

**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 20, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [17-25500](#)-A-13 **IN RE: CANDIE SIMMONS**
[MET-2](#)

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS
ATTORNEY(S)
12-11-2020 [\[78\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Mary Ellen Terranella has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,710.00 and reimbursement of expenses in the amount of \$22.08.

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, "opting in" to the no-look fee approved through plan confirmation, ECF No. 7. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 8. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See L.B.R. 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, as the debtor's counsel performed substantial and unanticipated work (i.e. post-confirmation Motion for Relief from Stay, Notice of Default, Motion to Modify and Response to Motion to Dismiss Case).

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

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

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.

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

IT IS ORDERED that the application is approved. The court allows compensation in the amount of \$3,710.00 and reimbursement of expenses in the amount of \$22.08. The aggregate allowed amount equals \$3,732.08.

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

2. [18-22900](#)-A-13 **IN RE: BARBARA REYNOLDS**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [\[56\]](#)

JEFFREY OGILVIE/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 for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$459.00. An additional \$93.00 is due before the 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.

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 proposed chapter 13 plan in this case. The court hereby dismisses this case.

3. [16-20302](#)-A-13 **IN RE: JONATHAN PHAM AND ANNA NATIVIDAD-PHAM**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [\[38\]](#)

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

No Ruling

4. [20-24902](#)-A-13 **IN RE: ISIDRO FLORES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-28-2020 [\[34\]](#)

PETER MACALUSO/ATTY. FOR DBT.
1/4/2021 INSTALLMENT FEES PAID \$154

Final Ruling

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

5. [20-25402](#)-A-13 **IN RE: KIMBERLY GOFORTH**
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
1-6-2021 [\[15\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Notice: LBR 9014-1(f)(2); trustee's non-opposition filed

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Dodge Caravan. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$9,508.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2015 Dodge Caravan has a value of \$9,508.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,508.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim. The debtor will be further permitted to pay that amount with 5% interest and a monthly dividend of \$179.00.

6. [20-25104](#)-A-13 **IN RE: MARTIN/LINDA GLASENAPP**
[SS-1](#)

MOTION TO CONFIRM PLAN
12-16-2020 [[23](#)]

SCOTT SHUMAKER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the attorney has withdrawn this motion on January 12, 2021, the court will drop this matter from the calendar as moot.

7. [17-26011](#)-A-13 **IN RE: MICHEL FALZON**
[DPC-2](#)

MOTION TO DISMISS CASE
12-18-2020 [\[88\]](#)

MUOI CHEA/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2,520.00. An additional payment of \$630.00 is due before the 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.

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

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

8. [18-27211](#)-A-13 **IN RE: ROBERT/KELLY ROCHA**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [\[63\]](#)

LUCAS GARCIA/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$5,970.00. An additional payment of \$995.00 is due before the 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.

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

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

9. [20-23811](#)-A-13 **IN RE: DENISE BATTS**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
11-24-2020 [\[56\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [20-23811](#)-A-13 **IN RE: DENISE BATTS**
[PGM-2](#)

MOTION TO CONFIRM PLAN
11-23-2020 [\[50\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); trustee's non-opposition
filed, creditor's opposition filed

Disposition: Denied

Order: Civil minute order

Subject: First Amended Chapter 13 Plan, November 23, 2020

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee does not oppose the motion, ECF No. 67. The creditor U.S. Bank National Association opposes the motion, objecting to confirmation, ECF No. 65.

11 U.S.C. 1325(a)(6)

Section 1325(a)(6) of the Bankruptcy Code requires that a proposed chapter 13 plan be feasible in such a form that "the debtor will be able to make all payments under the plan and to comply with the plan," 11 U.S.C. § 1325(a)(6). Here the creditor states that the debtor's Schedules reveal that her net disposable income leaves no income to fund a plan, ECF No. 1. The creditor states that the debtor relies on substantial gratuitous contributions from her boyfriend and daughter to fund the plan, and that there is "no credible evidence" that she will receive such contributions, ECF No. 65. However, the debtor's boyfriend and daughter have in fact filed declarations stating they will be contributing payments to fund the plan, ECF No. 40-41.

