

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

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

DAY: TUESDAY
DATE: FEBRUARY 15, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [21-20401](#)-A-13 **IN RE: RAFAEL QUIROZ**
[DPC-4](#)

MOTION TO DISMISS CASE
12-29-2021 [[105](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$8,640.00 with an additional payment of \$2,880.00 due January 25, 2022.

The debtor's opposition, ECF 109, states that the debtor intends to file a modified plan prior to the hearing on this motion to dismiss. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$8,640.00.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$8,640.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

2. [21-23202](#)-A-13 **IN RE: NATHANIEL JONES**
[DPC-2](#)

MOTION TO DISMISS CASE
1-3-2022 [\[42\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition filed by the debtor;
motion joined by creditor Real Time Resolutions

Disposition: Granted

Order: Civil minute order

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 debtor is delinquent in the amount of \$397.60 with an additional payment of \$3,813.80 due January 25, 2022.

The trustee also moves for dismissal of the case because there is no plan pending after the court sustained the trustee's objection to confirmation on November 16, 2021.

The debtor's opposition, ECF No. 48, asserts that: the plan payments are not delinquent; the debtor intends to file an objection to the disputed claim of Real Time Resolutions by the date of the hearing on this motion to dismiss; the delay in filing an amended plan is caused by the disputed claim filed by the creditor (Claim No. 1); and that he intends to file an amended plan. In effect, the debtor's statements admit that there is no plan pending as the trustee contends.

The debtor's opposition does not fully resolve the grounds for dismissal. A statement of intent to file an amended plan on or before a future date is not equivalent to doing so. The court is unable to deny the motion given the debtor's failure to act in proper prosecution of his plan and finds that this constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1). The objection to confirmation was sustained on November 16, 2022, nearly three months ago. The debtor has had ample time to file the objection to the claim and file an amended plan.

The court notes that creditor Real Time Resolutions has joined in the trustee's motion, ECF No. 46.

CIVIL MINUTE ORDER

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

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

The 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 properly prosecute his chapter 13 bankruptcy case and payments are delinquent in the amount of \$397.60. This delinquency constitutes cause to dismiss this case and the failure to file an amended plan also constitutes unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

3. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[DPC-3](#)

MOTION TO DISMISS CASE
1-18-2022 [\[145\]](#)

RICHARD JARE/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,749.64 with a payment of \$1,749.64 due January 25, 2022.

The trustee also moves for dismissal of the case because there is no plan pending after the court denied the debtor's motion to confirm on December 1, 2021. The debtor has had over two months to file an amended plan and seek confirmation and has not yet done so. The court finds that this constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

The debtor has filed an opposition in which she states she will file an amended plan. She indicates that she has not previously done so due to hospitalization, emergency surgery and recovery during the months of October and November 2021, ECF No. 153. However, after two months the debtor has not yet filed an amended plan.

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 this chapter 13 case 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 because of the delinquency under the proposed chapter 13 plan in this case and the debtor's failure to file an amended plan and seek confirmation. The court hereby dismisses this case.

4. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[SMR-1](#)

MOTION TO DISMISS CASE
1-13-2022 [\[142\]](#)

RICHARD JARE/ATTY. FOR DBT.
SID ROSENBERG/ATTY. FOR MV.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

Creditor Villa Del Sol Homeowners Association of Sacramento, a California Nonprofit Corporation, moves to dismiss this chapter 13 case as the debtor has failed to file an amended plan after the court her motion to confirm an amended plan on December 1, 2021. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The court finds that this constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

The debtor has filed an opposition in which she states she will file an amended plan. She indicates that she has not previously done so due to hospitalization, emergency surgery and recovery during the months of October and November 2021, ECF No. 151. However, after two months the debtor has not yet filed an amended plan.

The court will dismiss the case.

VIOLATION OF LBR 9014-1(c) (3)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c) (3). Thus, a party may not use the same docket control number on separate matters filed in the same case. Movant used the same docket control number for a motion for relief from stay, on August 2, 2021.

CIVIL MINUTE ORDER

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

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

The creditor's motion to dismiss this chapter 13 case 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 because the debtor has failed to file an amended plan and seek confirmation. This constitutes unreasonable delay under 11 U.S.C. § 1307(c) (1). The court hereby dismisses this case.

5. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[TLA-3](#)

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE
AUTOMATIC STAY
9-23-2021 [[65](#)]

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [21-20806](#)-A-13 **IN RE: JEFFREY/NIKEA HARRISON**
[DPC-2](#)

MOTION TO DISMISS CASE
12-22-2021 [\[53\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan is delinquent in the amount of \$14,925.10 with an additional payment of \$3731.42 due January 25, 2022.

The debtors' opposition, ECF 61, states that the debtors intend to file a modified plan prior to the hearing on this motion to dismiss. In effect, the debtors' statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$14,925.10.

The debtors have filed a modified plan and set it for hearing on March 15, 2022, at 9:00 a.m. The court will continue the hearing on the motion to dismiss to coincide with the hearing on the debtors' motion to modify 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.

