

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

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

DAY: WEDNESDAY
DATE: JANUARY 19, 2022
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**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-6-2021 [\[18\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Debtor's Claim of Exemptions

Notice: LBR 9014-1(f)(1) / LBR 3007-1(b)(1); written opposition required

Disposition: Overruled as Moot

Order: Civil minute order

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

The chapter 13 trustee objects to the debtor's claim of exemptions as the exemptions claimed on Schedule C combine exemptions from both C.C.P. § 704.010 and C.C.P. § 703.140(b).

EXEMPTIONS

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

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

DEBTOR HAS AMENDED EXEMPTIONS

On January 5, 2022, the debtor filed an amended Schedule C utilizing only the regular non-bankruptcy exemptions, ECF No. 22. The court will overrule the trustee's objection as moot.

CIVIL MINUTE ORDER

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

The 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.

2. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEB LOAN TRUST IV, U.S.
BANK NATIONAL ASSOCIATION
12-7-2021 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.
AUSTIN NAGEL/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).

Creditor, MEB Loan Trust IV, U.S. Bank National Association (creditor) has objected to confirmation of the debtor's plan contending that the plan contravenes the provisions of 11 U.S.C. §§ 1322(b)(5) and 1325(a)(6).

Creditor holds a deed of trust in the debtor's residence and has filed a proof of claim, Claim No. 2. The claim indicates an arrearage of \$60,038.08 as of the date the petition was filed. The plan provides for the creditor's claim in Class 1 in the amount of \$33,000.00, ECF No. 12. The debtor has not objected to the claim.

The plan calls for monthly payments of \$3,155.00. The plan is supported by Schedules I and J filed on November 17, 2021, ECF No. 11. The schedules show that the debtor has monthly disposable income in the amount of \$3,155.00 to fund the plan.

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).

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a).

The proposed plan is structured to pay mortgage arrears of only \$33,00.00. An additional sum of at least \$450.00 per month, plus trustee compensation, would be required over 60 months to pay the \$27,038.08 difference between the claim and the amount proposed in the plan. Schedules I and J do not show the debtor can increase the plan payment. As the debtor has not objected to the claim, the claim is deemed allowed. Thus, the plan is not feasible.

The court will sustain 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.

MEB Loan Trust IV, U.S. Bank National Association'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.

3. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-21-2021 [\[26\]](#)

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).

The chapter 13 trustee objects to confirmation on several bases as follows: the debtor's failure to provide documents and cooperate with the trustee in his administration of the plan; the plan is not feasible under 11 U.S.C. § 1325(a)(6); the plan contravenes 11 U.S.C. § 1322(d) as the trustee estimates it will take 76 months to complete; failure to file tax returns; the plan fails liquidation under 11 U.S.C. § 1325(a)(4); and that improper calculation of monthly income means the plan does not comply with 11 U.S.C. § 1325(b).

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).

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).

The debtor has also failed to provide the trustee with the following requested documents: 6 months of bank statements prior to the filing of the petition for all listed accounts; profit and loss statements for the 6-month period prior to the filing of the petition; evidence of business license and insurance; completed business questionnaire; failure to complete the Business Income and Expense attachment to Schedules I and J.

In addition to failing to cooperate with the trustee, by failing to provide all the fiscal information the debtor has failed to sustain her burden of proving that the plan is feasible.

Plan Overextension

The trustee calculates that the plan will take 76 months to complete. This exceeds the maximum length of 60 months allowed under 11 U.S.C. § 1322(d). The trustee also contends the plan is not feasible noting that the plan provides for mortgage arrears in an amount which is significantly less than what is owed to creditor, MEB Loan Trust IV, U.S. Bank National Association. Claim No. 2.

The court sustains the objection and finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

FAILURE TO FILE TAX RETURNS

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

The IRS has filed Claim No. 4 for estimated taxes for the tax years 2019 and 2020. Neither has the trustee received copies of the returns for either tax year. Thus, it appears that the debtor has not filed tax returns for these tax years.

The court will sustain this objection.

LIQUIDATION

The debtor testified at the 341 meeting that she owns and operates a 2010 Lexus vehicle. The schedules do not list the Lexus – thus the value of the vehicle has not been included in the calculation of the bankruptcy estate's value. Without amended schedules the trustee cannot represent whether, in his estimation, the plan satisfies the liquidation test of 11 U.S.C. § 1325(a)(4). The court notes that while the 341 meeting of creditors was held on December 16, 2021, that the debtor has yet to amend schedules to list the interest in the Lexus.

The court will sustain this objection.

DISPOSABLE INCOME

The trustee contends that the limited amount of information provided by the debtor thus far shows that the debtor has improperly calculated monthly income under 11 U.S.C. § 1325(b). The trustee contends that the debtor has income greater than the amounts proffered in both Form 122C and Schedules I and J. The difference in the amounts support the argument that the debtor's income is higher than the median income and thus a 60-month plan is required. The debtor maintains that her income is below the median family income.

The court sustains this objection.

CIVIL MINUTE ORDER

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

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

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

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

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

4. [19-22513](#)-A-13 **IN RE: ELVIRA/JOSE LOPEZ**
[PSB-3](#)

MOTION TO MODIFY PLAN
12-2-2021 [\[51\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed December 2, 2021

DEFAULT OF RESPONDENT

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

The debtors seek court approval of their modified chapter 13 plan. On December 2, 2021, the debtors filed supplemental Schedules I and J, evidencing their ability to fund the proposed plan, ECF No. 57. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 59.

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.

5. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA
SIRUNANIAN
[AP-1](#)**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
8-12-2021 [\[41\]](#)

PETER MACALUSO/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Motion: Creditor’s Objection to Confirmation of Plan

Notice: Continued from November 2, 2021

Disposition: Overruled as moot

Order: Civil minute order

THE CHAPTER 13 TRUSTEE’S OBJECTION HAS BEEN SUSTAINED

Creditor, U.S. Bank N.A has objected to confirmation of the debtors’ plan. The court has sustained the chapter 13 trustee’s objection to the plan (DPC-1). Therefore, the court will overrule this objection as moot.

CIVIL MINUTE ORDER

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

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

6. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA
SIRUNANIAN
[DPC-1](#)**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
8-11-2021 [\[37\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 2, 2022

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

BACKGROUND

The trustee's objection to confirmation was filed August 11, 2021. It has been continued multiple times to coincide with the Motion to Value (PGM-1) and the objection to confirmation filed by creditor U.S. Bank N.A., (AP-1).

The trustee has filed a Status Report updating his objection, ECF No. 78. In his report the trustee indicates that only one issue remains to be resolved. However, the issue is significant, the plan is overextended, as the plan will not complete within the proposed plan term of 36 months, ECF No. 4. The overextension is caused by the debtors' failure to file tax returns for the following tax years: 2017; 2018; 2019; and the resulting claim filed by the IRS for estimated taxes.

The debtors have filed a Status Report, ECF No. 71, and Exhibits in support of the status report, ECF No. 72. In the status report the debtors state that they have filed the tax returns and that the 2017 and 2018 returns have been forwarded to the trustee. The debtors further indicate that they await amendment of Claim No. 8 filed by the IRS. The status report fails to state when the tax returns were filed and whether the debtors have contacted the IRS regarding a possible amended claim.

The exhibits in support of the status report include copies of the 2017 and 2018 tax returns. The 2017 tax return (Exhibit A) is dated January 4, 2022, although it appears to have been prepared for filing on September 25, 2018, a date which is crossed out but still legible on the form. No explanation has been proffered regarding the failure to file the return when the trustee first filed his

objection to confirmation. Similarly, the 2018 return (Exhibit B) is dated October 29, 2021, but the debtors have not explained why they have yet to file an objection to the claim.

The debtors have had four months to file the tax returns and to object or resolve the IRS claim. The court finds that the plan is not feasible as proposed under 11 U.S.C 1325(a)(6) as the claim filed by the IRS has not been objected to and the plan will not pay the claim as filed. By delaying the filing of the tax returns, the debtors have failed to act in proper prosecution of their chapter 13 plan.

The court sustains 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.

7. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA
SIRUNANIAN
[PGM-1](#)**

CONTINUED MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
7-20-2021 [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

This motion is resolved by stipulation of the parties. The matter will be removed from calendar. No appearances are required.

8. [21-22222](#)-A-13 **IN RE: ARMAR/MARICELA WALKER**
[DBL-2](#)

MOTION TO MODIFY PLAN
12-7-2021 [\[61\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

The chapter 13 trustee opposes modification of the debtors' plan.

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 \$3,625.00. The plan cannot be confirmed if the plan payments are not current.

The trustee indicates in his response that six payments have come due under the plan for a total of \$33,625.00, and that the debtors have paid \$30,000.00, ECF No. 67.

The trustee further indicates that a payment for \$4,300.00 is pending and expected to be received by the first business day of January 2022. The court will approve the plan modification only if the trustee indicates that the payments under the proposed modified plan are current.

11 U.S.C. § 1325(a) (1)

The trustee also objects to drafting errors which appear in the additional provisions, Sections 7.01 and 7.02 of the proposed plan. The court agrees that these provisions are minor and may be corrected in the order granting the motion, should the debtor agree to the proposed changes.

The trustee requests that the following language be included in the order, clarifying the payments due under the modified plan: "payments shall be \$6,000.00 for months 1-5 and \$3,652.00 per month for months 6-60." The court will approve the motion to modify only if the debtor agrees to this provision.

The trustee further objects questioning the necessity of provisions relating to the tender of payments to certain priority claimants. The trustee believes these provisions are unnecessary. The court agrees that the reference to priority payments is unnecessary, confusing, and should be stricken. The court will approve the motion to modify only if the debtor agrees to strike the provisions at Section 7.02 of the proposed plan.

VIOLATION OF LBR 9014-1(c)

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

The docket control number used in this motion was used in a previous motion by the debtor - a motion to modify plan filed on November 24, 2021, ECF No. 52.

CIVIL MINUTE ORDER

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

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

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

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

9. [21-22222](#)-A-13 **IN RE: ARMAR/MARICELA WALKER**
[MMJ-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-15-2021 [[22](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.
WOLLEMI ACQUISITIONS, LLC VS.

No Ruling

10. [20-24225](#)-A-13 **IN RE: LONNIE CURREY AND ROSELYN**
BRANT-CURREY
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-2021 [\[65\]](#)

PATRICIA WILSON/ATTY. FOR DBT.
MICHAEL MYERS/ATTY. FOR MV.
THE GOLDEN 1 CREDIT UNION VS.

Tentative Ruling

Motion: Relief from Co-Debtor Stay; 11 U.S.C. § 1301(c)(2)

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Toyota Tacoma

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.

Movant seeks an order for relief from the co-debtor stay of 11 U.S.C. § 1301, against co-debtor Kim William Maldonado. The confirmed plan provides for movant's claim in Class 3. The vehicle was surrendered to the movant and subsequently sold. Pursuant to the plan the stay has been lifted as to the debtors upon confirmation. The plan calls for a 6.5% distribution to unsecured creditors. Movant also seeks an order for relief from stay against the debtors.

