

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

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

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

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [18-26800](#)-A-13 **IN RE: MICHAEL/EMMA POST**
[DPC-3](#)

MOTION TO DISMISS CASE
1-9-2023 [\[86\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$9,633.67 with a further payment of \$2,900.96 due January 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

2. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[DPC-1](#)

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

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from January 4, 2023

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 pursuant to the terms of the proposed modified plan in the amount of \$18.20 with a further payment of \$521.60 due January 25, 2023.

The hearing on this motion has been continued multiple times. If the trustee indicates that the plan payments are still delinquent at the hearing the motion will be granted and the case will be dismissed.

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

3. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[PGM-2](#)

CONTINUED MOTION TO MODIFY PLAN
11-8-2022 [\[51\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from December 13, 2022

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 hearing on this motion was continued to coincide with the hearing on the motion to approve additional compensation, (PGM-3). The court has approved the motion for compensation which contemplates payment through the Chapter 13 plan.

The sole remaining issue before the court is whether the plan as proposed is feasible.

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

In support of his motion to dismiss (DPC-1) the trustee indicates that the plan payments are delinquent in the amount of \$18.20 with another payment of \$521.60 due January 25, 2023. See Status Report, ECF No. 76. The plan cannot be confirmed if the plan payments are not current.

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.

4. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[PGM-3](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
1-2-2023 [\[66\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation
Notice: LBR 9014-1(f)(1); non-opposition filed by trustee
Disposition: Approved
Order: Civil minute order

Number of Requests for Additional Compensation: First
Additional Compensation Requested: \$1,500.00
Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,500.00, which represents a reduced amount of compensation. The motion is supported by the declaration of the debtor, ECF No. 70. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 74. In his response the trustee indicates that the plan set for hearing (PGM-2) funds with the inclusion of the additional compensation.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

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. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). 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 LBR 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,500.00.

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.

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) 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 the additional compensation in the amount of \$1,500.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

5. [22-22110](#)-A-13 **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**
[CLB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-2022 [\[82\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.
PENNYMAC LOAN SERVICES, LLC VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Relief from Automatic Stay

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

Disposition: Denied as moot

Order: Civil minute order

Subject Property: 251 Cloverleaf Circle, Suisun City, California

Previous Case: In re Manuel Saucedo Gonzalez and Regina Rodriguez Saucedo; Case No. 21-24161, E.D. Cal. Bankr. (2021)

-Chapter 13

-Date filed: December 14, 2021

-Date dismissed: March 17, 2022

Previous Case: In re Regina Saucedo, Case No. 22-21490, E.D. Cal Bankr. (2022)

-Chapter 13

-Date filed: June 15, 2022

-Date dismissed: July 5, 2022

Present Case:

-Chapter 13

-Date filed: August 23, 2022

-Deadline for hearing on motion to extend stay: September 22, 2022

-Motion to extend stay: not filed

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

PennyMac Loan Services, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion seeks relief under §§ 362(d)(1), 362(d)(4). The debtors have filed an opposition to the motion, ECF No. 111. The opposition is not supported by any evidence rebutting the allegations in the motion. The Chapter 13 trustee has filed a response which indicates his intention to oppose the debtors' motion to confirm Chapter 13 Plan currently scheduled for hearing on February 22, 2023. The basis of the trustee's opposition is plan delinquency.

For the following reasons the motion will be denied as moot.

THE STAY IS TERMINATED

Section 362(c) (3)

If a debtor who files a petition has had one bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay terminates with respect to the debtor on the 30th day after the filing of the later case, unless the stay is extended. 11 U.S.C. § 362(c) (3) (A). Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See *id.* § 362(c) (3) (B). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(j) (authorizing the court to issue orders confirming the termination of the automatic stay).

In this case, debtor Manuel Saucedo Gonzalez has had 1 case pending within the preceding 1-year period that was dismissed. More than 30 days have passed since the petition date and no motion to extend the stay was filed. The stay has terminated as to debtor Manuel Saucedo Gonzalez.

Section 362(c) (4)

If a debtor who files a petition has had two prior bankruptcy cases pending within the preceding one-year period that were dismissed, then the automatic stay does not go into effect upon the filing of the later case. 11 U.S.C. § 362(c) (4) (A) (i). And a party in interest may request an order confirming that no stay is in effect. *Id.* § 362(c) (4) (A) (ii).

In this case, debtor Regina Saucedo has had 2 cases pending within the preceding 1-year period that were dismissed. The automatic stay as to Regina Saucedo never went into effect upon the filing of the current case.

CIVIL MINUTE ORDER

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

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

PennyMac Loan Services, LLC's motion for relief from the automatic stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied as moot. The court hereby confirms that the automatic stay is not in effect in this case.