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

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of

the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

7. [21-23206](#)-A-13 **IN RE: JULIEANNE/RANDY PRICE**
[MOH-2](#)

MOTION TO CONFIRM PLAN
12-28-2021 [\[57\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

8. [21-23206](#)-A-13 **IN RE: JULIEANNE/RANDY PRICE**
[MOH-3](#)

MOTION TO VALUE COLLATERAL OF SWR MANAGEMENT
1-18-2022 [\[65\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [19-22810](#)-A-13 **IN RE: DENNIS/RANDI-MARIE MITCHELSON**
[DPC-1](#)

MOTION TO DISMISS CASE
12-22-2021 [\[73\]](#)

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

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that the debtors are delinquent in the amount of \$3,050.00 with an additional payment of \$1,325.00 due January 25, 2022.

A modified plan has been filed in this case. The scheduled hearing on the modification is March 15, 2022, at 9:00 a.m. The court will

continue the hearing on this motion to dismiss to coincide with the hearing on plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

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

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

10. [21-24010](#)-A-13 **IN RE: SHARON HILDBRAND**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-18-2022 [\[17\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that plan payments are delinquent in the amount of \$868.75 with another payment of \$868.75 due January 25, 2022. The plan cannot be confirmed if plan payments are not current. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

Payments by Third Party

Schedule J, ECF No. 9, states that the debtor's son will pay her utilities. The trustee objects because there is no independent declaration filed by the debtor's son evidencing his ability and willingness to make the utility payments on behalf of the debtor during the pendency of the plan. The debtor's sole source of income is Social Security. Absent a declaration from the debtor's son affirming his ability and willingness to pay for the debtor's utilities the court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

MEETING OF CREDITORS

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

United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

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

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.

11. [21-20811](#)-A-13 **IN RE: LANDER GREEN**
[DPC-2](#)

MOTION TO DISMISS CASE
12-29-2021 [\[70\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$14,827.40 with another payment of \$3,706.60 due January 25, 2022.

CIVIL MINUTE ORDER

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

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

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.

12. [21-24114](#)-A-13 **IN RE: TRACY CRUMP**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PINGORA LOAN SERVICING,
LLC
12-29-2021 [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.

Final Ruling

This matter will be removed from the calendar as moot. The parties have resolved the matter by stipulation. On January 29, 2022, the court signed the Order Confirming Plan which was approved by the chapter 13 trustee and the objecting creditor, ECF No. 18. No appearances are required.

13. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-5](#)

MOTION TO INCUR DEBT
1-12-2022 [\[101\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve New Debt [Vehicle Loan]

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

Disposition: Denied

Order: Civil minute order

This is the debtors' second motion wherein they seek permission to incur new debt to finance the purchase of a vehicle, a 2009 Toyota Tacoma. The first motion, MWB-3, was denied because the evidence in support of the motion was inconsistent regarding the amount of the down payment, and because the debtors failed to disclose the source of the down payment as requested by the court and the trustee.

The instant motion suffers from the same evidentiary deficiencies as the previous motion.

The trustee opposes the motion, contending that: the plan payments are delinquent in the amount of \$6,618.44; the amount of the down payment for the vehicle is unclear because the debtors have submitted inconsistent testimony; and the debtors have failed to disclose the source of the down payment, ECF No. 106.

The debtors have submitted a declaration, ECF No. 103, and the financing and purchase agreement for the vehicle, Exhibit A, ECF No. 104.

The court agrees that the debtors need a replacement vehicle as the debtor's sole source of income is from self-employment as a courier, which of necessity requires a vehicle. However, the evidence submitted in support of the motion is inconsistent as follows.

The court is unable to determine the amount of the down payment. The debtors' declaration states that the down payment is \$4,300.00, ECF No. 103, 2:12-13. In the same document the debtors state that the down payment was "\$8,000.00 and \$2,000.00 for the records", *id.*, 2:24. Exhibit A, the purchase and financing agreement shows that the down payment is \$8,000.00, ECF No. 104. The evidentiary record is silent regarding the source of the down payment.

The court considers the plan delinquency significant in this context. The trustee states that payments under the confirmed plan are delinquent in the amount of \$6,618.44, which is more than two plan payments, ECF No. 106, 2:8-9. The purchase of the vehicle appears to have put performance of the plan in jeopardy.

The court finds that the debtors have failed to provide sufficient evidence for it to grant the motion. The court will deny the motion.

CIVIL MINUTE ORDER

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

Debtor's motion to borrow money for the purchase of a vehicle has been presented to the court. Having considered the motion with papers filed in support and opposition, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

14. [21-23819](#)-A-13 **IN RE: GEORGIA/MILTON MERCER**
[SLE-6](#)

MOTION TO CONFIRM PLAN
12-30-2021 [\[71\]](#)

STEELE LANPHIER/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).

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.

The chapter 13 trustee originally opposed the motion on numerous bases. On February 3, 2022, the trustee filed a status report wherein he conceded that all but one of his objections had been resolved, ECF No. 109. The remaining issue is the failure of debtor Georgia Mercer to appear for examination at the 341 meeting.

