE: RICHARD BLENIO AND REBECCA RUBIN**
[SLH-1](#)

MOTION TO VALUE COLLATERAL OF EXETER FINANCE LLC
11-16-2022 [\[11\]](#)

SETH HANSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral
Disposition: Denied without prejudice
Order: Civil minute order

RULE 7004 SERVICE

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. See Certificate of Service, ECF No. 14.

UNSIGNED CERTIFICATE OF SERVICE

The court notes that even if service had been properly achieved under Rule 7004, the motion would be denied for insufficient service. The Certificate of Service is unsigned. See *id.*, p. 4.

CIVIL MINUTE ORDER

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

The debtor's Motion to Value Collateral 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.

9. [22-21218](#)-A-13 **IN RE: CYNTHIA DURAN**
[DPC-2](#)

MOTION TO DISMISS CASE
11-29-2022 [\[36\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 21, 2022

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 \$12,781.20 with a further payment of \$2,130.20 due December 25, 2022.

In addition to the plan delinquency the trustee requests dismissal as the debtor has failed to file a Chapter 13 plan after the court sustained the trustee's objection to the previous plan on July 19, 2022. See ECF No. 24. A review of the court's docket shows that the debtor has failed to file an 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. The court finds that both bases for dismissal alleged by the trustee constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c) (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 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 and for failure to file an amended plan. The court hereby dismisses this case.

10. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[DPC-4](#)

CONTINUED MOTION TO DISMISS CASE
6-21-2022 [[113](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from November 1, 2022

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from November 1, 2022, to allow for hearing on the debtors' motion to modify the chapter 13 plan. The motion to modify, PGM-7 has been granted

The trustee stated at the prior hearing "[i]f the modified plan is confirmed, the trustee consents to the court dismissing the dismissal motion without further notice or hearing." See Civil Minutes, ECF no. 164.

The court will deny this 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.

11. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[PGM-7](#)

MOTION TO MODIFY PLAN
11-29-2022 [\[166\]](#)

PETER MACALUSO/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 November 29, 2022

The debtors seek an order modifying their Chapter 13 plan. The plan is supported by supplemental Schedules I and J filed on November 29, 2022, ECF No. 172. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 173.

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).

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.

12. [22-22625](#)-A-13 **IN RE: JASON/CHRISTINE EATMON**
[DB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DANIEL LOCKWOOD
12-8-2022 [\[39\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
BRIAN ATON/ATTY. FOR MV.

Final Ruling

Objection: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1, 9014-1(f)(2); no written opposition required
Disposition: Continued to February 7, 2023, at 9:00 a.m.
Order: Civil minute order

This is creditor Daniel Lockwood's objection to the confirmation of the debtors' proposed Chapter 13 Plan. The hearing on the motion will be continued to allow for proper service of the motion on the debtors and for the debtors to file a response, if any, to the objection.

SERVICE

Rule 9013

The debtors must be served with the objection under Fed. R. Bankr. P. 9013(a)(1).

The Certificate of Service filed in this matter indicates that service of the objection was made upon the debtors. See Certificate of Service, page 2, No. 5. However, there is no attachment

evidencing service of the objection on the debtors which provides the address at which the debtors were served.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to February 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than January 10, 2023, the objecting creditor shall file and serve the objection to confirmation on the debtors.

IT IS FURTHER ORDERED that no later than January 24, 2023, the debtors shall file and serve a response, if any, to the objection to confirmation. Should the debtors fail to file a written response the court will rule on the objection without further notice or hearing.

13. [22-22625](#)-A-13 **IN RE: JASON/CHRISTINE EATMON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-8-2022 [\[35\]](#)

BRUCE DWIGGINS/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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,145.00. The plan cannot be confirmed if the plan payments are not current.

Attorney Fees

LBR 2016-1(c)(1) allows a maximum of \$4,000.00 in attorney fees to be paid to debtor(s) counsel in a non-business case and \$6,000.00 in a business case. This case is a non-business case.

The proposed plan, ECF No. 11, states that Debtors' attorney has elected to be paid pursuant to Local Bankruptcy Rule 2016-1(c). The plan also states \$0 was paid prior to filing this case and \$4,000.00 will be paid through the Plan, for a total of \$4,000.00.