The debtor's boyfriend declared that he is "willing and able to contribute the sum of \$1,600.00 each month to ensure that the Plan

payments are timely made. My net income is approximately \$2,200.00 with expenses of approximately \$600.00...The money I will contribute is a gift and I do not expect it to be repaid," Declaration, ECF No. 40. The debtor's daughter declared that she is "willing and able to contribute the sum of \$500.00 each month to ensure that the Plan payments are timely made. My net income is approximately \$2,100.00 with expenses of approximately \$1,000.00...The money I will contribute is a gift and I do not expect it to be repaid," Declaration, ECF No. 41.

The court finds that the debtor has produced ample evidence of plan feasibility. Therefore, the court will not sustain the creditor's objection under § 1325(a)(6).

11 U.S.C. 1325(a)(3), (7)

Sections 1325(a)(3) and (a)(7) of the Bankruptcy Code require that the debtor propose a chapter 13 plan in good faith. To determine whether a plan is proposed in good faith, the 9th Circuit courts apply a "totality of the circumstances" test, *In re Welsh*, 711 F.3d 1120, 1132 (9th Cir. 2013). One of the factors the 9th Circuit takes into consideration is whether the debtor misrepresented facts, unfairly manipulated the Bankruptcy Code or otherwise proposed the plan in an inequitable manner, *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Chapter 13 plan payments are to be submitted on a monthly basis, Section 2.01, Form Plan, EDC-080. Here the creditor states this plan was not proposed in good faith because the debtor did not provide for the payment of the creditor's claim until 19 months after the case was filed, and because the debtor would fund the plan "with income that she does not have and historically has not generated," ECF No. 65. The creditor states that the proposed step-up payment of \$1,100 per month is speculative and illusory since the debtor relies on contributions from her boyfriend and daughter—which the creditor stated has not been evidenced by declarations.

The court disagrees with the creditor. As stated above, the contributors to the debtor's plan payments have filed declarations which deftly state they are willing and able to contribute monthly payments to help fund the debtor's plan, ECF No. 40-41. The court concludes the debtor is able to fund the plan. The court finds that the creditor has not sufficiently shown the debtor's "inequitable behavior" and therefore the debtor's lack of good faith in proposing the plan. The court will not sustain the creditor's objection under § 1325(a)(3), (7).

11 U.S.C. 1322(b)(5)

A chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims," 11 U.S.C. § 1322(b)(2). "[N]otwithstanding paragraph (2) of this subsection, [the plan may] provide for the curing of any default within a reasonable time and

maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due," 11 U.S.C. § 1322(b)(5).

The creditor has a deed of trust on the debtor's principal residence. The debtor's plan provides for \$0.00 in payments on account of defaults on the creditor's secured claim until approximately March 2022, 19 months after this case was filed, Plan, Section 7, ECF No. 52. The court finds that 19 months after filing does not constitute "reasonable time" to cure defaults owed to the creditor. Therefore, the court will sustain the creditor's objection under 11 U.S.C. § 1322(b)(5).

CIVIL MINUTE ORDER

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

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

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

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

11. [18-22313](#)-A-13 **IN RE: XIOMARA CASTRO**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [\[24\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2,360.00. Also, another payment of \$590.00 will be due before the hearing.