6. [22-22913](#)-A-13 **IN RE: RICHARD BLENIO AND REBECCA RUBIN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-14-2022 [\[33\]](#)

SETH HANSON/ATTY. FOR DBT.

No Ruling

7. [22-22913](#)-A-13 **IN RE: RICHARD BLENIO AND REBECCA RUBIN**
[MMJ-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE
AUTO FINANCE
12-13-2022 [\[29\]](#)

SETH HANSON/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from January 10, 2023

Disposition: Overruled

Order: Civil minute order

The hearing on Capital One Auto Finance's Objection to Confirmation was continued to allow the objecting creditor properly serve creditors who had requested special notice with the objection as required under Fed. R. Bankr. P. 9013, 9007, LBR 9014-1(d)(3)(B)(iv).

IT IS FURTHER ORDERED that no later than January 24, 2023, the objecting creditor shall file and serve the objection on all parties which have filed a request for special notice.

Order, ECF No. 51.

Nothing has been filed since the court issued its order. There is no evidence that the special notice creditors have been served as ordered. The court will overrule the objection.

CIVIL MINUTE ORDER

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

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

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.

8. [22-22913](#)-A-13 **IN RE: RICHARD BLENIO AND REBECCA RUBIN**
[SLH-2](#)

MOTION TO VALUE COLLATERAL OF EXETER FINANCE LLC
1-9-2023 [\[47\]](#)

SETH HANSON/ATTY. FOR DBT.

No Ruling

9. [21-22514](#)-A-13 **IN RE: PATRICK FIELDS**
[DPC-2](#)

MOTION TO DISMISS CASE
1-9-2023 [\[50\]](#)

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

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For

the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$17,200.42 with a further payment of \$2,493.34 due January 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

10. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-10](#)

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-30-2022 [\[157\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling

11. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-9](#)

MOTION TO MODIFY PLAN
12-29-2022 [[151](#)]

MARK WOLFF/ATTY. FOR DBT.

No Ruling

12. [21-22121](#)-A-13 **IN RE: JEFFREY/CHERYL VANORNUM**
[DPC-3](#)

MOTION TO DISMISS CASE
1-9-2023 [[43](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,950.00 with a further payment of \$850.00 due January 25, 2023.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

13. [19-23726](#)-A-13 **IN RE: KATHLEEN BUCKLEY**
[DPC-1](#)

MOTION TO DISMISS CASE
1-9-2023 [\[31\]](#)

RICHARD STURDEVANT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: January 24, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$3,654.98 with another payment of \$979.34 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 37, 38. The declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 38.

The 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.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

14. [21-23127](#)-A-13 **IN RE: JOSHUA MOORE AND MELODY
MALDONADO-MOORE**
[DPC-1](#)

MOTION TO DISMISS CASE
1-9-2023 [\[30\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$20,775.00 with a further payment of \$3,000.00 due January 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

15. [22-23129](#)-A-13 **IN RE: MARIA ROWENA PENA**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICREDIT FINANCIAL
SERVICES, INC.
12-23-2022 [\[14\]](#)

ANH NGUYEN/ATTY. FOR DBT.
SHERYL ITH/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).

Americredit Financial Services, Inc., objects to confirmation of the debtor's plan as follows.

INTEREST RATE ON SECURED DEBT

The debtor's plan provides for the objecting creditor's claim in Class 2 of the plan. See Chapter 13 Plan, Section 3.08, ECF No. 3.

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 plan provides for an interest rate of 0% on the objecting creditor's class 2 secured claim. The prime rate of interest when the petition was filed on December 1, 2022, was 7%.

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. The plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 8%.

PLAN IMPROPERLY PROVIDES FOR CLASS 2 CLAIM

The objecting creditor contends that the plan incorrectly provides for its Claim in Class 2 as a non-purchase money secured obligation. Exhibit B, in support of the objection shows that the obligation is a purchase money obligation. See Exhibit B, ECF No. 16. Because of the improper classification the creditor has not received the pre confirmation payments it is due pursuant to 11 U.S.C. § 1326(a)(1)(C). Objecting creditor has filed Claim 5 and has been precluded from receiving payments because of the improper classification of its claim in the plan.

The court will sustain the objections 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.

Americredit Financial Services, Inc.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

16. [22-21331](#)-A-13 **IN RE: RODNEY/CAROL YIP**
[BLG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S)
1-2-2023 [\[44\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Plan Confirmed: November 1, 2022

Compensation Approved: \$3,835.25

Reimbursement of Expenses: \$57.42

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, Chad Johnson, Bankruptcy Law Group, PC, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,835.25 and reimbursement of expenses in the amount of \$57.42.

The Chapter 13 trustee has filed a non-opposition to the motion and indicated that the confirmed plan funds with the payment of attorney compensation through the plan. See Non-Opposition, ECF No. 50.