However, the amounts which have been paid, and are to be paid, to counsel are inconsistently stated in the various documents which have been filed in this case including the Rights and Responsibilities, the Disclosure of Compensation, and the Statement of Financial Affairs. Those documents indicate that debtors' counsel has been paid \$2,687.00. As such the trustee cannot determine the amount which counsel is to be paid under the plan. This in turn impacts the feasibility of the proposed plan under 11 U.S.C. § 1325(a)(6). If the debtors' attorney has been paid \$2,687.000 then an amended plan must be filed. No adjustments may be made in an order confirming the plan.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 169 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.

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 the value of the collateral held by Class 2 secured creditors Daniel Lockwood, Roseanne Lockwood, Development Group Inc., and Development Group Holdings, LLC. But the debtors have 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.

Given the fatal nature of the objections already ruled upon, the court need not reach the remaining objections to confirmation raised by the 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 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.

14. [22-22825](#)-A-13 **IN RE: SHALITA BASS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-5-2022 [\[23\]](#)

DEBTOR DISMISSED: 12/12/2022

Final Ruling

The case having been dismissed, the order to show cause is discharged as moot.

15. [22-22726](#)-A-13 **IN RE: JEREMY MCGHEE**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BROKER SOLUTIONS, INC.
12-8-2022 [\[14\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

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: Overruled

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.

Broker Solutions, Inc., objects to confirmation of the debtor's plan as the plan fails to provide for payment of its claim. See Objection, ECF No. 14.

The debtor has filed a response to the objection which states that the debtor's non-filing spouse is the sole signatory on the loan and deed of trust, and thus the debtor has not listed the obligation in the plan. See Response, ECF No. 17.

The objection will be overruled because the failure to provide for a secured creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. A proof of claim, not the plan, controls the amount of a claim. Ch. 13 Plan § 2.04. Under § 1325(a)(5), moreover, the plan does not have to provide for a

secured claim, although if the plan does provide for a secured claim, the plan's treatment of the secured claim must meet the requirements of § 1325(a)(5). See 11 U.S.C. § 1325(a)(5).

The objecting creditor has not raised an argument regarding the plan's feasibility under 11 U.S.C. § 1325(a)(6). Absent the Chapter 13 trustee's feasibility objection at the hearing the court intends to overrule the 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.

Broker Solutions, Inc.'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. A confirmation order shall be submitted by the trustee after approval by debtor's counsel.

16. [22-20527](#)-A-13 **IN RE: CHARLES LEONARD**
[DPC-2](#)

MOTION TO DISMISS CASE
11-29-2022 [\[66\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 21, 2022

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 \$26,598.00 with a further payment of \$4,433.00 due December 25, 2022.

In addition to the plan delinquency the trustee requests dismissal as the debtor has failed to file a Chapter 13 plan after the court denied the debtor's motion to confirm a plan on August 15, 2022. See ECF No. 60. A review of the court's docket shows that 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. The court finds that both bases for dismissal alleged by the trustee constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(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 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 and the failure to file an amended plan. The court hereby dismisses this case.

17. [22-22936](#)-A-13 **IN RE: COURTNEY WILSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-19-2022 [[23](#)]

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.

18. [22-22837](#)-A-13 **IN RE: KYLE FARRIS AND GRACIELA JARAMILLO-FARRIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-6-2022 [[29](#)]

RICHARD KWUN/ATTY. FOR DBT.
12/8/22 FINAL INSTALLMENT PAID \$313

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

19. [22-22244](#)-A-13 **IN RE: LENY HERNANDEZ**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-19-2022 [[13](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 8, 2022

Disposition: Overruled

Order: Civil minute order

The hearing on this motion was continued to allow for further briefing by the parties. See Order, ECF No. 19.

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).

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. 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.

TRUSTEE OBJECTION

The Chapter 13 trustee objected to confirmation of the plan under 11 U.S.C. §§ 1325(a)(4), and 1325(b). The court requested analysis of Form 122C to aid in its analysis of the proposed plan. The trustee filed his analysis of the plan and forms, ECF No. 20. In doing so, the trustee indicated that no unsecured claims had been filed in this case. The trustee also noted that, as is often the case, the resolution of the liquidation objection would also resolve the trustee's objection under § 1325(b).