The debtor's opposition states that the debtor "will come current" prior to the hearing on this motion, ECF No. 28.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,360.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

12. [19-23913](#)-A-13 **IN RE: GERARDO ABSALON**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[54](#)]

BERT VEGA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

13. [19-24814](#)-A-13 **IN RE: DAVID/SHARON RICETTI**
[DPC-3](#)

MOTION TO DISMISS CASE
12-18-2020 [[76](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

14. [16-20018](#)-A-13 **IN RE: JOJIE GOOSELAW**
[PGM-10](#)

MOTION TO REFINANCE
12-23-2020 [\[159\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve New Debt [Refinance Mortgage Loan]

Notice: LBR 9014-1(f)(2); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party, approved by chapter 13 trustee, non-opposing creditor's conditions to be incorporated by the creditor

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

The debtor seeks to incur new debt to refinance an existing mortgage loan. Amended Schedules I and J and the mortgage lender's non-opposition (ECF No. 168) have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court will grant the motion and approve the debtor's incurring of this new debt, provided that the creditor Wells Fargo Bank, N.A.'s loan shall be paid off in full through the refinance prior to releasing the lien on the property, and the creditor shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the refinance.

15. [20-25318](#)-A-13 **IN RE: LARRY/PATRICIA HENDERSON**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
12-30-2020 [[17](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
MARJORIE JOHNSON/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: Overruled

Order: Civil minute order

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

11 U.S.C. § 1325(a)(9)

The hanging paragraph of Section § 1325(a) states that a debtor may not use § 506 to limit the secured portion of a claim to the collateral's value "if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing," 11 U.S.C. § 1325(a)(9) (hanging paragraph).

The creditor holds a purchase money security interest in the vehicle and states that the vehicle was acquired for personal use within 910 days pre-petition. The creditor states that the debtor's chapter 13 plan does not account for the creditor at all, and therefore limits the value of the secured portion of the claim in violation of § 1325(a)(9).

The court disagrees with the creditor. The plan does account for the creditor, placing the creditor in Class 4, Plan, Section 3.10, ECF No. 4. Class 4 claims "mature after the completion of this plan, are not in default, and are not modified by this plan," Section 3.10, Form Plan EDC 3-080. The court finds the creditor has been properly classified in Class 4, as the claim will mature after completion of the plan. The terms of the plan do not limit the secured portion of the creditor's claim since the terms of the plan do not modify the creditor's claim. Therefore, the court will not sustain the creditor's objection under 11 U.S.C. § 1325(a)(9).

TILL V. SCS CREDIT CORP.

The plan's interest rate on a secured claim should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till*, 541 U.S. at 480.

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

"The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 479. Without deciding the issue of the proper scale of the risk adjustment, the plurality opinion noted that other courts have generally approved upward adjustments of 1% to 3% to the interest rate. See *id.* at 480.

Here, the creditor states that the plan fails to pay the applicable prime plus interest rate since the creditor states that it was not accounted for in the plan. Again, the court disagrees with the creditor, as the creditor has in fact been placed in Class 4 of the plan, Plan, Section 3.10, ECF No. 4, and as a result the creditor's claim will not be modified by the terms of the plan, Section 3.10, Form Plan EDC 3-080.

For the foregoing reasons, the court will overrule this objection to 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.

Capital One Auto Finance's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled. A confirmation order shall be submitted by the trustee after approval by debtor's counsel.

16. [18-21824](#)-A-13 **IN RE: MICHAEL ZENDER**
[TJW-4](#)

CONTINUED MOTION FOR ORDER TO DISBURSE FUNDS REALIZED FROM
THE SALE OF REAL PROPERTY
12-3-2020 [[70](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

17. [17-24928](#)-A-13 **IN RE: DUANE ORSBURN**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[30](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

18. [20-24128](#)-A-13 **IN RE: JOANNA GOODWIN**
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2020 [[26](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
NISSAN MOTOR ACCEPTANCE CORPORATION VS. NON-OPPOSITION.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party

Subject: 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).

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Here, the movant states the debtor is obligated to pay the movant pursuant to a lease agreement, ECF No. 36. In contrast, the debtor's plan places the movant's claim in Class 3, ECF No. 38, and therefore treats the claim as a secured claim instead of a lease, Section 3.09, Form Plan 3-080. However, by placing the movant's claim in Class 3, the debtor signals intent to surrender possession of the vehicle to the movant, *Id.* Therefore, regardless of whether the movant's claim is a lease or a secured claim, cause exists to grant relief under § 362(d)(1).