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 on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Chad Johnson, Bankruptcy Law Group, PC's application for allowance of interim 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 on an interim basis. The court allows interim compensation in the amount of \$3,835.25 and reimbursement of expenses in the amount of \$57.42. The aggregate allowed amount equals \$3,892.67. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$3,350.67 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

17. [22-23031](#)-A-13 **IN RE: ANDREW COLLIER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-12-2023 [\[14\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to March 21, 2023, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee has objected to confirmation of the debtor's plan. The hearing on the objection will be continued to March 21, 2023, at 9:00 a.m. for the following reason.

The objection was not properly served on the debtor as required by Fed. R. Bankr. P. 7004(b)(9). Neither was the objection served on debtor's counsel. The objection was served upon a debtor and counsel in a different Chapter 13 case. See Certificate of Service, Attachment 6A1, ECF No. 17.

The motion will be continued for the trustee to properly serve the debtor, counsel for the debtor and all parties which have filed a request for special notice, and for the debtor to file a written response to 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.

IT IS ORDERED that the objection is continued to March 21, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than February 14, 2023, the trustee shall serve the objection and all supporting documents on the debtor, debtor's counsel, and all parties which have filed a request for special notice.

IT IS FURTHER ORDERED that no later than February 28, 2023, the debtor shall file and serve an opposition, if any, to the trustee's objection. The opposition shall be supported by admissible evidence and all such evidence, including any amended bankruptcy schedules or plan, shall be filed and served not later than February 28, 2023.

IT IS FURTHER ORDERED that no later than March 7, 2023, the Chapter 13 trustee shall file and serve any reply to the debtor's opposition.

18. [22-20635](#)-A-13 **IN RE: MARIA LUPERCIO**
[CYB-3](#)

MOTION TO CONFIRM PLAN
12-15-2022 [[69](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

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

The motion will be denied for the following reason.

SERVICE

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 2) A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e)(1), (2).

The motion was not properly served as required by LBR 9014-1(e)(1), (2). There is no certificate of service filed in this matter. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

19. [22-20537](#)-A-13 **IN RE: LATASHA SAMUEL**
[DPC-2](#)

MOTION TO DISMISS CASE
1-9-2023 [\[36\]](#)

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

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,696.00 with a further payment of \$794.00 due January 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

20. [22-23039](#)-A-13 **IN RE: KAREN GARLINGTON**
[DB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JOHN W. COSBY
1-12-2023 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.
BRIAN ATON/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v.*

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

John W. Cosby, as co-trustee of the Cosby Family Trust, objects to confirmation of the debtor's plan. The Cosby Trust holds a deed of trust in the debtor's residence located at 6081 Sly Park Road, Placerville, California.

The objecting creditor contends the plan is not feasible because: 1) the arrears on the subject property are understated in the plan; 2) the debtor's current schedules evidence an inability to increase the plan payment to pay the difference in arrears; and 3) the debtor has failed to provide proof of required insurance coverage on the subject property.

The plan proposes to pay the arrears owed to the objecting creditor in the amount of \$8,000.00. See Chapter 13 Plan, Section 3.07, ECF No. 19. Conversely, the creditor contends that the arrears owed total \$9,858.41. See Declaration of John W. Crosby, 2:14, ECF No. 34. Schedules I and J show that the debtor has only \$1,160.00 per month available to fund the plan, ECF No. 18. The plan payment is \$1,160.00.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6) as the debtor has not demonstrated the ability to cure the arrears owed to the objecting creditor during the pendency of the plan. Moreover, the failure to demonstrate required contractual insurance coverage also indicates the plan is not feasible.

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.

John W. Crosby'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.

21. [22-23039](#)-A-13 **IN RE: KAREN GARLINGTON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-12-2023 [\[29\]](#)

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

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Testimony at Meeting of Creditors Contradicts Schedules

The debtor's testimony at the meeting of creditors revealed that the debtor has not yet obtained employment and that her unemployment benefits of \$1,800.00 will expire in 3 months. Without this income or proof of employment the debtor cannot make the plan payment and the plan is not feasible.

Property Taxes Not Listed

The debtor also admitted at the meeting of creditors that she failed to list \$2,270.00 in property taxes in the proposed plan or the bankruptcy schedules. This also impacts the feasibility of the plan. First, the debtor is required to list all obligations in the bankruptcy schedules; and second, she has not indicated how, or if, the secured obligation will be paid during the pendency of the plan. Whether this obligation will be paid and how it will be paid directly impacts the feasibility of the proposed plan.

The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6) and will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

22. [22-21943](#)-A-13 **IN RE: CHRISTOPHER KEENER**
[DPC-2](#)

MOTION TO DISMISS CASE
12-28-2022 [[42](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$13,628.00 with a further payment of \$3,407.00 due January 25, 2023.