DEBTOR REPLY

The debtor filed a reply, ECF No. 23. The debtor has agreed to pay unsecured creditors, if any, 100%. A proposed order confirming the plan has been submitted as Exhibit A with the debtor's reply. See Exhibit A, ECF No. 24.

The court will overrule the trustee's objection to confirmation. The order confirming the plan shall provide for payment to unsecured creditors at 100%.

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. The debtor shall submit an order confirming the plan, which is consistent with this court's ruling, and which has been signed by the Chapter 13 trustee.

20. [22-22444](#)-A-13 **IN RE: BRADLEY/ANDREA MCGRATH**
[DPC-2](#)

MOTION TO DISMISS CASE
11-21-2022 [[32](#)]

MATTHEW DECAMINADA/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 21, 2022

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

Plan Delinquency

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 \$3,080.00 with further payments of \$3,080.00 due November 25, 2022, and December 25, 2022.

Failure to Attend Meeting of Creditors

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtors did not attend the scheduled meeting on November 17, 2022. The court also notes that the docket indicates that the debtors failed to attend the continued meeting of creditors on December 15,

2022. The court finds that this is unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

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 finds that both bases for dismissal alleged by the trustee constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(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 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 and the debtor's failure to attend the meeting of creditors. The court hereby dismisses this case.

21. [22-22749](#)-A-13 **IN RE: MICHAEL WYCLIFFE AND REBECCA WEAVER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-29-2022 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.
12/6/22 FINAL INSTALLMENT FEE PAID \$156

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

22. [22-22251](#)-A-13 **IN RE: CELESTE RASMUSSEN**
[MRL-1](#)

MOTION TO CONFIRM PLAN
11-27-2022 [\[37\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Civil minute order

Mikalah Liviakis, counsel for the debtor, is ordered to personally appear in court at the hearing in prosecution of this motion. A telephonic appearance is not authorized in this matter.

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).

The debtor's plan proposed the following:

Debtor shall pay \$5,712.09 to Sacramento Credit Union toward its Class 2 Claim as a direct payment by November 18th, 2022, and the full remaining balance of its claim shall be paid through the plan according to the terms set forth in Class 2 of this plan.

Chapter 13 Plan, p. 8, Section 7, ECF No. 41.

The Chapter 13 trustee opposed confirmation of the plan as there was no evidence of the debtor's ability to make the payment. This was the sole basis for the trustee's opposition to the motion. As part of the payment depended upon the largesse of a friend the trustee also noted that there was no evidence of the third party's ability or willingness to assist the debtor with the payment.

DEBTOR REPLY

In response to the trustee's opposition the debtor filed a declaration with the court. See Declaration, ECF No. 45. The declaration states that the debtor paid the entire payment contemplated under Section 7 of the plan to the creditor on November 27, 2022. *Id.*

As the trustee's opposition has been fully resolved the court will grant the motion to confirm the plan. The debtor shall submit an order confirming the plan which has been signed by the Chapter 13 trustee.

OUTDATED CERTIFICATE OF SERVICE

The movant has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04,

indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

The Certificate of Service used by the third-party service provider indicates that it is the form in use as of September 2022. See Certificate of Service, ECF No. 42.

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

23. [19-24658](#)-A-13 **IN RE: LORETTA/MELODY ANDERSON-BRUMIDIS**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-2022 [\[41\]](#)

DIANA CAVANAUGH/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
WELLS FARGO BANK, N.A. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Wells Fargo Bank, N.A. seeks an order granting relief from the automatic stay of 11 U.S.C. § 362(a).

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).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented *using the Official Certificate of Service Form* (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

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).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter, but rather has created its own version of the form. This is not in compliance with LBR 7005-1, as the court's official form must be used. The motion will be denied without prejudice.

SPECIAL NOTICE CREDITORS

The motion will also be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Synchrony Bank c/o PRA Receivables Management.

The certificate of service states that only the debtor, debtor's attorney, and the chapter 13 trustee were served with the motion. As indicated in the Certificate of Service, the special notice parties were not served with the motion. *See Certificate of Service*, p. 3, no. 5, ECF No. 46. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

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).

