

**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: MARCH 1, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

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

MOTION TO CONFIRM PLAN
1-5-2022 [\[23\]](#)

JASON VOGELPOHL/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).

CHANGES TO FORM PLAN

The trustee objects to a provision added to the debtor's plan contending that it contravenes Fed. R. Bankr. P. 3015.1(e) and LBR 3015-1(a). The plan contains a provision stating that "[d]ebtor will submit any and all income tax refunds over \$2,000.00 to the Chapter 13 Trustee during the duration of her Chapter 13 Plan." This language is written onto page 6 of the plan above the signature line and not on a separate piece of paper appended to the plan. See ECF No. 27, page 6.

Rule 3015.1(e)

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

...

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

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

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no

nonstandard provision other than those set out in the final paragraph.

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

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

LBR 3015-1(a)

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

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

LBR 3015-1(a).

The Eastern District Chapter 13 Plan provides as follows:

Section 7. Nonstandard Provisions

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

EDC 3-080 (emphasis added).

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

Here the debtor has proposed a plan utilizing the district's form plan EDC 3-080. However, in proposing nonstandard provisions at Section 7 the plan fails to list those provisions on a separate piece of paper appended to the plan. Rather, they appear in the same type, as a continuation on the page of standard preprinted language. The type used is identical to that of the standard preprinted terms of the plan. Even someone familiar with this district's form plan could easily overlook the nonstandard provisions as proposed. The court will deny the debtor's motion to modify.

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 Factual Evidence

The trustee objects because the declaration in support of the motion to confirm fails to provide sufficient factual evidence to prove the elements required for confirmation of a plan under 11 U.S.C. §§ 1322 and 1325.

Specifically, the trustee complains that the declaration fails to address changes made to the debtor's budget as evidenced in the amended Schedule J, ECF No. 22. The amended schedule was filed on January 5, 2022, and contains changes from the previously filed Schedule J. The amended schedule does not contain any explanation regarding the changes.

The trustee observes that the amended schedule makes changes to the following expense categories: removes home ownership and entertainment expenses; adds homeowner association fees in the amount of \$404.78; reduces home maintenance by \$70.00, food by \$30.00, clothing by \$3.00, personal care by \$60.00; and increases pet expenses by \$100.00.

The declaration states that "I believe my Second Amended Chapter 13 Plan is feasible". See ECF No. 25, 1:27. This is a conclusion. The declaration should consist of factual statements which support the debtor's argument(s) for confirmation. At a minimum the declaration should: identify the changes to Schedule J and explain why any increased or additional expenses are necessary; identify any mistakes in the original schedules filed October 2021 and explain how the mistake occurred; explain how the debtor will adjust his behavior to account for any reduced and/or omitted expenses for the duration of the 60-month plan.

The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

2. [19-24407](#)-A-13 **IN RE: MARIA TERESA MERCADO**
[WW-2](#)

CONTINUED MOTION TO INCUR DEBT
1-11-2022 [23](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Incur Debt

Notice: Written opposition filed by the trustee

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order authorizing her purchase of residential real property and approval of the financing required to make the purchase. The hearing on this matter was continued to allow the debtor to augment the record and for the trustee to respond.

The proposed financing includes a down payment of approximately \$23,353.25 from the debtor. The debtor has failed to prove the source of the down payment. On February 2, 2022, the court ordered as follows: "that not later than February 15, 2022, the debtor shall augment the record to address the source of the \$23,353.25 down payment." See Order, ECF No. 31.

The court also ordered "that also, not later than February 15, 2022, the debtor shall file amended Schedule A/B, if necessary. In addition, if amended Schedule A/B is filed, the debtor shall provide the Chapter 13 trustee, by email or some other expedited method, with any available corroborating documentation." *Id.*

On February 19, 2022, the debtor filed a declaration in support of this motion, ECF No. 32. The debtor has not sought permission to

file a late pleading; nor does the declaration explain why it was not filed timely. The trustee, who was ordered to respond not later than February 22, 2022, will not have sufficient time to timely analyze the debtor's declaration and file his reply. As this matter has already been continued once, and as the debtor has failed to timely comply with the court's order, the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Debtor's motion to incur debt has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

3. [21-24115](#)-A-13 **IN RE: KATHIE GODBEHERE**
[GEL-1](#)

MOTION TO CONFIRM PLAN
1-24-2022 [\[25\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee, opposition filed by creditor Wilmington Trust, N.A.

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).

CREDITOR OPPOSITION

Background

Creditor, Wilmington Trust, N.A. opposes confirmation of the plan contending that the plan calls for payment of an obligation secured by property no longer owned by the debtor. The subject property is 740 5th Street Woodland, California.

The plan, ECF No. 29, provides for payment to Wilmington Trust, N.A. in Class 2. The creditor was the holder of a note secured by a deed of trust in the subject property.

The instant bankruptcy case was filed on December 9, 2021. On December 10, 2021, the subject property was sold via non-judicial foreclosure to a third-party purchaser for value. By operation of law, the proceeds from the sale were held by the nonjudicial foreclosure Trustee for 15 days to see if any "properly qualified bidders" filed a statement of intent to do the blind bidding procedure outlined by AB 175. See Renewed Objection to Confirmation of Debtor's Amended Chapter 13 Plan and Notice of Trustee's Deed Upon Sale, ECF No. 36 2:10-13, 2 n.1.

On January 31, 2022, the foreclosure Trustee issued a Trustee's Deed Upon Sale to the winning bidder under applicable California state law. The debtor no longer has an interest in the real property due to the completion of the foreclosure sale. *Id.*, 2:14-18.

The debtor has filed the following Chapter 13 cases: 1) Case No. 20-25494, E.D. Cal. Bankr. (2020) filed on December 10, 2020, and dismissed on December 21, 2020, for failure to timely file documents; 2) Case No. 21-21055, E.D. Cal. Bankr. (2021) filed on March 25, 2021, and dismissed on April 5, 2021, for failure to timely file documents; and 3) the instant Chapter 13 case filed on December 9, 2021.

11 U.S.C. § 362(c) (4) (A) (i)

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

. . . .

4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case;

. . . .

11 U.S.C. § 362(c)(4)(A)(i).

By operation of 11 U.S.C. Section 362(c)(4)(A)(i) no automatic stay went into effect upon the filing of the instant case on December 9, 2021.

The debtor failed to seek an order extending or imposing the automatic stay during the first 30 days of the instant bankruptcy case as required under 11 U.S.C. § 362(c)(4)(B). Thus, there was no stay prohibiting the completion of the non-judicial foreclosure sale. Therefore, the debtor no longer has an interest in the subject property.

The court will deny confirmation of the debtor's proposed plan as it calls for payment of an obligation secured by property no longer owned by the debtor.

TRUSTEE OPPOSITION

Plan Feasibility

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

The trustee indicates that the plan payments are delinquent in the amount of \$1,655.00 with an additional plan payment of \$1,655.00 due on February 25, 2022. The plan cannot be confirmed if the plan payments are not current. The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The trustee also objects to the feasibility of the plan contending that the plan improperly provides for the payments of attorney fees. The plan indicates that \$1,500.00 was paid prior to the filing of this case. This information conflicts with the amounts stated in: 1) the Rights and Responsibilities; 2) the Statement of Financial Affairs; and 3) the Disclosure of Compensation. These documents indicate that \$0.00 was paid prior to filing. If the trustee cannot

determine the proper amount of attorney fees to be paid the fees cannot be included in his plan calculation, which in turn makes it impossible for the trustee to determine if the plan is mathematically feasible.

The trustee objects to the payment of the Wilmington Trust N.A. obligation. The court has already sustained this objection in its discussion of the creditor's opposition to confirmation of the plan.

For all these reasons the court will deny confirmation of the proposed amended plan.

CIVIL MINUTE ORDER

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

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

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

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

4. [20-20032](#)-A-13 **IN RE: NEIL GARCIA**
[AP-1](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
1-19-2022 [\[29\]](#)

MARC CARPENTER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Motion: Consent to Enter into Voluntary Loan Deferral
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Creditor, Wells Fargo Bank, N.A. seeks an order allowing the debtor, Neil C. Garcia, to enter into a voluntary payment deferral agreement with respect to the first deed of trust on the real property located at 902 Freedom Dr., Suisun City, California. The Voluntary Payment Deferral Agreement provides for the deferral of five (5) monthly payments.

The obligation owed to the creditor is provided for in Class 4 of the confirmed Chapter 13 plan, ECF No. 3.

The debtor has failed to reply to or join this motion. The court will not presume that the debtor consents to the loan deferral without the debtor's express statement in support of the deferral.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Wells Fargo, N.A.'s Motion for Consent to Enter into Voluntary Loan Deferral has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED the motion is denied without prejudice.

5. [22-20246](#)-A-13 **IN RE: GUILLERMO MIRALRIO**
[WSS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-3-2022 [9](#)

W. SHUMWAY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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 extending the automatic stay under 11 U.S.C. § 362(c)(3).

BACKGROUND

The debtor is self employed as a gardener and landscaper, ECF No. 11. The debtor's prior chapter 13 case was dismissed because the debtor fell behind in his plan payments after he lost many of his clients shortly after the shutdown ordered by the government due to the COVID-19 pandemic. After rebuilding his customer base, the debtor was unable to catch up on the plan payments in the prior chapter 13 case.

The chapter 13 trustee has filed a non-opposition to the motion.

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

6. [20-21047](#)-A-13 **IN RE: PAUL DENNO AND SANDRA MURRAY**
[MWB-8](#)

MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS
ATTORNEY(S)
2-1-2022 [\[122\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Denied without prejudice

Order: Civil minute order

Number of Requests for Additional Compensation: Second

Additional Compensation Requested: unclear and uncertain

Additional Cost Reimbursement Requested: unclear and uncertain

COMPENSATION AND EXPENSES

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

Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party in interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.

LBR 2016-1(a).

If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying

the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.

...

LBR 2016-1(c)(3) (emphasis added).

In the Eastern District of California attorneys who represent Chapter 13 debtors may be compensated either on an hourly basis and apply for approval of compensation under 11 U.S.C. §§ 329, 330, and LBR 2016-1(a). Alternatively, the attorney may elect to be compensated on a flat fee basis under LBR 2016-1(c)(3).

In this chapter 13 case, Mark W. Briden, attorney for the debtors, has applied for an allowance of additional compensation after payment of the flat fee under LBR 2016-1(c)(3). The debtors and their attorney executed a Rights and Responsibilities (ECF No. 3) at the inception of the case. The applicant has received all the agreed upon compensation pursuant to the Rights and Responsibilities.

The applicant requests that the court allow additional compensation in the amount of \$3,540.00. This is the applicant's second request for additional compensation as the court previously approved additional compensation in the amount of \$1,770.00 and reimbursement of expenses in the amount of \$34.44.

The chapter 13 trustee opposes the motion because: the debtors have not filed a declaration indicating their support of the motion; and there are discrepancies in the paperwork filed in support of the application.

DEBTORS' FAILURE TO SUPPORT MOTION

The application fails to include a declaration by the debtors indicating their support of the motion. The parties previously agreed that the compensation in this case would be paid pursuant to the Rights and Responsibilities executed by the parties and approved by the court upon confirmation of the plan. Without a declaration of the debtors in support of the motion the court will not presume their acquiescence to the payment of additional compensation.

Applicant's Supplemental Documents

On February 22, 2022, the applicant filed a supplemental declaration which states:

There is a typo graphical (sic) error in the math. Total hours were 9.4 x \$300 hours or \$2,820.00 and not \$3,943.00 in fees. The fees requested are \$2,820.00. I also will reduce my fees by 2.1 hours and costs of \$58.58 in (sic) good faith effort to reach an agreement with my clients. The reduction is based on alleged redundancy of services and costs.

Supplemental Declaration of Attorney for Debtors in Support of Motion for Attorney Fees and Costs, ECF No. 132, 2:5-12.

The declaration does not address the court's concerns regarding the debtors' agreement to the additional fees. There is still no evidence that the debtors support the request for additional fees. From the declaration the court infers that there is a dispute between the applicant and the debtors regarding the additional fees requested.

On February 23, 2022, the applicant filed a declaration of the debtors, ECF No. 135. This declaration was filed late under LBR 9014-1(f)(1)(C) as replies were due not later than February 22, 2022. Moreover, the declaration is unsigned. As such, the declaration is not properly filed under LBR 9004-1(c) and will not be considered.

LBR 9004-1(c)

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

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

COMPENSATION AND COSTS ARE MISSTATED

The Motion states that the fees requested are \$3,540.00 and costs of \$217.00, ECF No. 122, 2:25-26. Conversely, Exhibit A (an accounting of services performed, and time spent) offered in support of the motion shows compensation requested in the amount of \$3,943.00 and reimbursement of costs in the amount of \$271.00. See Exhibit A, ECF No. 127, page 3. While these appear to be either typographical or mathematical errors the court will not presume to make the corrections.

DATES OF SERVICE

Exhibit A lists the dates which services were performed on behalf of the debtors. Numerous entries list the year of service incorrectly, indicating that services were performed in September 2022 and December 2022. See Exhibit A, ECF No. 127, page 2. These appear to be typographical errors where the year should be indicated as 2021, however, the court will not presume to make the corrections.

Applicant's Supplemental Documents

On February 22, 2022, the applicant filed an Amended Exhibit detailing tasks performed and listing the dates services were performed, ECF No. 133. Several of the entries with incorrect dates were corrected, yet three dates remain incorrectly listed. There are two entries for "12/29/2022" and one entry for "9/27/2022". *Id.*, 2:16; 19-20; 27-28.

On February 23, 2022, the applicant filed a further exhibit in support of this motion, ECF No. 136. The exhibit is filed late as replies were due not later than February 22, 2022, under LBR 9014-1(f)(1)(C). Moreover, this exhibit also contains the same incorrect dates of services as the previous exhibit, ECF No. 133.

TOTAL HOURS OF SERVICE

The motion seeks compensation for 11.9 hours, ECF No. 122, 2:25. Conversely, Exhibit A shows the total hours spent were 11.8, ECF No. 127, page 3.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

Mark W. Briden's application for allowance of additional compensation under LBR 2016-1(c) 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 application is denied without prejudice.

7. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[DPC-3](#)

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

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

Final Ruling

Motion: Dismiss Case
Notice: Continued from January 19, 2022
Disposition: Denied
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. In response the debtors filed a motion to modify the chapter 13 plan (WW-8) and a motion to approve loan modification (WW-9). Each of these motions has been granted.

At the prior hearing on this motion the court stated that "[i]n the event the debtors' loan modification is granted, and an order has been signed, the Court will confirm the debtors' plan, WW-8, and deny the trustee's motion to dismiss, DPC-3, without further notice or hearing." See Civil Minutes, ECF No. 215.

The court will deny the motion to dismiss.

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 denied.

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

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

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from January 19, 2022

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Sixth Modified Chapter 13 Plan, filed August 17, 2021

BACKGROUND

The hearing on this motion was continued from January 19, 2022, to allow the debtors to prove the feasibility of the proposed plan by obtaining an order authorizing the modification of their mortgage.

The feasibility argument was the sole basis for the trustee's opposition to the proposed plan modification. At the prior hearing on this motion the court stated that "[i]n the event the debtors' loan modification is granted, and an order has been signed, the Court will confirm the debtors' plan, WW-8, and deny the trustee's motion to dismiss, DPC-3, without further notice or hearing." See Civil Minutes, ECF No. 215.

An order authorizing the modification of the debtors' mortgage (WW-9), was entered on February 18, 2022, ECF No. 231.

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 debtors have sustained this burden of proof. The court will grant the motion and approve the modification.

9. [19-26163](#)-A-13 **IN RE: JOSE PADILLA CARDONA AND VANESSA PADILLA DPC-2**

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

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from January 19, 2022, non-opposition filed by the debtors

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$12,642.36 under the currently confirmed plan.

In response to the trustee's motion the debtors filed a modified plan and set it for hearing. The motion to modify (PSB-3) has been denied because the plan was not feasible under 11 U.S.C. § 1325(a)(6) due in part to delinquent payments under the proposed modified plan.

On February 24, 2022, the debtors filed a further reply wherein they state, "The Debtors do not oppose the Trustee's Motion to Dismiss Case." See ECF No. 91.

The court is unable to deny the motion given the outstanding delinquency. 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. Payments are delinquent in the amount of \$12,642.36. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

10. [19-26163](#)-A-13 **IN RE: JOSE PADILLA CARDONA AND VANESSA**
PADILLA
[PSB-3](#)

MOTION TO MODIFY PLAN
1-18-2022 [\[74\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

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).

RULE 41

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, incorporated by Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation “signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn “only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

On February 24, 2022, the debtors attempted to withdraw the motion by filing a notice of withdrawal of the motion to modify plan and all supporting documents, including the plan, ECF No. 90. Previously, on February 15, 2022, the trustee filed opposition to the motion to modify plan, ECF No. 86. No stipulation by the parties agreeing to the withdrawal of the motion has been presented to the court. The motion may not be withdrawn unilaterally by the debtors.

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 payments are delinquent in the amount of \$3,732.00 under the modified plan. The last payment made to the trustee was November 30, 2021, ECF No. 86, 1:26-28. The trustee reports that a payment is pending through TFS, yet even if this payment is received the plan payments will remain delinquent. The plan cannot be confirmed if the plan payments are not current. See 11 U.S.C. § 1325(a)(6).

Post-Petition Mortgage Arrears

The trustee contends that the modified plan incorrectly provides for post-petition mortgage arrears to Class 1 creditor, Community Loan Servicing, LLC. The arrears, caused by delinquent plan payments, total \$8,661.36, yet the modified plan calls for payment of only \$6,968.31 in mortgage arrears and does not properly identify the missing payments. As such the trustee is unable to fully comply with §3.07(b) of the plan. See ECF No. 86, 2:10-19. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

401K Loan Repayments

The trustee contends the plan is not feasible as Schedule I is inaccurate regarding the debtor's obligation to repay 401K loans. The amended schedule, ECF No. 79, provides for a loan repayment of only \$89.57 while the trustee received information earlier in the case indicating that the repayment on a 401K loan is not scheduled to complete until December 2023 and that the repayment amount is \$291.77. The trustee supports his contention with a copy of the statement from the debtor's 401K plan, showing the second 401K loan

does not mature until December 2023, ECF No. 88. The plan is not feasible. See 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 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.

11. [21-24175](#)-A-13 **IN RE: PETE GARCIA**
[DPC-2](#)

MOTION TO DISMISS CASE
1-31-2022 [\[55\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

Plan Delinquency

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 \$226.89 with another payment of \$4,826.89 due February 25, 2022.

The debtor has filed opposition to the motion, ECF No. 74. The opposition consists of an unsworn statement by the debtor's attorney. There is no evidence offered in support of the opposition as required by LBR 9014-1(f)(1)(B). For example, there is no declaration from the debtor under penalty of perjury indicating the dates and amount of any payment(s) tendered. Neither has the debtor submitted copies of any cashier's checks or money order receipts,

print outs from TFS, or any other documentary evidence of payment(s). As such the court does not consider the opposition credible and gives it no weight.

Trustee Reply

The trustee has filed a status report, ECF No. 87. In his report the trustee states that the plan payments are current through January 2022. However, the court notes that a further payment is due on February 25, 2022, prior to the date on this hearing.

341 Meeting of Creditors

The trustee moves to dismiss because the debtor failed to attend the 341 meeting of creditors. The court's docket reflects that the debtor attended a continued meeting of creditors after the filing of the trustee's motion.

Failure to Provide Requested Documents

The trustee has requested, and the debtor has failed to provide the following documents: 2019 California Tax Return; Profit and Loss Statements identified by month for the 6 month period prior to the filing of the case; bank statements for all accounts for the 6 month period prior to the filing of the case; a completed Business Questionnaire which the trustee sent to the debtor at the end of December 2021; complete tax returns for the 2 years prior to the filing of the case. The trustee acknowledges receipt of one profit and loss statement for an unidentified month which raises doubts about the feasibility of the plan.

The opposition, ECF No. 74 addresses the trustee's contentions regarding the missing documents as follows: "[t]he debtor has provided the missing 2019 F.T.B. return, and the balance of the 11 U.S.C. 521 documents." *Id.* 2:3-4. As the court has previously stated the opposition is an unsworn statement submitted by debtor's counsel. There is no evidence supporting the statement. There is no declaration under penalty of perjury from anyone indicating which documents were sent to the trustee, how they were sent or when they were sent. Neither is there a copy of an email transmission of the documents.

The trustee has filed a status report, ECF No. 87. In his report the trustee indicates that the debtor has failed to produce the following requested documents: 6 months of financial statements, credit union statements, or bank statements for each account listed on Schedule A/B; 2019 California Tax Return. The debtor has had ample time to produce the documents, thus the court will dismiss the case for unreasonable delay under 11 U.S.C. § 1307(c) (1).

The trustee further states that while the debtor has amended schedule H, he has failed to amend the mailing matrix to include a previously unlisted party.

Finally, the court notes that on February 1, 2022, it sustained creditor Wells Fargo Bank, N.A.'s objection to confirmation. To

date the debtor has not filed an amended chapter 13 plan. The court finds that the failure to file an amended plan constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C, § 1307(c) (1).

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because the debtor has failed to tender requested business documents to the trustee. This constitutes unreasonable delay under 11 U.S.C. § 1307(c) (1). The court hereby dismisses this case.

12. [21-24175](#)-A-13 **IN RE: PETE GARCIA**
[PGM-2](#)

MOTION TO EMPLOY FIRST AUTHORITY REALTY AS REALTOR(S)
2-4-2022 [\[66\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Application: Approval of Employment

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

Disposition: Denied as Moot

Order: Civil Minute Order

This matter will be denied as moot. The court has granted the trustee's motion to dismiss (DPC-2). Thus, the case is no longer pending.

CIVIL MINUTE ORDER

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

The debtor's motion for approval of employment has been presented to the court. Given the dismissal of the case as discussed by the court in its ruling,

IT IS ORDERED that the motion is denied as moot.

13. [22-20277](#)-A-13 **IN RE: PAMELA AMBUNAN**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-9-2022 [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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 extending the automatic stay under 11 U.S.C. § 362(c)(3).

BACKGROUND

The debtor's prior chapter 13 case was dismissed after overtime at Kaiser was reduced and she was unable to make the plan payments. The debtor has since increased income from self-employment medical billing income as follows:

Since my previous case was dismissed, my circumstances have changed as I am getting more clients that pay as they (sic) are more business people (sic) and are more reliable.

Declaration, ECF No. 12, 2:2-4.

The chapter 13 trustee has filed a non-opposition to the motion.

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

14. [19-23578](#)-A-13 **IN RE: CATHERINE BYRD**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-9-2022 [\[119\]](#)

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

No Ruling

15. [19-23578](#)-A-13 **IN RE: CATHERINE BYRD**
[PGM-6](#)

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

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

16. [21-24082](#)-A-13 **IN RE: TONIA BEAIRD**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
1-12-2022 [\[26\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Objection to Confirmation of Plan

Notice: Continued from February 1, 2022

Disposition: Overruled as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 objection to the prior plan.

The debtor has filed an amended plan, ECF No. 45, and has noticed a motion to confirm the amended plan (MET-2) April 5, 2022. Because the amended plan supersedes the previous plan to which the trustee objected, the court will overrule the objection as moot.

CIVIL MINUTE ORDER

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

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

17. [21-24183](#)-A-13 **IN RE: JOSE/CONSUELO MONREAL**
[MMM-1](#)

MOTION TO CONFIRM PLAN
1-20-2022 [\[17\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

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).

NOTICE

The chapter 13 trustee opposes the motion under 11 U.S.C. §§ 1325 (a)(1), (6) because the plan and the supporting declaration of the debtor are facially inconsistent.

The facial inconsistency is important as it impacts the sufficiency of the notice given to creditors regarding the amount of the monies to be disbursed to unsecured creditors under the plan.

The plan, ECF No. 19, provides that unsecured creditors will be paid 1% and the declaration, ECF No. 20, indicates that the unsecured creditors will receive 26%.

The debtors have filed a reply, ECF No. 26. In the reply the debtors state the 26% indicated in the declaration is incorrect and that the plan at 1% is correct. The debtors have offered to correct the typographical error in the order confirming the plan, however this does not resolve the court's concern. The inconsistency is confusing, and the court will not presume what conclusion a creditor reading both documents might reach. If the debtors agreed to provide for the higher disbursement at 26% the court could authorize this change in the order, assuming the plan would fund, as the conflicting information would be resolved in favor of the creditors. 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 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.

18. [21-23485](#)-A-13 **IN RE: RODNEY GREER**
[DPC-3](#)

MOTION TO DISMISS CASE
1-31-2022 [\[49\]](#)

TIMOTHY WALSH/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 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 \$630.00.

The trustee also moves to dismiss the case because the debtor has failed to file an amended plan after the court sustained the trustee's objection to confirmation on December 17, 2021. The debtor has not yet filed an amended plan. The court finds that the

failure to file an amended plan constitutes cause for dismissal under 11 U.S.C. § 1307(c) (1).

CIVIL MINUTE ORDER

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

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

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

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

19. [12-26989](#)-A-13 **IN RE: ANTONIO/MARIA HERNANDEZ**
[JJF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-2022 [\[87\]](#)

C. HUGHES/ATTY. FOR DBT.
JAMES FALCONE/ATTY. FOR MV.
DEBTORS DISMISSED: 01/17/2013
KENNETH JONES VS.

Tentative Ruling

Motion: Motion for Retroactive Relief from Automatic Stay

Notice: Written opposition filed

Disposition: Continued to May 3, 2022, at 9:00 a.m.

Order: Civil minute order

Property: 1013 Ross Street and 1109 Ash Street, Clovis, New Mexico

Movants, Kenneth Jones and Jo Jones, seek an order granting retroactive relief from the automatic stay under 11 U.S.C. § 362(d), ratifying the foreclosure on the subject properties identified as 1013 Ross Street and 1109 Ash Street, Clovis, New Mexico. The debtors oppose the motion.

BACKGROUND

The debtors have filed the following chapter 13 bankruptcy cases in the Eastern District of California:

| | | |
|------------|----------------------|----------------------------|
| 2011-34372 | Filed June 8, 2011 | Dismissed January 25, 2012 |
| 2012-26989 | Filed April 10, 2012 | Dismissed January 17, 2013 |
| 2013-24415 | Filed March 30, 2013 | Discharged August 13, 2018 |

The instant motion is filed in the 2012-chapter 13 case.

Prior to the filing of any of the bankruptcy cases the debtors entered into an agreement to purchase the subject properties from the movants. The purchase contract provides a procedure wherein the contract is recorded, and both a deed to the buyer and a deed to the seller are placed in escrow. In the event of a default in payment the contract provides a procedure for notice of the default to the buyers, and in the event the default is not cured, the escrow company records the deed to the seller. See Motion for Retroactive Relief from Automatic Stay, ECF No. 87, 2:7-13.

Such a procedure was commenced for default under the purchase agreement and then halted by the filing of the bankruptcy case filed in 2011. The 2011-chapter 13 case was subsequently dismissed.

On March 13, 2012, as the debtors remained in default under the agreement, the movants issued a new notice of default. When the default was not cured the deed was recorded on April 13, 2012. The movants had not received notice of the filing of the instant case. The subject property was subsequently sold to a third party. *Id.*, 2:15-23; Declaration of Kenneth Jones, ECF No. 89, 2:20-22.

2013 CHAPTER 13 CASE

The debtors filed a third chapter 13 case. In that case the debtors obtained a discharge. The debtors did not list the subject properties in their schedules in the 2013 case. The obligation to the movants regarding the subject property was listed in Amended Schedule F in the amount of \$1.00 and indicates that the property was foreclosed on after the dismissal of the previous chapter 13 proceeding in 2013. See Case No. 2013-24415, E.D. Cal. Bankr. (2013), Amended Schedules A, and F, ECF No. 32.

The debtors did not list any cause of action against the movants, or any other claim owed to them by the movants in their Schedule B filed at the inception of the 2013 case. See *Id.*, Schedule B, ECF No. 1. The chapter 13 plan was confirmed on June 28, 2013, *id.*, ECF No. 54.

On December 12, 2014, the movants filed a motion for relief from the automatic stay in the 2013 case *id.*, ECF No. 99. The order, issued on January 19, 2015, denied the motion without prejudice, *id.*, Order ECF No. 116.

The court explained its decision for the rulings as follows:

The automatic stay at issue, and which must be annulled with respect to the April 13, 2012 recorded deed, is the automatic stay in the Debtors second bankruptcy case No. 12-26989. See 11 U.S.C. § 362(a) (creation of automatic stay), (c) (termination of stay by operation of law), and (d) (termination of stay obtained by party in interest).

Id., Civil Minutes, ECF No. 114.

On November 15, 2021, the debtors filed an adversary proceeding against the movants for: declaratory relief/determination of the nature and extent of the liens on the subject property; damages under 11 U.S.C. § 524(a) (2); and attorney fees and costs. See 2021-02082, E.D. Cal. Bankr. (2021).

INSTANT MOTION

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

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

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

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

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

Hearing Continued for Further Evidence and Briefing

Neither party has presented evidence or legal argument in the context of the *Fjeldsted* and *Cruz* factors discussed above. Moreover, the debtors have presented no evidence in opposition to this motion.

Additionally, the parties should present legal briefing, evidence, and argument regarding the debtors' failure to list the properties (or alternatively list a cause of action/claim against the movants) in the 2013 case, and whether this omission estops the debtors from asserting their defenses of this motion.

The court will continue the matter to allow for additional legal briefing and augmentation of the evidentiary record by the parties.

The movants shall file all additional evidence and legal briefing not later than March 22, 2022. The debtors shall file all additional evidence and legal briefing not later than April 12, 2022. The hearing on this matter will be continued to May 3, 2022, at 9:00 a.m.

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.

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

IT IS ORDERED that the hearing on this motion is continued to May 3, 2022, at 9:00 a.m.,

IT IS FURTHER ORDERED that not later than March 22, 2022, the movants shall file and serve all additional evidence and legal argument in support of their motion,

IT IS FURTHER ORDERED that not later than April 12, 2022, the debtors shall file and serve all additional evidence and legal argument in opposition to the motion.

20. [19-27092](#)-A-13 **IN RE: ABDULMALIK ABDULRAHMAN AND AISHA WELLS**
[MMM-1](#)

CONTINUED MOTION TO PURCHASE REAL PROPERTY
12-10-2021 [\[22\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Motion: Approve New Debt

Notice: Continued from January 5, 2022

Disposition: Denied

Order: Civil Minute Order

Debtors seek an order approving the purchase of real property. To finance the purchase the debtors are attempting to obtain a VA Loan in the amount of \$550,000.00 at 3.75% interest for a 360-month term; estimated monthly payment \$3,220.06. The debtors are currently renters with a housing expense of \$1,900.00 per month. The debtors indicate that their rent expense will increase in January 2022, although they have not indicated the amount of the rental increase.

At the previous hearing the court continued this motion to allow the debtors to file a modified plan and set it for hearing and to provide the contract for purchase of real property. The contract has been provided.

The debtors' motion to modify plan (MMM-2) has been denied. The debtors failed to prove the feasibility of the proposed plan as they failed to provide evidence of their current budget with properly and recently filed Schedules I and J.

Whether this motion to approve new debt is in the best interests of the bankruptcy estate can only be determined in the context of a proposed modified plan and with all relevant supporting information as part of the evidentiary record. The debtors' budget is fundamental in assessing whether they can purchase the property and perform the plan. The increase in the debtors' housing expense is substantial as it increases to \$3,220.06 from \$1,900.00.

The court will deny the motion to purchase real property.

CIVIL MINUTE ORDER

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

The debtors' motion to purchase real property has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

21. [19-27092](#)-A-13 **IN RE: ABDULMALIK ABDULRAHMAN AND AISHA**
WELLS
[MMM-2](#)

MOTION TO MODIFY PLAN
1-13-2022 [\[38\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

AMENDED SCHEDULES I AND J

Rule 1008

The trustee opposes the motion contending that the supplemental Schedules I and J filed on December 17, 2021, ECF No. 31, were not properly noticed to all interested parties as required by Fed. R. Bankr. P. 1009.

The court need not reach the question of proper notice under Rule 1009. The schedules were filed without the required amendment cover

sheet, EDC 2-015 and are thus unsigned by the debtors. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

LBR 9004-1(c)

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

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

The debtors have filed an amendment to Schedule I and J. ECF No. 31. The amendment lacks the required amendment cover sheet, EDC 2-015 and therefore is not signed or dated by either the debtors or their attorney. Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court and may not be considered.

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 have not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were

filed on December 17, 2021, ECF No. 31 without the required amendment form. As the court has previously noted the schedules do not comply with Fed. R. Bankr. P. 1008 or LBR 9004-1(c).

Without current income and expense information the court is 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).

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.

22. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[NUU-1](#)

MOTION TO CONFIRM PLAN
1-12-2022 [\[31\]](#)

CHINONYE UGORJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: 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).

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 65 months to fund as proposed.

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

DEBTOR'S REPLY

The debtor has filed a reply to the trustee's opposition, which is supported by Amended Schedules I and J.

The reply offers to increase the plan payment to \$4,026.00 per month beginning in the fifth month of the plan, and to change the payment to the impacted Class 1 creditor to \$2,184.14 per month. The debtor offers to make these corrections in the order confirming plan. See ECF No. 53.

The amended schedules are not accompanied by a declaration which explains the changes made to the debtor's budget, nor are the changes to the schedules identified in the reply, ECF Nos. 53, 55.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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