As a courtesy to the court the debtor filed a non-opposition to the trustee's motion on January 19, 2023, ECF Nos. 47, 48. Accordingly, the court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

23. [22-22146](#)-A-13 **IN RE: JOSE ROMERO SOTO**
[KLG-1](#)

MOTION TO CONFIRM PLAN
12-30-2022 [\[34\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

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

The trustee contends the plan is not feasible as the plan calls for an increased payment of \$264.00 in the second month of the plan. See First Amended Chapter 13 Plan, Section 7, ECF No. 37. The debtor have not emended their Schedules I and J since the inception of the case, nor had they filed the attachments to Schedules I and J disclosing their business income and expenses.

The trustee further objects as he believes the debtor is paying executory contracts which are not indicated on Schedule G.

Each of these bases impact the feasibility of the plan.

DEBTOR AMENDED SCHEDULES

While the debtor did not file a reply to the trustee’s opposition, he did file amended schedules: 1) Schedule I; 2) Schedule J; and Schedule G. See ECF Nos. 45, 46, 47. The documents were filed on January 26, 2023.

For the following reasons the court will deny the debtor’s motion to confirm plan.

Rule 1008

On January 26, 2023, the debtor(s) filed Amended Schedules I, J, and G in support of the motion and plan, ECF Nos. 45, 46, 47.

The schedules were filed without the required amendment cover sheet, EDC 002-015 and are thus unsigned by the debtor. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that “[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.” See Fed. R. Bankr. P. 1008.

In the Eastern District Form EDC 002-015 is required for use in filing both amended and supplemental documents. The form provides the following instructions:

Attach each amended document to this form. If there is a box on the form to indicate that the form is amended or supplemental, check the box. Otherwise, write the word “Amended” or “Supplemental” at the top of the form.

EDC 002-015 (emphasis added).

LBR 9004-1(c)

Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

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

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are of no evidentiary value and are not properly before the court.

Schedules J and G, ECF Nos. 46, 47, were filed without any signatures and are not admissible evidence in support of the plan. Without this information the trustee is unable to assess the feasibility of the debtor's proposed plan or determine if in his estimation it is proposed in good faith. 11 U.S.C. § 1326(a)(3), (6).

The court notes that the Business Attachment appears to be submitted with affirmation and signature. However, it is unclear if the signature relates to Schedule I to which the Business Attachment is appended, whether the affirmation and signature relate to both documents, or only to the Business Attachment. See ECF No. 45.

Henceforth, the court requires that all supplemental schedules be filed with the properly executed Form EDC 002-015 attached to the schedules.

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. [22-23150](#)-A-13 **IN RE: MARCUS FRENCH**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
12-28-2022 [\[13\]](#)

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: 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).

Capital One Auto Finance objects to confirmation of the proposed Chapter 13 Plan contending that the plan does not propose to pay the appropriate rate of interest on the objecting creditor's claim.

INTEREST ON SECURED CLAIM

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 plan provides for an interest rate of 6% on the objecting creditor's class 2 secured claim. See Chapter 13 Plan, ECF No. 3. The petition was filed on December 5, 2022. On that date the prime rate of interest was 7%.

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 8%

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 sustained. The court denies confirmation of the chapter 13 plan.

25. [22-23053](#)-A-13 **IN RE: VERNICE/LINDA MOORE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
1-12-2023 [\[12\]](#)

MICHAEL REID/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that plan payments are delinquent in the amount of \$385.00 with a further payment of \$385.00 due January 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Post-Petition Mortgage Arrears

The proposed plan provides for treatment of Rancho Tehama Association in Class 1, ECF No. 3. Because the debtors failed to tender plan payments the trustee will be unable to pay the post-petition contract installments to Rancho Tehama Association for the month of December 2022. The proposed plan fails to provide for payment of post-petition mortgage arrears. An amended plan is required.

MEETING OF CREDITORS

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtors experienced technical difficulties with the online examination procedure and the trustee was unable to examine them regarding the issues raised in this motion. The court will sustain the objection.

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation
(1) Personal identification

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

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

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

The trustee reports that the debtors have failed to provide social security information as required. The court will sustain the objection.

The court sustains each of the trustee's objections and denies 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.

26. [22-22758](#)-A-13 **IN RE: LEONARDO PADILLA ORTIZ**
[DC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

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: 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 trustee has objected to the following provision in the debtor's plan:

Debtor's plan will terminate upon completion of
administrative expense payments, payments to One Main

Financial for vehicle, and 0% dividend to general unsecured creditors. In Re: Sisk, 962 F.3d 1133.

Chapter 13 Plan, Section 7.01, ECF No. 8.

The proposed plan makes no other provision regarding the anticipated plan length. The debtor's income is under the median income. See Form 122-C-1, ECF No. 1.

The trustee objects under 11 U.S.C. § 1325(b) as the plan fails to provide that the debtor will pay his projected disposable income for the applicable 36-month commitment period as required.