CO-DEBTOR STAY OF § 1301

The scope of the automatic stay is broader in chapter 13 cases than it is in chapters 7 and 11 cases. Section 1301(a) creates a co-debtor stay applicable in chapter 13 cases. 11 U.S.C. §§ 1301(a).

"After a Chapter 12 or 13 petition is filed, the stay extends to individuals who are "codebtors" with the debtor on a consumer debt—e.g., relatives, friends and others who cosigned or guaranteed a note (or other obligation) with the debtor." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:145 (rev. 2018). "The codebtor stay only applies where the codebtor is liable on the consumer debt and liable with the debtor to a third party. Stated otherwise, both the debtor and the codebtor must be liable to a third party and liable on the particular debt the third party is trying to collect." *Id.* ¶ 8:147.

RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c) (2)

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c)(2), 1201(c)(2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

When the plan pays only a fraction of the amount owed to the creditor on the claim for which the co-debtor is liable, the creditor is nevertheless entitled to relief from the co-debtor stay. The bankruptcy appellate panel has held that the co-debtor stay should be lifted when the plan provided for only 15% of the creditor's claim. The panel reasoned, "There is no limitation on the creditor's right to sue the co-debtor for the amount not provided for by the plan. There is no requirement that suit be deferred while the debtor pays under the plan during a period of years." *In re Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982).

"It would make little sense to defer such relief when it is known that the creditor will never receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the debtor has in effect stated [in the plan] the respective dimensions of his liability and that of the co-maker. Section 1301(a)(2) provides the creditor with freedom to pursue, to the latter extent, its claim against a co-debtor." *Id.*

In this case, the confirmed plan fails to provide for payment in full of the movant's claim. As a result, the movant is entitled to relief from the co-debtor stay in this case.

As the plan provides for the obligation in Class 3 the stay is already lifted as to the debtors. To the extent that this motion requests relief from stay against the debtors the motion is denied as moot.

CIVIL MINUTE ORDER

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

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

The Golden One Credit Union's motion for relief from the co-debtor 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 co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

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.

11. [21-24046](#)-A-7 **IN RE: PATRICIA MICHAEL**
[TJW-1](#)

CONTINUED MOTION TO IMPOSE AUTOMATIC STAY
12-2-2021 [8]

TIMOTHY WALSH/ATTY. FOR DBT.

Tentative Ruling

Motion: Impose the Automatic Stay
Notice: Continued from December 17, 2021
Disposition: Denied
Order: Civil minute order

Debtor moves for an order imposing the automatic stay under 11 U.S.C. § 362(c)(4). The instant case was filed on December 1, 2021, and this motion was filed on December 2, 2021.

The hearing on this matter was continued from December 17, 2021, to allow the debtor to augment the evidentiary record. The debtor was ordered to file any additional evidence in support of her motion not later than December 29, 2021. The debtor has failed to file any additional evidence or argument supporting her request.

On December 20, 2021, opposition to the motion was filed by creditor The Bank Of New York Mellon, ECF No. 18. The creditor's argument and analysis support the court's ruling denying the motion and requests denial of the motion.

On December 21, 2021, the debtor converted this case to a Chapter 7. Kimberly Husted was appointed as the trustee. The trustee has not appeared in this matter to support the request to extend the automatic stay.

MOTION TO EXTEND STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later* case is in *good faith* as to the creditors to be stayed." *Id.* (emphasis added).

The motion indicates that at least 2 or more cases were pending in the 1-year period preceding the current petition but were dismissed. A presumption that this case has not been filed in good faith arises under subsection (c)(4)(C) of section 362. See *id.* §

362(c)(4)(D)(i). Clear and convincing evidence is required to rebut the presumption. *Id.* Supporting declarations should proffer evidence that rebuts this presumption. The motion is not supported by sufficient evidence rebutting this presumption and demonstrating that the moving party is entitled to the relief requested. LBR 9014-1(d)(6).

For example, if applicable, the presumption may be rebutted by facts showing that, as to any of the prior cases in the past year that were dismissed, debtors had substantial excuse for any failure to file or amend the petition or other documents, or that such failure was caused by the negligence of debtors' attorney. See *id.* § 362(c)(4)(D)(i)(II). Alternatively, if applicable, the declaration should address facts indicating a "substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case" or "any other reason to conclude" that the current case will result in a "confirmed plan that will be fully performed." See *id.* § 362(c)(4)(D)(i)(III).

EVIDENCE OF PRESENT INCOME

The evidence in support of this motion does not support the debtor's ability to make the proposed plan payments. The plan, ECF No. 3, calls for payments of \$6,400.00 per month.

In support of this motion the debtor filed: a Declaration, ECF No. 10; and Exhibits, ECF No. 11. Schedule I was filed at the inception of the case, ECF No. 1.

Schedule I projects income from Room Rents and Airbnb at \$7,390.00 per month, *id.*, page 29, line 8h. This information is not supported by the income information in the Exhibits in support of the motion, ECF No. 11. Exhibit 1, which provides rental income data, lists total rents from January 2021 through November 2021 at \$57,114.57, *id.*, page 4. The Exhibit shows the total amount of Airbnb income for the same period. The Airbnb total is \$13,462.87, *id.*, page 20. These totals are handwritten at the conclusion of the list of each income category, presumably by the debtor. The combined average monthly income for this period is \$6,416.13. The difference from the debtor's projection on Schedule I is (\$973.87). The plan is not feasible.

The motion and declaration do not address or explain the discrepancy between the income amounts projected in Schedule I and the income amounts earned from January 2021 through November 2021, as listed in the Exhibits.