All debtors are required to attend the meeting of creditors. Attendance is critical so the trustee and any interested creditor may examine the debtor regarding the proposed plan.

A review of the court's docket shows that debtor Georgia Mercer failed to attend the 341 meeting on three separate dates: December 9, 2021; January 17, 2022; and February 3, 2022. The declaration of the debtors in support of this motion filed December 30, 2021, does not address the debtor's failure to attend the first 341 meeting, ECF No. 73. There is no other evidence submitted by the debtors in support of this motion explaining why the debtor failed to attend three 341 meetings.

The court will deny the motion to confirm. Unless and until the debtor attends the 341 meeting of creditors the plan is not in a posture to be confirmed.

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 debtors' 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.

15. [21-20222](#)-A-13 **IN RE: KATINA MILLER**
[MOH-2](#)

MOTION TO SELL AND/OR MOTION TO PAY
1-25-2022 [\[42\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

16. [20-22825](#)-A-13 **IN RE: LEAH ELEMEN**
[DPC-2](#)

MOTION TO DISMISS CASE
12-29-2021 [[68](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$14,872.75 with another payment of \$3,774.55 due January 25, 2022.

The debtor's opposition states that the debtor will file a modified plan before the hearing on this motion, ECF No. 72. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$14,872.75.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$14,872.75. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

17. [21-22926](#)-A-13 **IN RE: DANIEL LOGELIN**
[DPC-1](#)

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

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

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,925.00 with another payment of \$925.00 due January 25, 2022.

CIVIL MINUTE ORDER

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

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

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.

18. [21-20928](#)-A-13 **IN RE: MARK KAYLOR**
[DPC-3](#)

MOTION TO DISMISS CASE
1-3-2022 [\[69\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time and there is no pending chapter 13 plan. The debtor's motion to confirm an amended plan was denied on November 16, 2021, and the debtor has yet to file a further amended plan. The case was filed March 16, 2021, and has been pending for approximately 11 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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 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. The court hereby dismisses this case.

19. [21-23541](#)-A-13 **IN RE: JUSTINO SANCHEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-18-2022 [\[36\]](#)

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

This matter will be removed from the calendar as moot. The case has been dismissed on the trustee's motion, DPC-1. No appearances are necessary.

20. [21-23541](#)-A-13 **IN RE: JUSTINO SANCHEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
1-18-2022 [\[37\]](#)

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

DEBTOR'S LATE FILED OPPOSITION

Opposition, if any, to the granting of the motion shall be in writing and *shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the

particular portions of the record demonstrating that a factual issue is both material and in dispute. *Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P. 43(c).*

LBR 9014-1(f)(1)(B) (emphasis added).

The debtor filed an opposition to the motion. However, the opposition was filed late on February 3, 2022. The opposition was due not later than February 1, 2022, under LBR 9014-1(f)(1)(B).

The debtor's one-page opposition to the motion, states only that:

The debtor opposes the motion. 1. The debtor is currently pondering whether he should immediately consider proposing what I call a "bitter pill" modified plan. Wherefore the (sic) should consider the situation accordingly.

ECF No. 42.

The opposition is signed by debtor's counsel. There is no accompanying declaration from the debtor, and the opposition fails to state any legal or factual basis for opposing the motion. Moreover, the opposition is vague regarding the debtor's intention to file an amended plan.

Accordingly, the debtor has consented to resolution of the motion and all disputed material factual issues pursuant to LBR 9014-1(f)(B).

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time; plan payments are delinquent; the debtor has not filed 2020 tax returns; and Schedule I contains inaccurate information which has not yet been corrected.

11 U.S.C. 1324(b)

The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.

11 U.S.C. § 1324(b).

The debtor filed his plan on November 9, 2021, after the court extended the time to file a plan, ECF No. 19. Yet the debtor has

never filed a motion to confirm the plan. The first 341 meeting of creditors was held on November 18, 2021. The court finds that the debtor has failed to comply with 11 U.S.C. § 1324(b) and that this failure also constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

PLAN DELINQUENCY

The trustee represents payments under the plan are delinquent in the amount of \$2,314.13 with another payment of \$2,314.13 due January 25, 2022. This is cause for dismissal under 11 U.S.C. § 1307(c)(1).

INACCURATE INCOME SCHEDULE

The debtor testified at the 341 meeting of creditors that he had not worked since March 2021. Schedule I, ECF No. 22, shows gross monthly income of \$6,933.33. The debtor has not corrected the record by filing an amended schedule. The trustee argues that this constitutes unreasonable delay. The court finds that this is cause for dismissal under 11 U.S.C. § 1307(c)(1).

FAILURE TO FILE 2020 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).

The debtor testified at the 341 meeting of creditors that he has not filed his 2020 tax returns. The trustee argues that the failure to file tax returns constitutes unreasonable delay. The court finds that this is cause for dismissal under 11 U.S.C. § 1307(c)(1).

For all the reasons stated in the trustee's motion 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 this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

21. [20-24042](#)-A-13 **IN RE: JAANA BROWN**
[CYB-2](#)

MOTION TO MODIFY PLAN
1-10-2022 [\[32\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Modified Chapter 13 Plan, filed January 10, 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 debtor seeks an order approving her Second Modified Chapter 13 Plan. The plan is supported by supplemental Schedules I and J filed January 10, 2022, evidencing the debtor's ability to fund the plan, ECF No. 39. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 40.