Because the moving party has failed to comply with Local Rules regarding service of the motion 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:

Wells Fargo Bank N.A.'s Motion for Relief From Stay 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.

24. [22-22758](#)-A-13 **IN RE: LEONARDO PADILLA ORTIZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-5-2022 [\[19\]](#)

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 February 7, 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 debtor's plan on two bases: 1) that feasibility of the plan relies on the debtor successfully valuing the collateral of OneMain Financial Group, LLC; and 2) that the plan does not satisfy the requirements of 11 U.S.C. § 1325(b).

The court notes that a motion to value the collateral of OneMain Financial Group, LLC, has been filed and is set for hearing on January 10, 2023.

The court will continue the hearing on this motion to allow the motion to value collateral to be held and to allow the debtor to respond to the trustee's objection to confirmation. The debtor's response shall include argument supported by legal authority which at a minimum addresses the trustee's objection to the length of the plan, the percentage to be paid to unsecured creditors, and clarification of all terms indicated in the proposed Additional Provisions to the plan.

Should the debtor decide to file an amended plan the debtor shall file and serve a notice so indicating not later than the date ordered for the filing of the debtor's response.

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 hearing on the trustee's objection is continued to February 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 17, 2023, the debtor shall file and serve a response to the trustee's objection to confirmation. Should the debtor decide to file an amended plan the debtor shall file and serve a notice so indicating not later than January 17, 2023.

IT IS FURTHER ORDERED that the Chapter 13 trustee shall file and serve a reply to the debtor's response, if any, not later than January 24, 2023.

25. [22-22263](#)-A-13 **IN RE: JARVIS GARNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-1-2022 [\[53\]](#)

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.

26. [22-21973](#)-A-13 **IN RE: BEATRICE EATON**
[MEV-1](#)

MOTION TO CONFIRM PLAN
11-10-2022 [\[15\]](#)

MARC VOISENAT/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 confirmation of her Chapter 13 Plan. The motion will be denied as follows.

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).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented *using the Official Certificate of Service Form* (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

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).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter, but rather has created her own version of the form. This is not in compliance with LBR 7005-1, as the court's official form must be used. See Certificate of Service, ECF No. 19. The motion will be denied without prejudice.

OUTDATED CERTIFICATE OF SERVICE

The movant has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

The Certificate of Service used to serve the special notice creditor indicates that it is the form in use as of September 2022. See Certificate of Service, ECF No. 19.

CIVIL MINUTE ORDER

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

The debtor's motion to confirm Chapter 13 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.

27. [22-22775](#)-A-13 **IN RE: ORRIN MARKELL**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEWTEK SMALL BUSINESS
FINANCE, LLC
12-8-2022 [\[26\]](#)

STEPHAN BROWN/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).

CLASSIFICATION OF MORTGAGE CLAIM

The objecting creditor, Newtek Small Business Finance, LLC, holds a
note secured by a deed of trust in the debtor's residence located at
7460 Berry Lane Citrus Heights, California.

The creditor has filed a claim. See Claim No. 12. The claim and
attachments show that: 1) the obligation matures after the
anticipated completion of the plan; 2) the arrears owed to the
creditor at the time the petition was filed total \$30,222.44; 3) a
variable rate of interest currently set at 9% and 4) the current
monthly payment totals \$1,363.00.

The debtor has provided for the obligation in Class 2 of the plan
with interest at 7.5%. See Chapter 13 Plan, Section 3.08, ECF No.
3. Class 2 claims are defined as follows, "Class 2 includes all
secured claims that are modified by this plan, or that have matured
or will mature before the plan is completed." Thus, the debtor
acknowledges a proposed change to the terms of the loan.

The plan also provides a 7.32% dividend to unsecured creditors
totaling \$356,565.85. *Id.*, Section 3.14. The plan calls for a

monthly payment to the secured creditor in the amount of \$1,645.56, which is \$282.56 more than is required under the current contract. *Id.*, Section 3.08.

The creditor objects to confirmation because the plan proposes to modify the interest rate which is contrary to 11 U.S.C. § 1325(a)(5)(B)(ii). Because the claim does not mature until after completion of the plan, and because arrears are owed, the creditor contends the claim should be properly classified in Class 1 of the plan, with monthly payments paid by the Chapter 13 trustee, and arrears cured during the plan. The court agrees. The plan does not satisfy § 1325(a)(5)(B)(ii).