Given the inconsistencies in the evidence relating to her income the debtor has not met her burden of proof. There is not sufficient monthly income to fund the proposed monthly plan payments. The court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's Motion to Impose Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

12. [20-21047](#)-A-13 **IN RE: PAUL DENNO AND SANDRA MURRAY**
[MWB-7](#)

MOTION TO SELL
12-30-2021 [[109](#)]

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

13. [21-23647](#)-A-13 **IN RE: ROBERT KOEHLER**
[DNL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
12-20-2021 [[22](#)]

ERIC SCHWAB/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Motion: Convert to Chapter 7

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

Disposition: Continued to February 15, 2022, at 9:00 a.m.

Order: Civil minute order

BACKGROUND

Creditors, Drew Prinz, and Elizabeth Prinz have moved to convert this case to a chapter 7 contending that the debtor is misusing the bankruptcy process.

The debtor opposes the motion, indicating that a plan to pay the creditors is possible once the state court appeal of the judgment entered in favor of the creditors has been decided.

The chapter 13 trustee acknowledges that there is currently no plan pending and that he requires additional information to recommend confirmation of a plan. The trustee further requests that the hearing on this motion be continued to allow the debtor to provide the information which the trustee has requested and an opportunity to confirm a plan.

The creditors have also objected to the debtor's claim of exemptions (DNL-2). The hearing on the objection to exemptions is currently scheduled on February 15, 2022, at 9:00 a.m.

The court will continue this matter to February 15, 2022, at 9:00 a.m. to coincide with the hearing on the objection to the claim of exemptions.

STATUS CONFERENCE

The court will treat the hearing on both matters (DNL-1 and DNL-2) on February 15, 2022, at 9:00 a.m. as a status conference. Not later than February 1, 2022, each party shall file and serve a status report addressing the following matters.

Discovery

The length of time required to conduct discovery, if any, in each pending matter. This should include time required for an appraisal of the real property located at 10 Starlit Circle, Sacramento, California.

Bankruptcy Dispute Resolution Panel

Whether referral to BDRP is requested.

Underlying State Court Action

Brief factual and procedural description of the events which gave rise to the state court proceeding, which is the basis for the claim of Drew Prinz and Elizabeth Prinz.

Provide a copy of the state court judgment, and the state court's findings.

State Court Appeal

Identification of all appellate proceedings impacting this bankruptcy case. Statement of issues on appeal. Estimate of time for resolution of appeal(s).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the creditors' motion to convert to chapter 7 is continued to February 15, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than February 1, 2022, the creditors, the debtor, and the chapter 13 trustee shall each file a status report as directed by the court in this ruling.

14. [19-26448](#)-A-13 **IN RE: DUANE OTT**
[DPC-2](#)

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

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from October 19, 2021

Disposition: Continued to March 29, 2022, at 9:00 a.m.

Order: Civil minute order

The trustee's motion to dismiss was continued for the parties to meet and confer, and to allow the debtor to file amended Schedule I and J and to provide a declaration attesting to his income. The debtor filed the schedules on January 3, 2022, ECF No. 77 and 79. The debtor also filed a declaration describing his current and anticipated income on January 3, 2022, ECF No. 78.

The trustee has filed a Status Report, ECF No. 80. In his report the trustee requests a continuance of this motion for 60 days to allow the debtor to file and confirm a modified plan.

The court will continue this hearing to allow the debtor to file a modified plan and set it for hearing. The modified plan shall be heard not later than March 29, 2022.

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 March 29, 2022 at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor shall file a modified plan and set it for hearing. The hearing on the modified plan shall take place not later than March 29, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

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.

15. [21-23848](#)-A-13 **IN RE: GERMAN/MARIANA GARCIA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
12-21-2021 [\[20\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

The chapter 13 trustee objects to the debtors' plan contending that direct payment outside the plan to an unsecured creditor, Jonny Alvarez, is an unfair discrimination under 11 U.S.C. § 1322(b)(1). The trustee also noted that the obligation to Mr. Alvarez had not been listed in the debtors' schedules or mailing matrix, nor was the proposed payment to Mr. Alvarez listed in Schedule J. Thus, the plan is not feasible. The court notes that the trustee refers to the creditors as "Alvarez" but the debtors' amended schedules and amended matrix, ECF No. 18, identify the creditor as "Alcaarez". The court presumes they are the same creditor.

The debtors filed a reply, stating that they agreed with the trustee's position and would provide for payment of the Alvarez claim through the plan, ECF No. 25. The debtors amended the mailing matrix and Schedules E/F to add the missing creditor, ECF Nos. 17-18, although as the court has noted the creditor may be incorrectly identified.

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 Does Not Fund With Addition of Alvarez Debt

While the debtors have now provided for the Alvarez claim through the chapter 13 plan, they have not proven that the plan is feasible with the addition of the \$15,500.00 claim.

The proposed 60-month plan calls for 100% payment of all unsecured claims, ECF 3. The Alvarez obligation is listed in the Amended Schedule E/F in the amount of \$15,500.00. This increases the average monthly amount due under the plan by a minimum of \$258.00 per month plus trustee compensation.

The court notes that the proposed plan contemplates an increase in payment from \$480.00 per month to \$780.00 per month in the ninth month of the plan. However, this increase did not also contemplate the addition of the Alvarez obligation. Schedules I and J filed at the inception of the case show that the debtors' disposable income is \$480.00 per month. Moreover, as the Alvarez obligation was not listed in Schedule J the debtors cannot simply increase the plan payment.

Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

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

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

16. [16-25150](#)-A-13 **IN RE: ELVIA VALLEJO**
[DPC-1](#)

MOTION TO DISMISS CASE
12-22-2021 [\[41\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor's plan will not complete within 60 months as required under 11 U.S.C. § 1322(d). The confirmed plan provides for a term of 60 months. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. The trustee contends that the plan will take 94 months to complete.