The trustee calculates that it will take approximately 52 months to fund the plan at 0% to the unsecured creditors and pay the secured obligation to OneMain as proposed by the debtor. The trustee also contends that creditors are entitled to reasonable notice of the intended plan length, which is projected at longer than 36 months.

The debtor filed an opposition to the trustee's objection, ECF No. 29. In his opposition the debtor offers to extend the plan to 36 months or more to comply with the requirements of 11 U.S.C. § 1325(b).

The court finds that the plan may not be confirmed as the trustee has objected to the additional provisions under § 1325(b). As such, the debtor must propose a plan which complies with the requirements of 11 U.S.C. § 1325(b). All creditors were noticed of the plan as it is currently proposed and notice of the change in plan length is required. The debtor must file an amended plan. 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.

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

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

27. [22-21761](#)-A-13 **IN RE: ADOLFO/ALEJANDRA SANCHEZ**
[MS-2](#)

MOTION TO CONFIRM PLAN
12-23-2022 [\[51\]](#)

MARK SHMORGON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed December 23, 2022

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 confirmation of their Second Amended Chapter 13 Plan, ECF No. 55. The plan is supported by an Amended Schedule J filed January 12, 2023, ECF No. 57. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 59.

CHAPTER 13 PLAN CONFIRMATION

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

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

28. [22-23161](#)-A-13 **IN RE: ARTHUR HODGES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-10-2023 [\[27\]](#)

Tentative Ruling

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

29. [22-23161](#)-A-13 **IN RE: ARTHUR HODGES**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-29-2022 [\[19\]](#)

SHERYL ITH/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES, INC. VS.

RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Buick Encore

Pre-petition Delinquency: \$2,834.67

Post-Petition Delinquency: \$572.66

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).

Americredit Financial Services, Inc. moves for: 1) relief from the automatic stay of 11 U.S.C. § 362(a); 2) relief from the co-debtor stay of 11 U.S.C. § 1301(a); and 3) annulment of the stay under 11 U.S.C. § 362(d).

The Chapter 13 trustee has filed a response to the motion. In his response the trustee indicates that the debtor filed a proposed plan failing to use the required form plan EDC 3-080. The plan proposes payments of \$275.00 for 60 months. See Chapter 13 Plan, ECF No. 8.

The trustee also reports that there have been no plan payments (\$0.00) made to date, and the first payment was due January 25, 2023.

The treatment of the movant's claim is unclear in the proposed plan. The claim is listed in Part 3 of the proposed plan, but the debtor also checked the box stating "None" indicating that no payments to secured obligations would be made under the plan.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 postpetition payment is past due. The total postpetition delinquency is approximately \$572.66.

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

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.

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.

"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 of the movant's claim. The debtor's intentions regarding payment of

secured debt are unclear as provisions in the proposed plan conflict. Moreover, the debtor has failed to use the Eastern District's required form plan and the plan before the court may not be confirmed. full of the movant's claim. As a result, the movant is entitled to relief from the co-debtor stay in this case.

RETROACTIVE RELIEF

"[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for

analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

Here the movant was unaware of the bankruptcy filing when it repossessed the subject vehicle on December 6, 2022, the same date the petition was filed. See Declaration of Aaron Rangel, 2:22-24, 3:15-17, ECF No. 22.

Moreover, it appears that the debtor is deceased. The date of the debtor's death is unclear. The court's docket shows that no notice of death has been filed as required. The movant received a letter indicating that the debtor was deceased and that the co-debtor, Debra Bailey-Hodges intended to take over the debt owed to movant through a bankruptcy plan. See Letter, Exhibit C, ECF No. 24.

Additionally, Schedule I, filed December 19, 2022, indicates that the debtor is "deceased". See Schedule I, ECF No. 13. The cover sheet containing the affirmation and signature of the debtor was signed on December 16, 2022.

The court has considered the pertinent factors for deciding whether to grant retroactive relief from stay.

The court finds that the factors discussed are dispositive on the question whether to grant retroactive relief from stay. Retroactive stay relief will be granted to the date of the petition.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 Buick Encore, 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 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 the automatic stay of 11 U.S.C. § 362(a) is annulled and retroactive stay relief is granted to the date of the petition.

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.

30. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[DPC-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-22-2022 [\[144\]](#)

KIM BEATON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition filed by debtor
Disposition: Sustained
Order: Civil minute order

The Chapter 13 trustee objects to the debtors' claim of exemptions in assets as indicated in Schedule C, ECF No. 120. The exemptions claimed are "mixed" as the debtors have claimed exemptions under both C.C.P. § 703.140(b) and the regular non-bankruptcy exemptions commencing with C.C.P. § 704.010.

EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

11 U.S.C. § 522 allows a debtor either to exempt property under federal bankruptcy exemptions under § 522(d), unless a state does not so authorize, or to exempt property under state or local law and non-bankruptcy federal law. *Id.* § 522(b)(2)-(3)(A), (d).