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

CIVIL MINUTE ORDER

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

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

Nissan Motor Acceptance Corporation's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2020 Infiniti Q50, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

19. [18-20129](#)-A-13 **IN RE: MICHAEL/ESTHER SPEARMAN**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [\[50\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$30,639.16. Another \$7,500.77 is due before the hearing. Additionally, the debtor has filed non-opposition to the trustee's motion to dismiss, ECF No. 54.

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 entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

20. [18-20337](#)-A-13 **IN RE: CAROL SMITH**
[DPC-2](#)

AMENDED MOTION TO DISMISS CASE
12-21-2020 [\[48\]](#)

BARRY SPITZER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

21. [19-24237](#)-A-13 **IN RE: ELENA PEREZ GONZALEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
12-18-2020 [\[106\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$6,825.87. An additional payment of \$2,275.29 is due before the hearing.

The debtor's opposition states that the debtor will file a modified chapter 13 plan to cure this delinquency, ECF No. 110.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$6,825.87. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

22. [19-24338](#)-A-13 **IN RE: LASHRAY WRIGHT**
[PGM-2](#)

MOTION TO MODIFY PLAN
12-14-2020 [[38](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

23. [20-24242](#)-A-13 **IN RE: ROBERT MAC BRIDE**
[RSM-2](#)

MOTION TO CONFIRM PLAN
12-4-2020 [[38](#)]

ROBERT MAC BRIDE/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

11 U.S.C. § 521

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor has not submitted to the trustee pay advices or other evidence of income received within the 60 day period prior to filing.

The debtor has failed to timely provide the trustee with a required 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).

11 U.S.C. § 1325(a)(6)

The plan is not feasible under 11 U.S.C. § 1325(a)(6). Payments under the proposed plan are delinquent in the amount of \$3,585.30. An additional payment of \$3,585.30 will be due before the hearing.

F.R.B.P. 2002(b)

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that NewRez and Deutsche Bank were served "in care of" PHH Mortgage Corporation, and PHH Mortgage Corporation has not been served directly. Serving parties in care of a creditor is not sufficient notice on the creditor under Fed. R. Bankr. Proc. 2002(b) and 3015(d).

CIVIL MINUTE ORDER

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

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

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

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

24. [20-23446](#)-A-13 **IN RE: THOMAS WALTON**
[PGM-1](#)

MOTION TO CONFIRM PLAN
12-14-2020 [[47](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

25. [18-20051](#)-A-13 **IN RE: RORY MCNEIL**
[DPC-2](#)

MOTION TO DISMISS CASE
12-18-2020 [\[64\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

DELINQUENCY

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$10,890.00. An additional payment of \$3,360.00 is due before the hearing.

The debtor's opposition states that the debtor will "become current or otherwise file a motion to modify plan," ECF No. 68.

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

DEBTOR'S REQUEST FOR CONTINUANCE

The debtor requested that this matter be continued to June 30, 2021 so that the debtors can become current or otherwise file a motion to modify plan, ECF No. 68. The court concludes that six months is too inequitably extended to allow the debtor to become current. Chapter 13 plan payments are to be submitted on a monthly basis, Section 2.01, Form Plan, EDC-080. The court will deny the debtor's request to continue the hearing to June 30, 2021.

CIVIL MINUTE ORDER

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

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

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 \$10,890.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6).

IT IS FURTHER ORDERED that the debtor's request that this hearing be extended to June 30, 2021 to bring the plan current or to file a motion to modify plan is denied. The court hereby dismisses this case.