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 overextension of the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

17. [19-27056](#)-A-13 **IN RE: BONITA MELENDEZ**
[RJM-3](#)

MOTION TO MODIFY PLAN
11-8-2021 [\[53\]](#)

RICK MORIN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to February 15, 2022, at 9:00 a.m.

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 chapter 13 trustee objects to confirmation of the debtor’s proposed modified plan contending that the plan payments are not current and that he is unable to properly administer the claim of SMUD as it’s claim is currently treated in the modified plan.

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 under the proposed modified plan are delinquent in the amount of \$5,202.00. The trustee further states that the debtor's last payment posted on September 8, 2021. The plan cannot be confirmed if the plan payments are not current.

Administrative Feasibility

The debtor has reclassified the claim of SMUD from Class 1 to Class 2 so that it conforms to the claim filed by SMUD. The SMUD claim, Claim No. 1, shows that the entire claim was due at the time the case was filed. Thus, the claim properly belongs in Class 2.

The concern arises as the trustee has made previous distributions on the SMUD claim as a Class 1 claim. The trustee objects as the debtor does not specify if the previously made payments are to be reclassified as interest or remain principal payments, and if reclassified, in what manner.

The hearing on this matter will be continued to February 15, 2022, at 9:00 a.m. to allow the parties to meet and confer regarding the specific language required in the order to properly resolve the treatment of the SMUD claim. On or before February 1, 2022, the parties shall file a joint status report regarding the modified plan and the proposed language required to properly provide for the SMUD claim.

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 hearing on this motion is continued to February 15, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED, that not later than February 1, 2022, the parties shall file a joint status report regarding the proposed language required to properly provide for the SMUD claim. The trustee shall also indicate whether the plan payments are current.

18. [19-22357](#)-A-13 **IN RE: DARASY/JOHNSY ESIO**
[DPC-2](#)

MOTION TO DISMISS CASE
12-22-2021 [\[37\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that the debtors are delinquent in the amount of \$6,829.01, with another payment of \$6,873.00 due before the hearing on this motion.

The debtors' opposition states that the debtors will pay \$13,702.01 prior to the hearing on this motion. In effect, the debtors' statement regarding amounts remaining to be paid admits the existence of a delinquency in plan payments.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$6,829.01. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

19. [19-21258](#)-A-13 **IN RE: TROY EMRY**
[DPC-3](#)

MOTION TO DISMISS CASE
12-22-2021 [[140](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$9,296.00 with an additional payment of \$1,898.00 due prior to the hearing on this motion.

The debtor's opposition states that the debtor has been unresponsive to queries made by debtor's counsel and his staff, regarding plan payments, ECF Nos. 144-145.

The debtor's opposition does not resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$9,296.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

20. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[DPC-3](#)

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

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

No Ruling

21. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[WW-8](#)

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

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from September 21, 2021

Disposition: Denied

Order: Civil minute order

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

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

The motion to modify the debtors’ plan was continued from September 21, 2021, to allow the debtors to negotiate a loan modification with creditor HSBC Bank USA, National Association. The parties filed a Status Report on January 5, 2022, ECF No. 211. The parties report that loan modification papers have been executed and only require court approval.

The court notes that a motion to approve loan modification has not been filed. The chapter 13 trustee opposed this motion at the outset stating that the loan modification was needed to approve the plan modification. As the modified plan is predicated upon the loan modification the motion to modify the plan will be denied.

CIVIL MINUTE ORDER

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

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

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

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

22. [19-26163](#)-A-13 **IN RE: JOSE PADILLA CARDONA AND VANESSA PADILLA**
[DPC-2](#)

MOTION TO DISMISS CASE
12-22-2021 [[68](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that the debtors are delinquent in the amount of \$12,642.36 with an additional payment of \$3,285.26 due prior to the hearing on this motion.

The debtors' opposition states that the debtors intend to file a modified plan, ECF No. 72.

The opposition does not resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition, and the modified plan has not yet been filed. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$12,642.36. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

23. [18-23364](#)-A-13 **IN RE: BARRY RAASS**
[DPC-3](#)

MOTION TO DISMISS CASE
12-22-2021 [\[82\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn

Order: Civil minute order

The chapter 13 trustee filed a motion to dismiss the debtor's case, contending that the plan payments were delinquent. The debtor opposed the trustee's motion ECF No. 86.

The trustee has filed an ex-parte motion to dismiss his motion indicating that the plan payments in this case have been brought current, ECF No. 89.

DISCUSSION

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, the Chapter 13 trustee has signaled his abandonment of his objection. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the objection is withdrawn.

24. [18-26867](#)-A-13 **IN RE: BAYARDO/LUCILLA VILCHEZ**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
11-9-2021 [\[46\]](#)

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

Final Ruling

Motion: Motion to Dismiss

Notice: Continued from December 7, 2021

Disposition: Continued to March 15, 2022, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the chapter 13 plan will not complete within the 36-month plan term.

A modified plan has been filed in this case. The scheduled hearing on the modification is March 15, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to March 15, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

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.

25. [18-26867](#)-A-13 **IN RE: BAYARDO/LUCILLA VILCHEZ**
[EJS-1](#)

MOTION TO MODIFY PLAN
12-7-2021 [\[53\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to March 15, 2022, at 9:00 a.m.

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 debtors seek an order approving their proposed modified chapter 13 plan. The chapter 13 trustee opposes the modification on numerous bases and requests that the debtors' motion to modify be denied.

NO LEGAL AUTHORITY CITED FOR RELIEF REQUESTED

"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." Fed. R. Bankr. P. 9013.

- A) Motion or Other Request for Relief. The application, motion, contested matter, or other request for relief shall set forth the relief or

order sought and shall state with particularity the factual and legal grounds therefor. *Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request* but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(D)(3)(A) (emphasis added).