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.

Newtek Small Business Finance, LLC'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. [22-22775](#)-A-13 **IN RE: ORRIN MARKELL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-5-2022 [\[17\]](#)

STEPHAN BROWN/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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,700.00, with another payment of \$2,700.00 due December 25, 2022. The plan cannot be confirmed if the plan payments are not current.

Schedules I and J

The plan is not feasible. See 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have monthly net income of approximately \$2,539.50, but the plan requires a monthly payment of \$2,700.00. Thus, the debtor's monthly net income is less than the proposed monthly plan payment.

Non-Filing Spouse Income

The debtor's non-filing spouse generates gross monthly income as a limited partner in Capital Containers, LLC, in the amount of \$8.750.04. Numerous claims have been filed in this case where Capital Containers, LLC, is a co-debtor (with the debtor) on these claims. It is unclear whether any payment of the non-consumer obligations is contemplated outside the plan, and if so, what impact this might have on the funds remaining from the non-filing spouse's income to fund the Chapter 13 plan.

While the debtor has amended certain schedules in response to the trustee's objection the debtor has offered no opposition or filed any declaration regarding this objection to the feasibility of the plan.

The court will sustain each of the trustee's feasibility objections.

INCORRECT SOCIAL SECURITY NUMBER ON PETITION

The trustee reports that the debtor produced his social security card to the hearing officer, at the meeting of creditors held December 1, 2022. The last four digits of the social security number filed with the court, do not match the number listed on the debtor's social security card.

The court notes that the debtor has filed an amended Form 121, ECF No. 21, as required. However, there is no certificate of service evidencing direct notice of the correct number on the credit reporting agencies as required. Moreover, the trustee has not confirmed the accuracy of the amended Form 121.

The court will sustain 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.

29. [22-22378](#)-A-13 **IN RE: MELINDA AGDIPA**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-21-2022 [\[25\]](#)

D. ENSMINGER/ATTY. FOR DBT.
KRISTEN KOO/ATTY. FOR MV.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
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).

The Chapter 13 trustee objects to the debtors claim of exemptions under C.C.P. § 704.070.

EXEMPTION OF EARNINGS

A debtor may claim an exemption in paid earnings under California Code of Civil Procedure section 704.070. Cal. Civ. Proc. Code § 704.070(a)(2), (b). The term "paid earnings" means "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy." *Id.* § 704.070(a)(2). The term "earnings" means "compensation made payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." *Id.* § 706.011(a) (emphasis added).

The exemption for earnings is limited to all or a percentage of earnings paid to an employee within the 30-day period prior to the date of levy, which translates in the bankruptcy context to the 30-day period preceding the date of the petition. See Cal. Civ. Proc. Code §704.070(a)(2); *In re Moffat*, 119 B.R. 201, 204 n.3 (B.A.P. 9th Cir. 1990) ("The debtor's exemption rights under state law are determined as of the date of the petition.").

The debtor claims as exempt the following amounts on deposit in banking accounts pursuant to C.C.P. § 704.070: 1) Wells Fargo Bank - acct #1025 - \$2,057.00; 2) Wells Fargo Bank-acct #4186 - \$1420.00. The amounts total \$3,477.00, and the debtor has claimed 100% of the funds on deposit as exempt. See Schedules A/B, C, ECF No. 11.

The debtor has not provided sufficient evidence to the trustee or to the court to substantiate the claimed exemption. Given that the debtor's gross monthly income is \$2,301.26, it is unclear how the sum of \$3,477.00 is traceable to the debtor's income earned in the 30-day period prior to the filing of the petition. See Schedule I, ECF No. 11.

The court will sustain the trustee's objection and disallow the exemptions claimed by the debtor under C.C.P. 704.070 in their entirety.

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 the Debtor's Claim of Exemptions 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 objection,

IT IS ORDERED that the objection is sustained. The claims of exemption under C.C.P. 704.070 are disallowed in their entirety.

30. [22-22780](#)-A-13 **IN RE: SVETLANA WATKINS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-7-2022 [\[13\]](#)

MOHAMMAD MOKARRAM/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 7, 2023, 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).