CHAPTER 13 PLAN MODIFICATION

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

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

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

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

22. [21-21347](#)-A-13 **IN RE: ALSESTER COLEMAN**
[DPC-3](#)

MOTION TO DISMISS CASE
12-29-2021 [\[82\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$5,600.00 with another payment of \$1,400.00 due January 25, 2022.

The debtor’s opposition states that the debtor paid \$5,600.00 after the trustee filed the present motion to dismiss. The debtor also states that \$1,400.00 will be paid prior to the hearing on this motion. In effect, the debtor’s statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$1,400.00.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$5,600.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

23. [21-23647](#)-A-13 **IN RE: ROBERT KOEHLER**
[DNL-1](#)

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

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

No Ruling

24. [21-23647](#)-A-13 **IN RE: ROBERT KOEHLER**
[DNL-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-7-2022 [[38](#)]

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

No Ruling

25. [19-27056](#)-A-13 **IN RE: BONITA MELENDEZ**
[RJM-3](#)

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

RICK MORIN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: Continued from January 19, 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 from January 19, 2022, to allow the parties to negotiate appropriate plan language curing the trustee's opposition. The parties have filed a joint status report, ECF No. 64. In the report the parties agree that the proposed modified plan is not confirmable.

Accordingly, the court will deny the motion.

CIVIL MINUTE ORDER

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

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

The 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.

26. [21-23461](#)-A-13 **IN RE: SIRRENA THOMPSON**
[CRG-1](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 8
1-3-2022 [\[20\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Matter: Objection to Claim
Notice: LBR 3007-1(b)(1)
Disposition: Overruled as moot
Order: Civil minute order

The debtor objects to the claim of LVNV Funding, LLC, Claim No. 8.

The debtor's objection to the claim of LVNV Funding, LLC, Claim No. 8, will be overruled as moot. On January 10, 2022, the claimant filed a withdrawal of its claim, ECF No. 24.

CIVIL MINUTE ORDER

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

Debtor's Objection to Claim of LVNV Funding, LLC has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

27. [21-24162](#)-A-13 **IN RE: CASEY WOODBURY**

MOTION TO SUBSTITUTE ATTORNEY
1-13-2022 [\[30\]](#)

SARAH SHAPERO/ATTY. FOR DBT.

No Ruling

28. [21-24162](#)-A-13 **IN RE: CASEY WOODBURY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-26-2022 [\[37\]](#)

SARAH SHAPERO/ATTY. FOR DBT.

Final Ruling

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

29. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[WW-9](#)

MOTION TO APPROVE LOAN MODIFICATION
1-25-2022 [\[220\]](#)

MARK WOLFF/ATTY. FOR DBT.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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).

Debtors seek an order approving a proposed loan modification with Wells Fargo Bank, N.A. The trustee has filed a non-opposition to the motion, ECF No. 227.

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act

to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

By granting this motion, the court is not approving the terms or conditions of the loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the terms and conditions of the loan modification agreement or other declaratory relief.

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 has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

30. [19-21764](#)-A-13 **IN RE: SHEMILA JOHNSON**
[DPC-2](#)

MOTION TO DISMISS CASE
1-18-2022 [\[77\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,724.92 with an additional payment of \$2,861.73 due on January 25, 2022.

CIVIL MINUTE ORDER

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

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

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.

31. [20-22764](#)-A-13 **IN RE: LUTUVIKA TOFINGA**
[DPC-1](#)

MOTION TO DISMISS CASE
1-18-2022 [\[21\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,758.31 with an additional payment of \$2,391.49 due on January 25, 2022.

The debtor's opposition states that the debtor will become current making monthly payments which will bring the plan completely current by April 2022. The debtor explains: that her partner's lost income caused the plan delinquency; that she has filed supplemental Schedules I and J showing her ability to make the payments proposed (ECF Nos. 25-26); and requests a conditional order requiring that the payments be made as proposed.

In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$3,758.31.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$3,758.31. This

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

32. [21-22773](#)-A-13 **IN RE: RICHARD/SARAH DEATHERAGE**
[DEF-1](#)

MOTION TO CONFIRM PLAN
12-3-2021 [\[26\]](#)

DAVID FOYIL/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Chapter 13 Plan, filed August 11, 2021

DEFAULT OF RESPONDENT

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

MAILING MATRIX

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice.

CHAPTER 13 PLAN CONFIRMATION

The debtors seek confirmation of their Chapter 13 Plan filed August 11, 2021, ECF No. 9. The debtors filed Schedules I and J on the same date as the plan which support the feasibility of the plan, ECF No. 10. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 31.

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.

33. [21-23274](#)-A-13 **IN RE: JASON/SARAH SMITH**
[DPC-2](#)

MOTION TO DISMISS CASE
1-3-2022 [\[30\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case because the debtors failed to file an amended plan after the court sustained the trustee's objection to confirmation of the previous plan on November 16, 2021.