Debtors' Motion to Modify

The debtors' motion makes numerous references to bankruptcy code sections which support the requirements for confirmation of a plan, ECF No. 53. However, the motion fails to reference the legal grounds which authorize *modification* of a chapter 13 plan after confirmation. The court believes that 11 U.S.C. § 1329 is intended but will not make this presumption. The debtors are required to support their motion by citing the appropriate legal basis for relief.

Chapter 13 Trustee's Opposition to the Motion

The chapter 13 trustee has opposed the motion to modify and requested that the court deny the motion, ECF No. 63. In his opposition *the trustee raises numerous objections to the proposed modified plan but has cited no legal authority for any of his objections*. The court believes that 11 U.S.C. §§ 1325(a)(3) and (6) may be applicable but will not make this presumption. The trustee is required to support his request by citing the appropriate legal grounds authorizing the relief sought.

The court will continue the hearing on this motion and provide a schedule for amendment of the parties' respective pleadings in this matter. The amended pleadings shall comply with Fed. R. Bankr. P. 9013 and LBR 9014-1(d)(3)(A).

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 hearing on the debtors' motion to modify their chapter 13 plan is continued to March 15, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than February 1, 2022, the debtors shall file and serve an amended motion to modify, citing the legal authority for the motion. Rebuttal of arguments presented by the trustee shall not be included in this pleading.

IT IS FURTHER ORDERED that not later than February 15, 2022, the trustee shall file and serve an amended opposition to the debtor's motion, citing the *legal grounds* for each of the trustee's

objections to the motion. Any additional grounds for objection may also be included in this pleading.

IT IS FURTHER ORDERED that not later than 14 days prior to the hearing on the motion the debtors may file a reply to the trustee's opposition.

26. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-4](#)

MOTION TO DISMISS CASE
12-22-2021 [\[150\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$11,369.00 with an additional payment of \$5,682.00 due prior to the hearing on this motion.

The debtor's opposition states that the debtor will be current prior to the hearing on this motion, ECF No. 154.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$11,369.00. This

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

27. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NISSAN MOTOR ACCEPTANCE
CORPORATION
12-17-2021 [\[24\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
AUSTIN NAGEL/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).

Nissan Motor Acceptance Corporation objects to confirmation of the debtors' plan. The plan provides for the creditor's claim in Class 2 of their plan. The debtors have failed to file a motion to value the collateral of the creditor yet propose to pay only \$6,500.00 to the creditor on the claim. The claim lists a secured amount of \$12,325.00, Claim No. 6.

The creditor also objects to the feasibility of the plan with the entire claim included, as the claim has been filed in the amount of \$19,574.71. Finally, the creditor objects to the interest rate proposed by the plan contending that it is entitled to the prime rate of interest plus 3%, or 6.5% interest.

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 creditor's Class 2 secured claim based on the value of the collateral securing such claim. 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.

As the court has sustained the creditor's objection on the issue of valuation it need not reach the issue regarding the interest rate at this time.

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 creditor'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. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-21-2021 [\[28\]](#)

CANDACE BROOKS/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).

The chapter 13 trustee objects to confirmation of the debtors' plan as the debtors have listed three creditors in Class 2 of their plan: EDD; Nissan Motor Acceptance Corporation; and Travis Credit Union. The debtors have failed to file motions to value the collateral of these creditors.

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 Class 2 secured claims of: EDD; Nissan Motor Acceptance Corporation; and Travis Credit Union based on the value of the collateral securing such claims. 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.

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. [21-20070](#)-A-13 **IN RE: BENIGNA GONZALEZ AND JESUS MONROY**
[DPC-1](#)

MOTION TO DISMISS CASE
12-22-2021 [\[45\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that the debtors are delinquent in the amount of \$2,325.00 with an additional payment of \$585.00 due prior to the hearing on this motion.

The debtors' opposition states that the debtors will be current prior to the hearing on this motion, ECF No. 49.

The debtors' opposition does not resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement that the debtor will cure the delinquency on or before a future date is not the same as a cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,325.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

30. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[DPC-3](#)

MOTION TO DISMISS CASE
12-22-2021 [\[122\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$16,020.34 with an additional payment of \$4,165.78 due prior to the hearing on this motion.

The debtor's opposition states that the debtor intends to file a modified plan prior to the hearing on this motion, ECF No. 30.

The debtor's opposition does not resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition, and the modified plan has not yet been filed. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$16,020.34. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

31. [21-20573](#)-A-13 **IN RE: ALYSSA HALL**
[DPC-1](#)

MOTION TO DISMISS CASE
12-22-2021 [\[19\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,586.00 with another payment of \$793.00 due prior to the hearing on 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 this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

32. [20-22875](#)-A-13 **IN RE: ALLAN WEST**
[DPC-1](#)

MOTION TO DISMISS CASE
12-22-2021 [\[27\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to February 15, 2022, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,720.00.

A modified plan has been filed in this case. The scheduled hearing on the modification is February 15, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to February 15, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

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.

33. [21-22775](#)-A-13 **IN RE: ELIZABETH GONZALEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
12-22-2021 [\[43\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$960.00 with another payment of \$480.00 due prior to the hearing on 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 this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

34. [19-23578](#)-A-13 **IN RE: CATHERINE BYRD**
[PGM-6](#)

MOTION TO DISBURSE FUNDS
12-27-2021 [[104](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

35. [19-27981](#)-A-13 **IN RE: LIEN-CHAU LE**
[JTN-1](#)

MOTION TO INCUR DEBT
12-13-2021 [[22](#)]

JASMIN NGUYEN/ATTY. FOR DBT.