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)).

Objection to Confirmation

This objection is brought pursuant to Rule 9014 which requires that notice and an opportunity to be heard shall be "afforded the party against whom relief is sought." Moreover, an objection to the confirmation of a Chapter 13 plan is governed by Fed. R. Bankr. P. 2002(b). The court has determined that notice shall be given to parties who have filed a request for special notice as follow.

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.

In this case creditor AIS Portfolio Services, LLC, has filed a request for special notice. See *Request for Notice*, ECF No. 12. Thus, the trustee is bound to serve his objection to confirmation on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the chapter 13 trustee does not list the creditor as a party served with the notice as required. See *Certificate of Service*, ECF No. 16. The Certificate of Service does erroneously list parties which have not filed a request for special notice in this case.

The court will continue the hearing on his objection to confirmation to allow for notice to the special notice party.

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 hearing on the objection is continued to February 7, 2023, at 9:00 a.m. Not later than January 10, 2023, the Chapter 13 trustee shall file and serve the objection and an amended notice of hearing on the objection to all parties which have filed a special notice in this case.

IT IS FURTHER ORDERED that no later than January 24, 2023, the debtor shall file and serve a response, if any, to the trustee's objection. Should the debtor fail to file a response the court will rule on the objection without further notice or hearing.

31. [22-22782](#)-A-13 **IN RE: RONALD AHLERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-1-2022 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.
12/8/22 INSTALLMENT FEE PAID \$78

Final Ruling

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

32. [22-21388](#)-A-13 **IN RE: KATHY ADAMS-BERRY**
[DPC-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-16-2022 [\[41\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim of Exemptions

Notice: Written opposition filed

Disposition: Overruled as moot

Order: Civil minute order

The Chapter 13 trustee objects to the debtor's claim of exemptions under C.C.P. § 704.070. On December 12, 2022, the debtor filed an Amended Schedule C. See ECF No. 45.

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1). The filing of the amended Schedule C renders the trustee's objection moot.

The court will overrule the objection as moot.

CIVIL MINUTE ORDER

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

The Chapter 13 trustee's Objection to the Debtor's Claim of Exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot. The debtor filed an Amended Schedule C on December 12, 2022.

33. [22-22289](#)-A-13 **IN RE: CASS CRINER**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-2022 [\[12\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
SANTANDER CONSUMER USA, INC. VS.

RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2009 Honda Accord

Pre-petition Delinquency: \$8,739.67

Chapter 13 Plan Treatment: None

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).

Santander Consumer USA, Inc., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan. The total pre-petition delinquency is approximately \$8,739.67 and the movant currently has possession of the vehicle.

The Chapter 13 trustee reports that the proposed Chapter 13 plan does not provide for treatment of the automobile loan. See Response and Declaration, ECF Nos. 21, 22.

Because the plan, which has not been confirmed, does not provide for the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property.

Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Santander Consumer USA, Inc.'s motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 2009 Honda Accord, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied

34. [22-21495](#)-A-13 **IN RE: BARRY/CINDY TAYLOR**
[DPC-2](#)

MOTION TO DISMISS CASE
11-22-2022 [\[24\]](#)

GARY FRALEY/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 21, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - 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 because the debtor has failed to file an amended Chapter 13 plan following the hearing on August 30, 2022, where the court sustained the trustee's objection to confirmation of the debtor's previous plan. See Order, ECF No. 23. For the reasons stated in the motion, cause exists under § 1307(c)(1) to 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.

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 failure of the debtor to file and prosecute an amended Chapter 13 plan. The court hereby dismisses this case.

35. [22-22698](#)-A-13 **IN RE: NICKOLAS GARCIA AND JACK TYLER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-7-2022 [\[16\]](#)

GABRIEL LIBERMAN/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 7, 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 debtors' plan on two bases: 1) that feasibility of the plan relies on the debtor successfully valuing the collateral of several creditors and 2) that the debtors may not have sufficient income to fund the plan, 11 U.S.C. § 1325(a)(6).

The court notes that several motions to avoid lien have been filed by the debtors and are set for hearing on January 10, 2023.