The debtors oppose the motion and state that they will file an amended plan, ECF No. 34. An amended plan was filed on February 4, 2022, but was not concurrently set for hearing. LBR 3015-1(d)(1) requires that a motion to confirm be filed *together* with the amended plan.

The debtors have now filed a modified plan and set it for hearing on March 15, 2022, at 9:00 a.m. The court will continue the hearing on the motion to dismiss to coincide with the hearing on the debtors' motion to modify 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.

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

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

34. [20-22875](#)-A-13 **IN RE: ALLAN WEST**
[DBL-1](#)

MOTION TO MODIFY PLAN
1-11-2022 [\[31\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

The trustee opposes the motion contending that the proposed modified plan is not feasible as follows.

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 is Facially Deficient

The proposed modified plan is a 60-month plan, ECF No. 33, at Section 2.03. However, the plan fails to account for payments previously made as it only provides for payments made from months 19-60, *id.*, at 7.2.

The plan fails to provide for a total balance paid in through month 18 or alternatively to detail payments for months 1-18. Thus, the plan is facially deficient. The trustee is incapable of administering such a plan. Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Plan Fails To Cure Post Petition Mortgage Arrears

The debtor has defaulted in plan payments. Thus, the trustee was unable to make ongoing mortgage payments to Class 1 creditor PHH Mortgage Services (Claim No.1) in the amount of \$1,120.09. The proposed modified plan does not properly provide for post-petition mortgage arrears. Thus, the plan is not feasible under 11 U.S.C. § 1325(a)(6). A provision to pay mortgage arrears requires notice to the impacted creditor, thus this provision may not be simply added to the order to correct the deficiency.

Schedules I and J

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby...

Fed. R. Bankr. P. 1009.

The debtor has not supported the plan by correctly filing recently supplemented Schedules I and J. The most recently filed budget schedules were filed only as exhibits to the motion to modify. Thus, the documents do not appear on the docket. This prevents the

court, creditors, the trustee, and all other interested parties from locating the document in the future.

The trustee also opposes the motion as the supplemental Schedules I and J do not include the attachment which details the income and expenses regarding rental property owned by the debtor. Without the additional information which this attachment requires the trustee cannot properly review the debtor's budget and state whether, in his estimation, the proposed plan is 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 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.

35. [20-22875](#)-A-13 **IN RE: ALLAN WEST**
[DPC-1](#)

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

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from January 19, 2022

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moved 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. In response to the trustee's motion to dismiss the debtor filed a modified plan and scheduled it for hearing.

The hearing on this motion to dismiss was continued to coincide with the debtor's motion to modify plan, DBL-1. The motion to modify plan has been denied, in part because the plan was facially

deficient in that it failed to provide for plan payments during months 1-18 of the plan.

The trustee has filed a status report, ECF No. 45 which states:

"The Trustee is unable to determine if Debtor is current under the proposed plan and what, if any, delinquency remains."

Id., 2:1-2.

As the proposed modified plan has failed the court presumes that the payments under the currently confirmed plan remain delinquent. This constitutes cause to dismiss the case under 11 U.S.C. § 1307(c)6).

At the prior hearing on this motion to dismiss the court stated:

If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

Civil Minutes, ECF No. 33.

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

36. [21-24175](#)-A-13 **IN RE: PETE GARCIA**

OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.
1-26-2022 [\[42\]](#)

PETER MACALUSO/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

Final Ruling

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

The court sustained an objection to the confirmation of the debtor's plan on February 1, 2022. See Order, ECF No. 65. The plan to which the creditor objects, ECF No. 3, is no longer pending.

As such the objection to confirmation by Citibank, N.A. will be overruled as moot.

CIVIL MINUTE ORDER

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

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

37. [21-24175](#)-A-13 **IN RE: PETE GARCIA**

OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.
1-26-2022 [\[41\]](#)

PETER MACALUSO/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

Final Ruling

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

The court sustained an objection to the confirmation of the debtor's plan on February 1, 2022. See Order, ECF No. 65. The plan to which the creditor objects, ECF No. 3, is no longer pending.

As such the objection to confirmation by Citibank, N.A. will be overruled as moot.

CIVIL MINUTE ORDER

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

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

38. [21-24175](#)-A-13 **IN RE: PETE GARCIA**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ARCPE 1 LLC
1-27-2022 [[49](#)]

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

Final Ruling

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

The court sustained an objection to the confirmation of the debtor's plan on February 1, 2022. See Order, ECF No. 65. The plan to which the creditor objects, ECF No. 3, is no longer pending.

As such the objection to confirmation by ARCPE 1 LLC will be overruled as moot.

CIVIL MINUTE ORDER

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

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

39. [21-24175](#)-A-13 **IN RE: PETE GARCIA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-26-2022 [\[44\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

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

The court sustained an objection to the confirmation of the debtor's plan on February 1, 2022. See Order, ECF No. 65. The plan to which the trustee objects, ECF No. 3, is no longer pending.

As such the objection to confirmation by the chapter 13 trustee will be overruled as moot.