Final Ruling

Motion: Approve New Debt - Student Loan

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt, a student loan, to pay for her attendance at Bryan University, ECF No. 24. The debtor is in month 23 of a 36-month plan which will complete in December 2022. The payments on the student loan will not come due until the debtor has completed her plan. The debtor has made a preliminary application to the U.S. Department of Education/Federal Student Aid (FAFSA) program for a federally guaranteed student loan in the amount of \$9,500.00. Because the loan will not come due during the plan there is no impact upon the debtor's plan.

The court will grant the motion. The debtor is authorized to borrow not more than \$9,500.00 through the U.S. Department of Education/Federal Student Aid (FAFSA) program for the purposes of funding her education.

36. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
11-9-2021 [[120](#)]

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

Final Ruling

Motion: Dismiss Case

Notice: Continued from December 7, 2021

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from December 7, 2021, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, PGM-3 has been granted.

The trustee has consented to the dismissal of his motion in the event the motion to modify is granted, ECF No. 135.

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.

37. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[PGM-3](#)

MOTION TO MODIFY PLAN
12-6-2021 [\[126\]](#)

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: Second Modified Chapter 13 Plan, filed December 6, 2021

DEFAULT OF RESPONDENT

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

The debtor seeks an order approving his second modified chapter 13 plan. In support of his motion the debtor has filed supplemental Schedules I and J evidencing the feasibility of the plan, ECF No. 133. The trustee has filed a non-opposition to the motion, ECF No. 137.

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.

38. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[DPC-4](#)

MOTION TO DISMISS CASE
12-22-2021 [\[97\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,783.83 and that an additional payment of \$1,994.61 will come due prior to the hearing on this motion.

The debtor's opposition states that the debtor has paid \$2,118.00 plus a second payment of \$1,500.00 after the trustee filed the present motion to dismiss. The debtor states that she is attempting a minor modification of her plan via stipulation with the chapter 13 trustee. The debtor further states that she will file a motion to modify her plan should the minor modification not be approved, ECF No. 101. In effect, the debtor's statements regarding amounts remaining to be paid admit the existence of a delinquency despite the tender of plan payments after the motion to dismiss was filed.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$3,783.83. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

39. [21-22391](#)-A-13 **IN RE: JOYCE DAHLGREN**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY GULF HARBOUR
INVESTMENTS CORPORATION
8-12-2021 [\[16\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from October 19, 2021

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

BACKGROUND

Creditor, Gulf Harbour Investments Corporation objects to the proposed chapter 13 plan contending that the plan contravenes 11 U.S.C. § 1322(b)(5) and is not feasible under 11 U.S.C. § 1325(a)(6). The proposed plan provides for the cure of mortgage arrears on the creditor's claim in Class 1 in the amount of \$35,000.00, ECF No. 3. However, the arrearage on the creditor's claim is in the amount of \$116,216.20. Debtor has failed to provide for the curing of the remaining default of \$81,216.20. Thus, the creditor has satisfied its grounds for objection under 11 U.S.C. § 1322(b)(5).

The hearing on this objection to confirmation has been continued twice. At the hearing on October 19, 2021, the court continued the hearing to allow the debtor to proceed with a loan modification and/or other methods of satisfying the objection raised by the creditor.

The court ordered the parties to report on the status of the objection as follows:

[T]hat not later than 14 days prior to the continued hearing creditor's counsel and debtor's counsel, Mr. Ritzinger, shall file a joint status report. Mr. Ritzinger will take the lead and coordinate the filing of the status report. The Chapter 13 trustee may join as appropriate but it will not be required.

Order, ECF No. 28.

Pursuant to the order the status report was due not later than January 5, 2022. Neither party has filed a status report as ordered, nor has either party otherwise advised the court that this matter has been resolved. The debtor has not filed any response to the creditor's objection to confirmation.

The court finds that the debtor has not met her burden of proof regarding the confirmation of her plan.

The court also finds that the debtor has not acted in proper prosecution of her plan, Fed. R. Civ. P. 41(b), Fed. R. Bankr. P. 7041.

As such, the court will sustain the creditor's objection and deny confirmation of the debtor's plan.

CIVIL MINUTE ORDER

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

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

Gulf Harbour Investments Corporation's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

40. [21-23894](#)-A-13 **IN RE: KAVEETA CHAND**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-21-2021 [\[22\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
1/4/22 FINAL INSTALLMENT FEE PAID \$313

Final Ruling

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

41. [21-23894](#)-A-13 **IN RE: KAVEETA CHAND**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-21-2021 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

The chapter 13 trustee objects to confirmation of the debtor's plan as the debtor failed to attend the 341 meeting; failed to produce tax returns and pay advices as required; and has advised the trustee (through her attorney) that she does not wish to proceed with the chapter 13 case.

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).

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).

Similarly, the debtor has failed to provide the trustee with required pay advices.

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 debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection

The court will sustain the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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.

42. [21-23197](#)-A-13 **IN RE: CLAUDE WILKES**
[CDW-3](#)

MOTION TO CONFIRM PLAN
11-29-2021 [\[58\]](#)

CLAUDE WILKES/ATTY. FOR MV.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in

reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

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 \$5,377.00. The plan cannot be confirmed if the plan payments are not current.

Plan Overextension

The trustee calculates that the plan will take 104 months to complete. This exceeds the maximum length of 60 months allowed under 11 U.S.C. § 1322(d).

Speculative Source of Funding

The plan calls for payment of all claims upon the sale of real property located at 333 Santana Row, San Jose, California. This is the property which is the subject of litigation in the California State Appellate Court. The trustee contends that the feasibility of the plan depends upon the debtor's success in the pending litigation in the state appellate court, which is speculative. Only if the debtor is successful in this endeavor will he be able to sell the real property to fund the plan. The debtor has not provided any information indicating that the appellate decision impacting the plan is imminent.