The court will continue the hearing on this motion to allow the motions to avoid lien to be heard and to allow the debtors to respond to the trustee's objection to confirmation. The debtors' response shall include argument supported by legal authority.

Should the debtors decide to file an amended plan the debtors shall file and serve a notice so indicating not later than the date ordered for the filing of the debtors' response.

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 hearing on the trustee's objection is continued to February 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 17, 2023, the debtors shall file and serve a response to the trustee's objection to confirmation. Should the debtors decide to file an amended plan the debtors shall file and serve a notice so indicating not later than January 17, 2023.

IT IS FURTHER ORDERED that the Chapter 13 trustee shall file and serve a reply to the debtors' response, if any, not later than January 24, 2023.

36. [22-22699](#)-A-13 **IN RE: CHRISTINE BONILLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-28-2022 [\[30\]](#)

PETER MACALUSO/ATTY. FOR DBT.
12/7/22 INSTALLMENT FEE PAID \$80

Final Ruling

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

37. [22-22699](#)-A-13 **IN RE: CHRISTINE BONILLA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-7-2022 [\[32\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 \$4,300.00. 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).

Failure To Provide Financial/Business Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtor failed to provide the trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. §521(a)(1)(B)(iv).

The debtor failed to attach a statement for property or business income to Schedules I and J. Schedule I, Line #8a, reflects \$500.00 business or real property income. See Schedules I, ECF No. 1.

The failure to provide complete 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.

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 debtor failed to provide proof of her social security number at the meeting of creditors as required. The court will sustain 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.

38. [22-21984](#)-A-13 **IN RE: ANDREW KNIERIEM**
[DPC-3](#)

MOTION TO DISMISS CASE
12-20-2022 [\[59\]](#)

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) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 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.

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 \$5,550.00 with a further payment of \$1,950.00 due December 25, 2022.

Additionally, the trustee moves to dismiss this case as the debtor has not filed a motion to confirm the amended plan which was filed in this case on October 14, 2022, ECF No. 35. The court finds that the failure to set the amended plan for a hearing is an unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

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 and the failure to file a

motion to confirm the amended plan. The court hereby dismisses this case.

39. [22-21973](#)-A-13 **IN RE: BEATRICE EATON**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-2022 [\[27\]](#)

MARC VOISENAT/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
PERITUS PORTFOLIO SERVICES II, LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Peritus Portfolio Services II, LLC, seeks an order for relief from the automatic stay of 11 U.S.C § 362(a).

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

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).

The following parties filed a request for special notice: Bank of New York Mellon Trust Company, N.A. See Request for Special Notice, ECF No. 22.

The certificate of service states that only the debtor, debtor's attorney, the chapter 7 trustee, and the United States Trustee were served with the motion. As indicated in the Certificate of Service, the special notice party was not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 33. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

Peritus Portfolio Services II, LLC's motion for relief from the automatic stay 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 denied without prejudice.

40. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[MEV-2](#)

MOTION TO CONFIRM PLAN
11-10-2022 [\[38\]](#)

MARC VOISENAT/ATTY. FOR DBT.

***[Since posting its original rulings, the court has added the following 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: 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 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).

Schedule I and Schedule J

The trustee's opposition refers to the debtor's amended Schedule J filed November 7, 2022, ECF No. 34. In the schedule the debtor refers to prospective employment and a union dues expense. The trustee is correct in that there is no indication that the debtor has returned to work. As such the trustee questions the feasibility of the proposed plan. The court notes that the debtor did not amend Schedule I when the amended Schedule J was filed. The most recently filed Schedule I was filed at the inception of the case and shows that the debtor is unemployed and expecting to return to work at the end of the year. See Schedule I, ECF No. 1.

The declaration in support of the motion does not indicate the debtor's employment status. See Declaration, ECF No. 40.

Equally troubling to the court is an expense on Amended Schedule J of \$1,100.00 per month for 2022 taxes. It is unclear to the court whether this entry is an expense for ongoing taxes each month for the debtor's non-filing spouse, or whether the debtor anticipates a tax obligation resulting from the 2022 tax year. The declaration in support of the motion does not address this issue.

The debtor has failed to meet his burden of proving the plan is feasible under 11 U.S.C. 1325(a)(6). 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 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.