CIVIL MINUTE ORDER

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

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

40. [20-21276](#)-A-13 **IN RE: OLAF/SUSAN HELENA OLSEN**
[DPC-1](#)

MOTION TO DISMISS CASE
1-18-2022 [\[37\]](#)

MICHAEL BENAVIDES/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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that the debtors are delinquent in the amount of \$4,460.41 with another payment of \$3,422.82 due January 25, 2022.

The debtors' opposition, a statement by the debtors' attorney, states that the debtors "believe they are fully current", ECF No.

41, 1:16-18. The opposition lacks specificity as it does not state how much money has been paid to the trustee since the filing of the motion. The opposition violates LBR 9014-1(f)(1)(B) as it is not accompanied by a declaration or any other admissible evidence. The opposition also states that the debtors intend to file an amended plan before the hearing. The court notes that an amended plan has not been filed.

The debtor's opposition does not fully resolve the grounds for dismissal. Absent any admissible evidence refuting the trustee's contentions the court finds a delinquency still exists as of the date of the opposition. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$4,460.41. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

41. [21-23978](#)-A-13 **IN RE: RYAN PICCHI**
[MBW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MISSION CITY FEDERAL
CREDIT UNION
1-10-2022 [[29](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
DANIEL BURBOTT/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Creditor Mission City Federal Credit Union objects to confirmation of the debtor's plan. The debtor filed an amended plan on February 8, 2022, and has set it for hearing on March 29, 2022, at 9:00 a.m.

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot.

CIVIL MINUTE ORDER

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

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

42. [21-23978](#)-A-13 **IN RE: RYAN PICCHI**
[PSB-2](#)

MOTION TO CONFIRM PLAN
12-22-2021 [\[24\]](#)

PAULDEEP BAINS/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 and Mission City Federal Credit Union

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Both the chapter 13 trustee and Mission City Federal Credit Union oppose confirmation of the debtor's plan, ECF No. 21. On February 8, 2022, the debtor filed an amended plan and has set it for hearing on March 29, 2022, at 9:00 a.m.

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is denied as moot.

43. [21-21983](#)-A-13 **IN RE: STELLA SMALLEY**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-5-2022 [\[22\]](#)

GEORGE BURKE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
WELLS FARGO BANK, N.A. VS.

TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Toyota Tacoma - Insurance Proceeds \$25,308.48

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).

RELIEF FROM STAY

Movant seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and the co-debtor stay of 11 U.S.C. § 1301 so it may administer insurance claim proceeds against its claim filed in the chapter 13 case.

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Movant's claim (Claim No. 2) is provided for in Class 4 of the currently confirmed plan, which pays 15% to unsecured creditors, ECF No. 3. The current balance owed to the movant on its claim is \$25,461.51 as of December 1, 2021, ECF No. 26. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 29.

The subject vehicle has been declared a total loss and an insurance claim has been paid on the vehicle. Movant is in possession of the insurance check in the amount of \$25,308.48, which it will apply to the remaining balance owed on its claim. ECF No. 22, 2:5-12.

CO-DEBTOR STAY OF § 1301

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

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

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

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

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

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

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

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

CIVIL MINUTE ORDER

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

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

Wells Fargo Bank, N.A.'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 a 2018 Toyota Tacoma and Insurance Proceeds resulting from the total loss of the vehicle in the amount of \$25,308.48, as to all parties in interest. 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. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

44. [18-20890](#)-A-13 **IN RE: RAYMOND DELGIORNO**
[DPC-1](#)

MOTION TO DISMISS CASE
1-18-2022 [[28](#)]

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,942.68 with another payment of \$2,028.36 due January 25, 2022.

The trustee further contends that the plan is overextended and will not complete within the 60-month plan term. The trustee estimates that the plan will take 80 months to complete. This is also cause to dismiss the case.

The debtor has filed a late opposition to the motion in contravention of LBR 9014-1(f)(1)(B). Opposition to the motion was due not later than February 1, 2022. The opposition states that the

debtor has been out of town and has not checked his mail since the motion was served on January 18, 2022, ECF No. 34.

The opposition further states that the debtor has made a payment to the trustee in the amount of \$6,008.64 and that his plan payments are current. No proof of the payment is included with the opposition and the opposition does not state the manner of payment.

The opposition states that the debtor will pay an additional \$7,000.00 in 2021 tax refunds to the trustee, presumably to resolve the plan overextension which the trustee also raises in his motion to dismiss. The confirmed plan proposes to pay 4% to unsecured creditors. It appears, that the debtor has not properly calculated his withholding taxes on Schedule I and is not paying the appropriate amount into the plan each month if he is to receive such a substantial income tax refund.

The opposition does not resolve the grounds for dismissal as follows: 1) the debtor has filed his opposition late; 2) the opposition does not include evidence proving that the plan payments have been received by the trustee or sufficiently describe the method of payment such that the court can conclude that the payment has been tendered; and 3) the opposition raises additional questions about the debtor's good faith in the prosecution of his bankruptcy case.