"California has opted out of the federal exemption scheme and limited [debtors in bankruptcy] to the exemptions debtors may claim in non-bankruptcy cases." *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

Under California 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).

ANALYSIS

Here the debtors claim exemptions under both exemption schemes as found in the California Code of Civil Procedure. See Schedule C, ECF No. 120. The court will sustain the trustee's objection to the debtors' exemptions and disallow all exemptions claimed in Schedule C, ECF No. 120.

SCHEDULES C, ECF No. 120

Rule 1008

On November 23, 2022, the debtor(s) filed amended Schedules C. In addition to the combined exemptions schemes discussed above the court notes that the filed schedule is not authenticated or signed with the required affirmation.

The schedule was filed without the required amendment cover sheet, EDC 002-015 and is thus unsigned by the debtors. As such, the schedule is not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

In the Eastern District Form EDC 002-015 is required for use in filing both amended and supplemental documents. The form provides the following instructions:

Attach each amended document to this form. If there is a box on the form to indicate that the form is amended or supplemental, check the box. Otherwise, write the word "Amended" or "Supplemental" at the top of the form.

EDC 002-015 (emphasis added).

LBR 9004-1(c)

Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

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

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedule is of no evidentiary value and is not properly before the court.

Henceforth, the court requires that all supplemental schedules be filed with the properly executed Form EDC 002-015 attached to the filed document.

CIVIL MINUTE ORDER

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

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

The trustee's objection to the debtors' claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor's exemptions claimed in Schedule C, ECF No. 120, will be disallowed in their entirety.

31. [19-21366](#)-A-13 **IN RE: ANTHONY/BARBARA WATSON**
[DPC-3](#)

MOTION TO DISMISS CASE
1-9-2023 [\[51\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: January 24, 2023 - timely

Modified Plan: Untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$13,001.10 with another payment of \$3,281.78 due January 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 60, 61. The opposition states that the debtors intend to file a modified plan. See Opposition, ECF No. 60.

UNTIMELY OPPOSITION – MOTION TO MODIFY

On January 24, 2023, the debtor(s) filed an opposition to the motion to dismiss, ECF No. 60. The opposition includes a declaration by the debtor(s) stating their intention to file a modified plan.

The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

Moreover, the court notes that the debtors have not timely filed a Modified Chapter 13 plan by the date opposition was due. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since the filing of a modified plan is opposition--albeit of the de facto variety-- it will not be considered in ruling on the motion to dismiss, as it has not been timely filed.

The court is aware that the motion to dismiss was filed January 9, 2023, giving the debtors only 29 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

32. [19-26466](#)-A-13 **IN RE: JOANNE BRONSON**
[DPC-2](#)

MOTION TO DISMISS CASE
1-9-2023 [\[55\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: January 24, 2023 - timely

Modified Plan: Untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$13,491.45 with another payment of \$4,587.15 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 59, 60. The opposition states that the debtor intends to file a modified plan. See Opposition, ECF No. 59.

UNTIMELY OPPOSITION - MOTION TO MODIFY

On January 24, 2023, the debtor(s) filed an opposition to the motion to dismiss, ECF No. 59. The opposition consists of a declaration by the debtor(s) stating her intention to file a modified plan.

The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

Moreover, the court notes that the debtor has not yet filed a Modified Chapter 13 plan. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since the filing of a modified plan is opposition--albeit of the de facto variety--it will not be considered in ruling on the motion to dismiss as no plan has been filed by the opposition date.

The court is aware that the motion to dismiss was filed January 9, 2023, giving the debtor only 29 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

33. [22-23071](#)-A-13 **IN RE: DOUGLAS/PHATHUMPORN OVERSTREET**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-12-2023 [\[16\]](#)

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).

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 119 months to fund as proposed.

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

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

FAILURE TO FILE TAX RETURNS

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

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

11 U.S.C. § 1325(a)(9).

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

11 U.S.C. § 1308(a).

If the debtors have not filed a 2021 tax return, and were required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

DEBTOR RESPONSE

The debtors filed a response to the objection on January 31, 2023, ECF No. 20. The debtors offer to resolve the trustee's feasibility objection by increasing the plan payment by \$87.00 each month.

The debtors argue that the 2021 tax return has been filed with and accepted by the IRS. The IRS has amended its claim. Claim No. 4 was amended on January 19, 2023, and appears to include the 2021 tax return.

The court will hear from the trustee regarding whether the minor modification proposed by the debtors will resolve his objection. If it does not the court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

34. [22-22974](#)-A-13 **IN RE: GREGORY BUSH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-10-2023 [\[46\]](#)

ARETE KOSTOPOULOS/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: 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).

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the Chapter 13 trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

RULE 3015.1(e)

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

...