26. [20-24851](#)-A-13 **IN RE: MARGO SWIFT**
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
12-10-2020 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Trustee's Objection to Discharge

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

Disposition: Granted

Order: Civil minute order

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

11 U.S.C. § 1328(f)(1).

"The court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

The debtor filed a Chapter 7 bankruptcy on July 3, 2019 (Case #19-24242) and received a discharge in that case on October 15, 2019 pursuant to 11 U.S.C. § 727. The debtor subsequently filed the above case to Chapter 13. Pursuant to 11 U.S.C. §1328(f)(1), the debtor is not eligible to receive a discharge, as she received a discharge under 11 U.S.C. §727 in a case filed under Chapter 7 during the four-year period preceding the date of the order for relief in this case. For the foregoing reasons, the court will sustain this objection to discharge.

CIVIL MINUTE ORDER

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

The trustee's objection 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 granted.

27. [18-27055](#)-A-13 **IN RE: JEFFREY/LISA PURCELL**
[MRL-2](#)

MOTION FOR COMPENSATION FOR MIKALAH LIVIAKIS, DEBTORS
ATTORNEY(S)
12-5-2020 [\[53\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Mikalah Raymond Liviakis has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4,725.00 and reimbursement of expenses in the amount of \$0.00.

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation, ECF No. 5. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 4. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See L.B.R. 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, as the debtor's counsel performed substantial and unanticipated work (i.e. motions to assume and reject leases, motions to use cash collateral, motions to extend or shorten timelines, motions for post-petition financing, motions to approve settlement, motions to avoid liens, motions to sell real estate, plans, disclosure statements, motions to value, adversary proceedings, and confirmation hearings).

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

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

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.

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

IT IS ORDERED that the application is approved. The court allows compensation in the amount of \$4,725.00 and reimbursement of expenses in the amount of \$0.00.

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

28. [20-24756](#)-A-13 **IN RE: EDGAR MANDAP**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
11-25-2020 [[26](#)]

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Withdrawn

Order: Civil minute order

Chapter 13 trustee David P. Cusick interposed an objection to the debtor(s)' Chapter 13 plan. LBR 3015-1(c)(4). The debtor(s) responded to the trustee's objection.

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, ECF No. 37. 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.

29. [17-24757](#)-A-13 **IN RE: HOANG WRIGHT**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[22](#)]

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

No Ruling

30. [19-22357](#)-A-13 **IN RE: DARASY/JOHNSY ESIO**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[24](#)]

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

No Ruling

31. [19-20559](#)-A-13 **IN RE: KARRI WIECK**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[29](#)]

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

No Ruling

32. [16-26160](#)-A-13 **IN RE: KEVIN/SHERRIE FLOYD**
[MET-1](#)

MOTION TO MODIFY PLAN
11-29-2020 [[94](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, November 29, 2020

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.

33. [17-21160](#)-A-13 **IN RE: LUIS/MELISSA CRUZ DE LA CRUZ**
[TJW-1](#)

MOTION TO CONFIRM SALE OF REAL PROPERTY
12-22-2020 [[54](#)]

STEPHEN MURPHY/ATTY. FOR DBT.

No Ruling

34. [20-20361](#)-A-13 **IN RE: RAMONA LITTLE**
[PSB-1](#)

MOTION TO MODIFY PLAN
12-7-2020 [\[33\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, December 7, 2020

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

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

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

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

35. [17-22863](#)-A-13 **IN RE: CAITLIN MILLS**
[DPC-2](#)

MOTION TO DISMISS CASE
12-18-2020 [\[78\]](#)

LUCAS GARCIA/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$1,250.00. Another payment of \$250.00 is due before the 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.

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

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

36. [20-24065](#)-A-13 **IN RE: KAREN KNECHT**
[HAW-1](#)

MOTION TO CONFIRM PLAN
11-13-2020 [[24](#)]

HELGA WHITE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

37. [19-24669](#)-A-13 **IN RE: RAMON CAPARAS**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[97](#)]

ARASTO FARSAD/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$8,683.88. Another payment of \$3,550.84 is due before the hearing.