The plan proposes to sell the real property within 36 months. The trustee also objects to the length of time to sell the property. The court agrees.

Schedules I and J

Schedules I and J do not support the feasibility of the plan. The most recently filed budget schedules were filed on October 7, 2021, ECF No. 19. Schedule J shows a net monthly income of \$699.89 while the initial plan payment is \$6.823.00 per month.

The debtor's sole source of income is rents from the real property located at 333 Santana Row, San Jose, California. The property is the subject property in the state court dispute. Unless the debtor is successful in his appeal in the state appellate court, he will have no income to fund any plan. The court notes that in addition to the disputed real property obligations the debtor owes a domestic support obligation in the amount of \$147,092.74, Claim No. 4; and taxes to the Internal Revenue Service, Claim No. 1 in the amount of \$10,181.41 priority, \$563.00 unsecured.

Moreover, the expenses proposed by the debtor in Schedule J are meager and do not support the debtor's care for a period of 36 months, much less the 60 months called for in the plan. The debtor's expenses for food are only \$50.00 per month; medical expenses are \$0; clothing \$20; personal care \$10; and \$0 for housing and utilities.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

IMPROPER CALCULATION OF DISPOSABLE MONTHLY INCOME

The trustee objects to the way the debtor has calculated his disposable monthly income. The debtor has included business expenses at Line 5 of Form 122C-1. Business expenses are not deducted from gross monthly income but rather from current monthly income. "We conclude that § 1325(b)(2) plainly and unambiguously requires a debtor to deduct business expenses from current monthly income." *In re Wiegand*, 386 B.R. 238, 242 (B.A.P. 9th Cir. 2008).

Because Form 122C-1 is incorrectly completed with the business expenses deducted in the wrong location in the form the debtor has failed to complete the remainder of the form. To determine if the Plan complies with 11 U.S.C. Section 1325(b)(1)(B) the debtor must complete Forms 122C-1 and 122C-2 in their entirety.

DOMESTIC SUPPORT OBLIGATION CHECKLIST

The debtor admits that he owes a domestic support obligation, ECF No. 58, 2:15-19. Claim No. 4 has been filed by the State of Louisiana Department of Child and Family Support in the amount of \$147,092.74. The trustee objects to confirmation as the debtor has failed to provide a domestic support obligation checklist.

- 1) Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person

to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*.

LBR 3015-1(b)(6).

CHAPTER 13 ELIGIBILITY

Generally

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$419,275 [originally "\$250,000", adjusted effective April, 1, 2019] and noncontingent, liquidated, secured debts of less than \$1,257,850 [originally "\$750,000", adjusted effective April 1, 2019], or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$419,275 [originally "\$250,000", adjusted effective April, 1, 2019] and *noncontingent, liquidated, secured debts* of less than \$1,257,850 [originally "\$750,000", adjusted effective April 1, 2019] may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) (emphasis added).

The trustee contends that the debtor is not eligible to be a debtor under Chapter 13 because his secured debts exceed the maximum amount allowed under § 109(e) which is currently \$1,257,850. The debtor's Schedule D, ECF No. 19, filed at the inception of the case lists the following secured obligations: J.P. Morgan Chase Bank, N.A. in the amount of \$1,626,207.26; and The Deforest Building Residential Condominium Association in the amount of \$132,171.18. The secured obligations total \$1,758,378.44.

J.P. Morgan Chase has filed a proof of Claim, Claim No. 1. The claim is a secured claim filed in the amount of \$1,626,140.43.

Schedule D lists both obligations as disputed and indicates the courts where litigation is proceeding regarding each claim. The Statement of Financial Affairs, ECF No. 19, also lists the legal proceedings wherein the obligations are disputed. The obligation to J.P. Morgan Chase appears to be on appeal from a decision dismissing the debtor's complaint. The obligation to Deforest Condominium Association is pending in Santa Clara County Superior Court.

The Ninth Circuit has "simply and explicitly state[d] the rule for determining Chapter 13 eligibility under § 109(e) to be that

eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001).

The schedules filed in this case indicate that the secured debt limits exceed those allowed by § 109(e).

Disputed Claims Are Not Excluded From Calculation

The obligations to J.P. Morgan Chase and The Deforest condominium Association may not be excluded from the § 109(e) eligibility calculation because the amounts claimed are in dispute.

While the debts are listed as disputed in Schedule D this classification does not exclude the amounts owed to J.P. Morgan Chase Bank, N.A. and The Deforest Condominium Association from the calculation of secured obligations.

However, a disputed claim is still a "claim" under § 101(5). Section 109(e) excludes unliquidated and contingent debts from the eligibility calculation, but it does not exclude debts which are *merely disputed*. *In re Nicholes*, 184 B.R. at 88. Additionally, eligibility under § 109(e) is determined as of the petition date and is not based on post-petition events. *In re Fountain*, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020) citing *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001).

In re Fountain, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020) (emphasis added).

Thus, the idea that the pending litigation might change the amount owed does not impact the determination of the debtor's eligibility to proceed under Chapter 13. Eligibility is determined at the outset of the case, and the speculative results of subsequent litigation are not relevant.

The court finds that the debtor is not eligible for chapter 13 relief as his secured debt exceeds the limits of 11 U.S.C. § 109(e).

VIOLATION OF LBR 9014-1(c)

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

The docket control number used in this motion was used in a previous motion by the debtor - an objection to claim filed on November 17, 2021, ECF No. 46.

CIVIL MINUTE ORDER

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

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

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

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