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

Fed. R. Bankr. P. 3015.1(e).

Thus, Rule 3015.1(e) requires that the Eastern District Plan provide for specific placement of plan provisions which are nonstandard.

LBR 3015-1(a)

Local Bankruptcy Rule 3015-1(a) requires that all chapter 13 debtors shall utilize the district's form plan as follows:

All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form *Chapter 13 Plan*.

LBR 3015-1(a).

The Eastern District Chapter 13 Plan provides as follows:

Section 7. Nonstandard Provisions

Debtor may propose nonstandard provisions that modify the preprinted text of this form plan. *All nonstandard plan provisions shall be on a separate piece of paper appended to this plan.* Each nonstandard provision shall be identified by a section number beginning with section 7.01 and indicate which section(s) of the form plan are modified by the nonstandard provision. Nonstandard provisions placed elsewhere are void. *The signatures below are certifications by Debtor and Debtor's attorney that this plan form has not been altered and that all nonstandard provisions are in section 7.*

EDC 3-080(emphasis added).

The language in EDC 3-080 is clear, it requires nonstandard provisions to be provided for on a separate piece of paper, appended to the plan.

Here the debtor has proposed a plan utilizing the district's form plan EDC 3-080. However, in proposing nonstandard provisions at Section 7 the plan fails to list those provisions on a separate piece of paper appended to the plan. Rather, they appear in the same type, as a continuation on the page of standard preprinted language. The labeling of the section as Non-Standard is irrelevant as the type and font used is identical to that of the standard preprinted terms of the plan. Even someone familiar with this district's form plan could easily overlook the nonstandard provisions as proposed. See Chapter 13 Plan, ECF No. 23.

Because the proposed plan fails to comply with Fed. R. Bankr. P. 3015.1 and LBR 3015-1 the court will sustain the trustee's objection. The failure to propose a plan in conformity with the rules is fatal to confirmation and may not be remedied in an order. The debtor must file an amended plan. Because the plan may not be confirmed on this basis the court need not reach the other objections raised by the Chapter 13 trustee at this time.

The court will sustain the trustee'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.

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

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

35. [19-20476](#)-A-13 **IN RE: JEFFERY/ANNA SISK**
[DPC-3](#)

MOTION TO DISMISS CASE
1-9-2023 [\[74\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: January 24, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$13,704.00 with another payment of \$5,643.12 due January 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 82, 83. The declaration states that the debtors will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 83.

The 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.

Given the extraordinary circumstances in this case the court will consider a conditional order, if requested, at the hearing on this matter.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

36. [22-21976](#)-A-13 **IN RE: STEPHEN GLOVER**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-4-2023 [\[51\]](#)

SEAN FERRY/ATTY. FOR MV.
HSBC BANK USA, N.A. VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

RELIEF UNDER SECTION 362(d) (1) AND (2)

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately

before the commencement of the case.” Id. § 349(b)(3). Under § 362(c)(2), the stay of “any other act” under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief.

CIVIL MINUTE ORDER

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

The present motion for relief from the stay 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,

IT IS ORDERED that the motion is denied as moot.

37. [22-22878](#)-A-13 **IN RE: GEORGE KOZEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-11-2023 [\[26\]](#)

Final Ruling

This case was dismissed on January 26, 2023. See ECF No. 30. This matter will be removed from the calendar as moot. No appearances are required.

38. [22-22780](#)-A-13 **IN RE: SVETLANA WATKINS**
[DPC-1](#)

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

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Objection: Trustee’s Objection to Confirmation of Plan

Notice: Continued from January 4, 2023

Disposition: Sustained and confirmation denied

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).

CONTINUED HEARING

The hearing on this matter was continued from January 4, 2023, to allow the trustee provide notice of the objection to parties which filed a request for special notice. The trustee has provided notice to the special notice parties as ordered.

The debtor was required to file opposition, if any, to the objection no later than January 24, 2023, ECF No. 19. The debtor has failed to file opposition.

PLAN CONFIRMATION

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

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).

Unrealistic Budget

The trustee objects to confirmation of the plan contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The debtor's Schedule J fails to list any expenses for the following: electricity, heat, or natural gas. Moreover, the trustee argues

that the following expenses/amounts present an unrealistic and meager budget for the duration of the 36-month plan: 1) \$35.00/water; 2) \$119.00/telephone expenses; 3) \$575.00/food; and 4) \$75.00/entertainment. The debtor's household consists of 4 persons. See Schedules I, J, ECF No. 1.

IRS Claim

The Internal Revenue Service has filed a secured claim in the amount of \$93,945.53. See Claim No. 1. The proposed Chapter 13 Plan does not provide for payment of the secured obligation. How the obligation is to be paid, or if it is to be paid, directly impacts the feasibility of the debtor's plan.

The court sustains the trustee's objection and finds that the plan as proposed 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.

39. [22-21182](#)-A-13 **IN RE: STACY TUCKER**
[DPC-2](#)

MOTION TO DISMISS CASE
12-29-2022 [[39](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$11,000.00 with a further payment of \$2,200.00 due January 25, 2023.

Failure to File Amended Plan

The trustee also moves for dismissal as the debtor has failed to file an amended plan. On November 1, 2022, the court denied the debtor's motion to confirm the previous plan. The debtor's failure to prosecute the Chapter 13 case and file an amended plan is unreasonable delay which is prejudicial to creditors.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case and the debtor's failure to file an amended plan. The court hereby dismisses this case.

40. [22-23082](#)-A-13 **IN RE: TIMOTHY WILLIAMS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-9-2023 [\[27\]](#)

Tentative Ruling

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

41. [22-20496](#)-A-13 **IN RE: LAMBERT DAVIS**
[DPC-2](#)

MOTION TO DISMISS CASE
12-28-2022 [\[68\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 24, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$4,200.00 with a further payment of \$700.00 due January 25, 2023.

Failure to File Amended Plan

The trustee also moves for dismissal as the debtor has failed to file an amended plan. On May 20, 2022, the court sustained the trustee's objection to confirmation of the debtor's previous plan. The debtor's failure to prosecute the Chapter 13 case and file an amended plan for 8 months is unreasonable delay which is prejudicial to creditors.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, and the debtor's failure to file an amended plan. The court hereby dismisses this case.

42. [22-22698](#)-A-13 **IN RE: NICKOLAS GARCIA AND JACK TYLER**
[DPC-1](#)

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

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 4, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on this matter was continued from January 4, 2023, to allow the debtors' motions to avoid lien to be heard and for the debtor to file opposition, if any to the trustee's objection. The motions to avoid lien were granted on January 10, 2023.

The debtor filed opposition to the motion accompanied by a declaration of the debtor, ECF Nos. 44, 45.

The trustee filed a status report following the debtors' opposition, ECF No. 47.

PLAN CONFIRMATION

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

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).

Trustee Objection

The trustee contends the plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtors admitted at the meeting of creditors held December 1, 2022, that Mr. Tyler is no longer receiving the income from State Disability listed on Schedule I in the amount of \$3,880.00. See Objection to Confirmation, ECF No. 16.

Debtor Opposition

The debtors' opposition states

Within the past month, I (Jack Tyler), was able to finalize my status with my doctor and have been approved for permanent disability. At the moment, I am waiting for paperwork on how much my disability pay will be and will file the necessary supplemental budget with the Court when I have those figures.

Declaration of Debtors, 2:1-5, ECF No. 45.

The debtors also indicated that they had obtained a forbearance of their mortgage payment, paid in Class 4 of the proposed plan, reducing their expenses by \$2,169.90 each month. Id., 2:6-13.

The declaration does not state when the disability payments will commence, nor does it state the amount Mr. Tyler will receive. Mr. Tyler's prior monthly income from disability was \$3,880.00 and the debtors have only reduced their expenses by \$2,169.90 each month. The income and expense schedules have not been amended showing where and how the debtors have adjusted their expenses to account for the remaining shortfall of \$1,718.10.

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

CIVIL MINUTE ORDER

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

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

The 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.

43. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
12-22-2022 [[145](#)]

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

No Ruling

44. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-6](#)

CONTINUED OBJECTION TO CLAIM OF CHARLEY SMITH FAMILY TRUST,
CLAIM NUMBER 14-3
7-29-2022 [[214](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

Notice: Continued from January 24, 2023

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

Order: Civil minute order

The debtor objects to the claim of creditor Charley Smith Family Trust, Claim No. 14-3. The creditor and the trustee have each filed opposing briefs to the objection. The court will continue this matter for further hearing.

CIVIL MINUTE ORDER

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

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

45. [22-23082](#)-A-13 **IN RE: TIMOTHY WILLIAMS**
[DPC-1](#)

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

TIMOTHY WILLIAMS/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

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

DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$4,800.00, with another payment of \$4,800.00 due January 25, 2023.

Failure to Confirm Plan

The petition was filed on November 29, 2022, and the debtor filed a Chapter 13 Plan on December 27, 2022. Because the trustee did not receive the plan within 14 days of the filing of the petition the debtor is required to file a motion to confirm the plan pursuant to LBR 3015-1(c)(3), (d)(1). The debtor has not filed a motion to confirm the plan. This constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

Failure to Provide Section 521(e) Documents

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See *In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. P. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. P. 4002(b).

The debtor has not provided the trustee the tax return (or transcript of tax return) at least 7 days prior to the meeting of creditors.

For each of these reasons, the case will be dismissed.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case, failed to confirm the chapter 13 plan, and failed to provide documents to the trustee. Each of these bases constitute cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.