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 this chapter 13 case has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

45. [19-26391](#)-A-13 **IN RE: JOHN/SHANNON ALVARADO**
[DPC-1](#)

MOTION TO DISMISS CASE
1-18-2022 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtors' confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$13,000.00 with another payment of \$7,018.05 due January 25, 2022.

CIVIL MINUTE ORDER

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

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

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.

46. [20-23991](#)-A-13 **IN RE: VINCENT/NORMA CAMPISI**
[DPC-3](#)

MOTION TO DISMISS CASE
1-18-2022 [\[83\]](#)

STEELE LANPHIER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtors' confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,770.00 with an additional payment of \$705.00 due January 25, 2022.

CIVIL MINUTE ORDER

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

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

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.

47. [21-20191](#)-A-13 **IN RE: KRISTA MICHIELS**
[DPC-2](#)

MOTION TO DISMISS CASE
1-18-2022 [\[58\]](#)

RICHARD KWUN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,300.00 with another payment of \$1,140.00 due January 25, 2022.

CIVIL MINUTE ORDER

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

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

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.

48. [21-24193](#)-A-13 **IN RE: KATHLEEN WIDICK**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-26-2022 [\[18\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

Order: Civil minute order

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

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

The chapter 13 trustee objects to confirmation of the debtor's plan because: the plan is not feasible unless the motion to value collateral of Safe Credit Union is granted, and that motion has not been heard; the debtor has not provided tax returns for the 2020 tax year; the debtor has not filed 2020 tax returns.

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 debtor has not filed a 2020 tax return, and was 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. The Franchise Tax Board has filed Claim No. 2 which indicates that a tax return for this tax year has not been filed. Moreover, the trustee has not received copies of the debtor's 2020 tax returns.

PLAN FEASIBILITY

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

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). Specifically, the trustee has not received copies of the debtor's 2020 tax returns. The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors. While the trustee acknowledges receipt of the debtor's 2019 tax returns this information is not useful in assessing the debtor's current circumstances.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation, is feasible under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later

than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e) (2) (A)-(B).

Reduction of Collateral Value Without a Motion

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Safe Credit Union's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. The plan is not feasible under 11 U.S.C. § 1325(a) (6) unless the motion is granted. The debtor has filed a motion to value the collateral of Safe Credit Union. The hearing is scheduled for March 15, 2022, at 9:00 a.m.

Because the trustee has requested it, the court will continue the hearing on this objection to March 15, 2022, at 9:00 a.m. to coincide with the motion to value the collateral of Safe Credit Union.

CIVIL MINUTE ORDER

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

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

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

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date *each party shall file a status report* advising the court of the status of the trustee's remaining objections to confirmation. If the issues regarding the tax returns are not fully resolved the court intends to sustain the objection to confirmation without further hearing.

49. [21-22994](#)-A-13 **IN RE: JUSTIN/CHRISTINA BORGES**
[MRL-1](#)

MOTION TO MODIFY PLAN
1-4-2022 [\[41\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

Subject: Chapter 13 Plan, filed January 4, 2022

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

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

PLAN FEASIBILITY

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

The debtors propose a 43-month plan which calls for payment of 100% on unsecured claims. The proposed modified plan calls for a lump sum payment of \$58,350.00 in December 2021, which the trustee reports he received on December 20, 2021. Debtor Justin Borges states that the source of the lump sum payment was from his retirement account, ECF No. 44, 2:1. Pursuant to Section 7.01 of the proposed plan, payments continue after payment of the lump sum in the amount of \$325.00 per month for 39 months, ECF No. 42.

Neither the debtor's declaration nor the recently amended Schedules I and J, ECF No. 40, indicate whether the retirement funds were borrowed, or were withdrawn from the debtor's retirement account. The trustee correctly argues that if the funds were borrowed then a monthly repayment amount should be indicated in Schedule I, which it is not. If the funds were withdrawn this would likely result in a taxable event to the debtors. While an increase in withholding taxes is indicated in Schedule I the debtors have provided no explanation regarding this information or how they arrived at the amounts now withheld, which the trustee observes has increased significantly despite a reduction in income.

The trustee also objects as the debtors have failed to provide an attachment to Schedules I and J detailing their business income and expenses, as Christina Borges is self-employed.

The debtor has filed a declaration in response to the trustee's opposition, ECF No. 48. The declaration clarifies that the 401K monies were withdrawn and not borrowed. However, the declaration raises additional concerns. It does not state how much money was withdrawn from the 401K account and it does not explain how the debtors have calculated the monthly income tax withholdings proposed in the amended Schedule I.

The declaration addresses the issue raised by the trustee regarding the missing attachment to Schedules I and J by stating that the self-employment income is unchanged.

This explanation does not satisfy the court's requirement that the debtors support plan feasibility with recently filed budget schedules. To be accurate the schedules must also be complete, and the debtors have failed to include the attachment regarding business income and expenses. Thus, the debtors have not supported the plan by filing recently amended and complete Schedules I and J. Without those documents, the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The debtors have not met their burden of proof.

Additionally, the court is unable to determine if this discussion is relevant given the final assertion made by the chapter 13 trustee that:

[w]here the plan will complete if confirmed, the Trustee dies (sic) not believe a business detailed statement is needed.

ECF No. 46, 2:20-22.

The assertion appears to imply that the plan has been sufficiently funded to complete now, however, the plan proposes continued payments for 39 months after the payment of the lump sum.

The court is unable to determine the plan is feasible and will deny the motion to modify.

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 debtors' 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.

50. [21-24096](#)-A-13 **IN RE: JOSEPH/SHELLY HINTON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-19-2022 [\[12\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

The chapter 13 trustee objects to confirmation contending that: the debtors have not filed all required tax returns; and the plan is not feasible because it does not fund payment of the tax claims filed by the IRS or the Franchise Tax Board as required under 11 U.S.C. §§1325(a)(1), 1322(a)(1).

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 required tax returns, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

The trustee has received copies of the debtors' 2020 tax returns. The tax returns received are both filled out as "Married filing separately". The Internal Revenue Service filed a priority claim (Claim No. 6) which states no return has been filed for Joseph Hinton for tax years 2016-2020. The claim also states that no tax returns have been filed for Shelly Hinton for tax years 2018-2019.

Similarly, the Franchise Tax Board filed a claim (Claim No. 5) which states no return has been filed for Joseph Hinton for tax years 2017-2018 and no returns have been filed for Shelly Hinton for tax years 2018-2020.

Based on these proofs of claims, it appears the debtors have not filed all tax returns required under 11 U.S.C. §§1325(a)(7) & 1308 and therefore the plan may not be confirmed.

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).

Based on the \$39,472.03 of priority claims filed by the Internal Revenue Service and the Franchise Tax Board, the proposed plan is not fully funded, contrary to 11 U.S.C. §§1325(a)(1) & 1322(a)(1). Therefore, the plan is not feasible under 11 U.S.C. § 1326(a)(6).

The court will sustain the trustee's objections.

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.

51. [19-26297](#)-A-13 **IN RE: SALEH ABDULLAH**
[DPC-1](#)

TRUSTEE'S MOTION TO SET STATUS CONFERENCE ON FORBEARANCE
12-27-2021 [[57](#)]

KRISTY HERNANDEZ/ATTY. FOR DBT.

No Ruling

52. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-26-2022 [[42](#)]

CHINONYE UGORJI/ATTY. FOR DBT.
1/27/22 AMENDMENT FEE PAID \$32

Final Ruling

The \$32 amendment fee having been paid, the order to show cause is discharged.

53. [19-22099](#)-A-13 **IN RE: ELDRIDGE JACKSON**
[DPC-1](#)

MOTION TO DISMISS CASE
1-18-2022 [[143](#)]

LUCAS GARCIA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: 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 plan does not complete withing the 60 month plan term. The trustee contends the plan will take 87 months to complete.

PLAN OVEREXTENSION

The trustee contends: that the plan is overextended and will take 87 months to complete, noting that this violates 6.04 of the confirmed plan; and that the plan overextension violates 11 U.S.C. §1322(d).

The opposition filed by the debtor's attorney states as follows:

- a. The debtors (sic) attorney dispute (sic) this assertion by the trustee.
- b. However, debtors (sic) counsel has not been able to reach debtor to obtain the 2015 tax return (the tax return estimated by the IRS and the core cause of this over extension).
2. The debtors (sic) attorney requests four weeks extension to obtain the tax return and determine if a modified plan is needed or an objection to the proof of claim is needed.

ECF No. 147, 1:23, 2:1-5.

The opposition argues that the plan overextension is caused by the claim filed by the IRS for 2015 taxes. The opposition further requests an *additional* four weeks to retrieve the tax return from the debtor and object, if appropriate, to the IRS claim.

The debtor and his attorney have failed to explain why they have not already investigated the accuracy of the IRS claim and objected to the claim, or alternatively modified the plan. The Notice of Filed Claims was filed on October 22, 2019, ECF No. 140, over two years ago. The IRS claim is listed in the document. The Notice should have been reviewed and appropriate action taken by the debtor as required by LBR 3007(d) (3) and (5).

The debtor's opposition does not resolve the grounds for dismissal. The statement that the debtor intends to file an objection to a claim, or alternatively modify the plan, when he and his attorney have had notice of the claim for nearly two years, is evidence that the debtor has failed to act in proper prosecution of his bankruptcy case. See, Fed. R. Civ. P. 41(b), Fed. R. Bankr. P. 7041.

The court notes that the circumstances in this case are nearly identical to those in another case filed by debtor's counsel: *In re Jodoin*, Case No. 19-23669 (Bankr. E.D. Cal. 2019). The court dismissed that case after the debtor failed to modify the overextended plan for two years after the filing of the Notice of Filed Claims.

The court will dismiss the instant case.

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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 plan will not complete within the 60 months required by 11 U.S.C. § 1322(d) and the debtor has failed to object to the claim of the IRS and/or file a modified plan. The debtor has failed to act in proper prosecution of his chapter 13 case under Fed. R. Civ. P. 41(b), Fed. R. Bankr. P. 7041 and failed to take appropriate action under LBR 3007(d)(3) and (5). The court hereby dismisses this case.