The debtor's opposition states that the debtor paid the December payment of \$3,238.00 through TFS, ECF No. 101. The debtor also states that two payments in cashier checks were not delivered and that the debtor has been in contact with the trustee's case administrator to handle the issue.

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 attempt to pay the delinquency is not equivalent to cure of the delinquency. The debtor also has not supported his opposition with a declaration or other evidentiary document as required by L.B.R. 9014-1(d)(1). In addition, the debtor's filed exhibits are not authenticated as required by Fed. R. Evid. 901(a). 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 \$8,683.88. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

38. [20-25170](#)-A-13 **IN RE: GREGORY KRUZONA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-21-2020 [[15](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.

No Ruling

39. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[81](#)]

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

No Ruling

40. [17-23779](#)-A-13 **IN RE: MARIA CRISTINA CRUZ GALLEGOS**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[42](#)]

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

No Ruling

41. [20-21479](#)-A-13 **IN RE: MARCO/CAROL GOMEZ**
[WW-2](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
15-1
11-23-2020 [[25](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Since the debtor objects to Claim No. 15-1, and since then the claimant IRS has filed an amended proof of Claim No. 15-2 which supersedes Claim No. 15-1, the court will drop this matter from the calendar as moot.

42. [20-21479](#)-A-13 **IN RE: MARCO/CAROL GOMEZ**
[WW-3](#)

OBJECTION TO CLAIM OF FRANCHISE TAX BOARD, CLAIM NUMBER 14-1
11-23-2020 [[30](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Since the debtor objects to Claim No. 14-1, and since then the claimant FTB has filed an amended proof of Claim No. 14-2 which supersedes Claim No. 14-1, the court will drop this matter from the calendar as moot.

43. [20-21479](#)-A-13 **IN RE: MARCO/CAROL GOMEZ**
[WW-4](#)

OBJECTION TO CLAIM OF U.S. BANK, N.A., CLAIM NUMBER 10-1
11-23-2020 [[35](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

44. [16-27081](#)-A-13 **IN RE: MICHELLE SHAMBOURGER**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[38](#)]

TAMIE CUMMINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

45. [19-22081](#)-A-13 **IN RE: BONNIE PATTILLO**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[23](#)]

JULIUS CHERRY/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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8,675.00. Another payment of \$1,250.00 is due before the 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.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to

appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

46. [20-24781](#)-A-13 **IN RE: PHILIP/KATHRYN MALAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
11-25-2020 [[16](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

This matter has been continued to February 17, 2021 at 9:00 a.m. to coincide with the hearing for Item 47 on this calendar, Order granting continuance, ECF No. 33-34.

47. [20-24781](#)-A-13 **IN RE: PHILIP/KATHRYN MALAN**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MORTGAGE
SOLUTIONS OF COLORADO, LLC
10-28-2020 [[11](#)]

JULIUS CHERRY/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

This matter has been continued to February 17, 2021 at 9:00 a.m., Order granting continuance, ECF No. 33-34.

48. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[DPC-1](#)

MOTION TO DISMISS CASE
12-18-2020 [[95](#)]

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

No Ruling

49. [20-23991](#)-A-13 **IN RE: VINCENT/NORMA CAMPISI**
[SLE-1](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
7-1
12-3-2020 [[34](#)]

STEELE LANPHIER/ATTY. FOR DBT.

Final Ruling

Since the debtor objects to Claim No. 7-1, and since then the claimant IRS has filed an amended proof of Claim No. 7-2 which supersedes Claim No. 7-1, the court will drop this matter from the calendar as moot.

50. [20-23991](#)-A-13 **IN RE: VINCENT/NORMA CAMPISI**
[SLE-2](#)

MOTION TO CONFIRM PLAN
12-3-2020 [[39](#)]

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

51. [19-20995](#)-A-13 **IN RE: RUDY GONZALEZ, AND ROBERTA GONZALEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
12-18-2020 [[121](#)]

SUSAN TERRADO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling