

**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 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. [21-23702](#)-A-13 **IN RE: WILLIS/MISKA PEARSON**
[GC-1](#)

MOTION TO CONFIRM PLAN
2-5-2022 [\[31\]](#)

JULIUS CHERRY/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 October 27, 2021

DEFAULT OF RESPONDENT

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

The debtors seek confirmation of their chapter 13 plan filed October 27, 2021. The debtors have properly filed amended Schedules I and J on February 5, 2022, in support of the motion, ECF No. 30. The chapter 13 trustee has filed a statement of non-opposition in support of plan confirmation, ECF No. 36.

CHAPTER 13 PLAN CONFIRMATION

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

The court finds that the debtors have sustained that burden, and the court will approve confirmation of the plan.

2. [21-22205](#)-A-13 **IN RE: SHELBY HILL**
[TLA-1](#)

MOTION TO MODIFY PLAN
2-4-2022 [\[29\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant; approved by the trustee

Subject: First Modified Chapter 13 Plan, filed February 4, 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 confirming his modified chapter 13 plan filed February 4, 2022, ECF No. 33. The chapter 13 trustee has filed a statement of non-opposition in support of plan modification, 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).

SUPPLEMENTAL SCHEDULES I AND J

Rule 1008

On February 4, 2022, the debtor filed supplemental Schedules I and J in support of the motion and plan, ECF No. 32.

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

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

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

EDC 002-015.

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).

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

In this matter the debtor has filed a declaration in support of the motion which states "I have attached a copy of my household budget as Exhibit A. This shows the current status of my income and household expenses. I believe that this budget demonstrates that I can make my proposed payment." See Declaration, ECF No. 31, 1:23-25. The supplemental budget schedules are contained in the exhibit. The declaration will satisfy the evidentiary requirement for the supplemental schedules in this matter.

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

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

3. [21-24105](#)-A-13 **IN RE: ERIKA/MARK MILLER**
[DPC-1](#)

MOTION TO DISMISS CASE
2-14-2022 [\[47\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtors' 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 provided for as "TBD", see ECF No. 41. The case was filed on December 8, 2021, thus monthly plan payments were required to begin January 25, 2022. Two plan payments have come due since the filing of the case and the trustee has not received payments in any amount.

Failure to File Tax Returns

Section 1308 of the Bankruptcy Code provides: "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 debtors have failed to comply with this tax-filing requirement. The debtors testified at the meeting of creditors that they have not filed 2013-2020 state and federal tax returns. The court will dismiss this case pursuant to § 1307(e).

Failure to Set Plan for Confirmation Hearing

The debtors have failed to confirm a plan within a reasonable time. The debtors filed this case on December 8, 2021, yet the plan was not filed until January 19, 2022. Because the plan was filed more than 14 days after the filing of the petition the debtors are required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1). The failure to file a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

Failure to Provide Documents

The debtors have failed to provide the trustee with required and requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtors provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors.

The debtors have failed to provide the following requested and/or required business documents to the trustee for his review: 2019 and 2020 tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists, for the 6 months preceding the filing of this case; completed business questionnaire mailed to the debtors on January 20, 2022; Domestic Support Obligation Checklist; 2018 copy of CAMPFIRE VICTIM TRUST SETTLEMENT to which the debtors are a party.

Failure to Provide Social Security Number

All debtors are required to provide documentary evidence of their Social Security number to the trustee under Fed. R. Bankr. P. 4002(b)(2)(B).

Debtor Mark Miller has failed to provide this information to the trustee.

Failure to Amend/Correct Filed Statements, Schedules, Plan

The trustee examined the debtors at the meeting of creditors. At that time the trustee discovered numerous inaccuracies to the plan, the statements and schedules filed by the debtors. To date no amended documents have been filed by the debtors in response to the motion to dismiss. Of particular importance are the defects in the

plan which the trustee is unable to administer in its current form as it proposes to pay a monthly amount of "TDB" to the trustee as well as payments of "TDB" to certain creditors listed in the plan.

The failure to amend and correct documents is evidence that the debtors are not acting in proper prosecution of their chapter 13 case, Fed. R. Civ. P. 41(b), Fed. R. Bankr. P. 7041. This constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

Failure to Attend Continued 341 Meetings

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtors did not attend the continued meetings of creditors on January 20, 2022, and February 10, 2022.

For all the above reasons the court will dismiss the case.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent

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

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case; the debtors' failure to provide income and business documents; failure to attend the meetings of creditors; failure to file tax returns; failure to correct/amend bankruptcy pleadings. The court hereby dismisses this case.

4. [21-20806](#)-A-13 **IN RE: JEFFREY/NIKEA HARRISON**
[DPC-2](#)

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

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from February 15, 2022

Disposition: Denied

Order: Civil minute order

CASE DISMISSAL

The hearing on the chapter 13 trustee's motion to dismiss was continued to coincide with the debtors' motion to modify the chapter 13 plan. The motion to modify (TLA-2) was granted.

As the trustee's motion to dismiss the case has been resolved with the approved modified plan 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.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is denied.

5. [21-20806](#)-A-13 **IN RE: JEFFREY/NIKEA HARRISON**
[TLA-2](#)

MOTION TO MODIFY PLAN
2-4-2022 [\[63\]](#)

THOMAS AMBERG/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 the movant; approved by the trustee

Subject: First Modified Chapter 13 Plan, filed February 4, 2022

DEFAULT OF RESPONDENT

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

The debtors seek an order confirming their modified chapter 13 plan filed February 4, 2022, ECF No. 67. The chapter 13 trustee has filed a non-opposition in support of plan modification, ECF No. 71.

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).

SUPPLEMENTAL SCHEDULES I AND J

Rule 1008

On February 4, 2022, the debtors filed supplemental Schedules I and J in support of the motion and plan, ECF No. 69.

The schedules were filed without the required amendment cover sheet, EDC 002-015 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.

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

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

EDC 002-015.

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).

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

In this matter the debtors have filed a declaration in support of the motion which states "We have provided an updated household budget, which is attached as Exhibit A. This is an accurate reflection of our current income and expenses. The budget shows are (sic) new childcare expenses, as well as our current monthly income." See Declaration, ECF No. 65, 1:26-28. The supplemental budget schedules are contained in the exhibit. The declaration will satisfy the evidentiary requirement for the supplemental schedules in this matter.

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

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

6. [19-22810](#)-A-13 **IN RE: DENNIS/RANDI-MARIE MITCHELSON**
[DPC-1](#)

CONTINUED 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: Continued from February 15, 2022

Disposition: Withdrawn by Moving Party

Order: Civil minute order

The chapter 13 trustee has filed a timely status report, ECF No. 97. In his report the trustee indicates that he no longer wishes to pursue his motion to dismiss.

DISCUSSION

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

7. [19-22810](#)-A-13 **IN RE: DENNIS/RANDI-MARIE MITCHELSON**
[PGM-3](#)

MOTION TO MODIFY PLAN
2-2-2022 [\[84\]](#)

PETER MACALUSO/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).

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

Conflicting Income Information

Debtors are required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3).

The chapter 13 trustee filed an opposition to the motion indicating that he had not been provided copies of the debtors' recent tax returns, ECF No. 92. On March 1, 2022, the trustee filed a status report updating his opposition to the motion, ECF No. 98. The trustee states that he has received the debtors' 2020 Federal income tax return which shows a total gross income of \$119,432.00. This amount averages \$9,952.67 per month.

The debtors filed amended Schedules I and J, in support of the motion and proposed plan, ECF No. 90. Schedule I shows a total gross income of \$8,980.00 per month. There is a \$972.67 discrepancy

in monthly income between the 2020 tax return and the Amended Schedule I.

The court notes that the amended schedule contains no explanation of how the debtors' income was calculated or how it may differ from other supporting documents provided to the trustee. While the debtors have submitted a declaration in support of this motion, the declaration does not explain how the monthly income was calculated, how the scheduled income might be different from other supporting documents, or what changes may have occurred to cause the discrepancy between the tax return and the debtors' schedules.

The proposed plan calls for a 0% dividend to be paid to unsecured creditors totaling approximately \$42,000.00. Given the evidentiary discrepancies the court finds that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Debtors' Reply

On March 8, 2022, the debtors filed a timely reply and supporting declaration in response to the trustee's opposition, ECF No. 99-100. The reply states generally that the debtors' income generated from the debtor's business was reduced in 2021.

The declaration provides no evidence of the method used to calculate the debtors' income each month. It does not explain the sources of the debtors' income, nor does it address the following matters of concern to the court.

Schedule I, shows that each of the debtors are employed at Auto Excellence, ECF No. 90. The court infers that this business is owned and operated by the debtors, but it is not stated in the declaration. The Statement of Financial Affairs, ECF No. 1, states that the debtors own a business called "Mitchelson Motorsports", *id.*, at Item No. 27. The address for this business matches the address for the debtors' employment on Schedule I. Yet there is no explanation offered regarding the two different businesses and what, if any changes may have transpired since the filing of the case.

Additionally, the business income and expense attachment to Schedule I shows that there is profit of approximately \$1,300.00 per month. This appears to correspond to the income entry on Schedule I which states "Drawer" from business. Also of concern are two entries at Line 5h in Schedule I which show that the debtors are repaying what appear to be salary advances in the amount of \$860.00 and \$560.00 per month. The court does not have information regarding how much longer it will take to repay the advances, when the advances were taken, or why the advances were taken.

The declaration in support of the motion should contain all necessary factual allegations for the court and all interested parties to understand the debtors' finances and how their monthly income was calculated.

The court and interested parties should not be required to search the docket for information which might explain the debtors' current

circumstances. The debtors' current fiscal status should be specifically and clearly described in the declaration, exhibits and schedules filed in support of the motion. It is not unusual for s to changes to occur during the pendency of a chapter 13 plan, but it is the debtors' burden to explain how and why their current circumstances differ from previously filed evidence. Without this evidence the court, the trustee and any interested creditor cannot determine if the plan is proposed in good faith or is feasible under 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.

8. [22-20014](#)-A-13 **IN RE: SAMSON/MICHELLE FOUCHE**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
2-2-2022 [\[16\]](#)

MARK BRIDEN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Creditor, Toyota Motor Credit Corporation, objects to confirmation of the debtors' plan contending that the interest rate proposed in the plan does not satisfy the requirements of *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The plan calls for payment of the debt secured by the 2011 Toyota Tundra in Class 2, see ECF No. 3. The plan proposes to pay the full value of the secured claim filed by the creditor, Claim No. 4. The monthly payment to the creditor in the plan is proposed at \$450.00 with .5% interest. In contrast, the contractual rate of interest is 8.84% with a monthly payment of \$571.48, ECF No. 18.

INTEREST RATE

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

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

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

Here, the plan provides for an interest rate of .5% on the objecting creditor's class 2 secured claim. The creditor indicates that the prime rate of interest at the time the case was filed was 3.25%. The creditor also argues that an increased interest rate is appropriate given the reduction in the monthly payment on the debt in the plan. The payment proposed in the plan is approximately a 20% reduction from the contractual payment.

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of

default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. The plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement.

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.

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

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

9. [22-20014](#)-A-13 **IN RE: SAMSON/MICHELLE FOUCHE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-8-2022 [\[20\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

The chapter 13 trustee objects to confirmation of the debtors' plan as follows.

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 court notes that the debtors failed to attend the initial meeting of creditors. However, the court's docket shows that the debtors each attended the continued meeting on March 3, 2022. This portion of the trustee's objection will be overruled.

FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtors provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: Federal and state income tax returns for the two-year period prior to the filing of the case; bank statements for all accounts listed in the debtors' schedules for the 6-month period prior to the filing of the case; completed Business Questionnaire which the trustee forwarded to the debtors, and which is submitted as an exhibit with the trustee's objection, see ECF No. 24.

The trustee filed a status report, ECF No. 30, after conducting the meeting of creditors. The trustee reports that the debtors have provided the missing tax returns and business documents and that the debtors are current with plan payments. This portion of the trustee's objection will be overruled.

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

Failure to File Accurate and Complete Schedules

Debtors are required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The trustee discovered the following inaccuracies in the debtors' bankruptcy paperwork at the meeting of creditors: 1) Accounts Receivables in the amount of \$6,500.00 are missing from Schedule A/B; two unsecured obligations totaling \$34,000.00 are missing from Schedule E/F and the prepetition payments to these creditors are not indicated in the Statement of Financial Affairs; Income from IHSS is not indicated in Schedule I. See Status Report, ECF No. 30.

The court notes that prepetition payments made to creditors must be evaluated to determine whether there are avoidable transfers. If so, this may impact the liquidation test under 11 U.S.C. § 1325(a)(4).

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

10. [22-20014](#)-A-13 **IN RE: SAMSON/MICHELLE FOCHE**
[JM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LENDMARK FINANCIAL
SERVICES, LLC
2-9-2022 [\[25\]](#)

MARK BRIDEN/ATTY. FOR DBT.
JAMES MACLEOD/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled in part; sustained in part

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.

Creditor Lendmark Financial Services, LLC objects to confirmation of the debtors' plan as follows.

FAILURE TO PROVIDE FOR SECURED OBLIGATION

The creditor has filed two secured claims. The first, Claim No. 2 is not provided for in the debtors' plan. The claim is for a marquis hot tub which is not listed in the debtors' Schedules A/B. See Plan, ECF No. 3, and Schedules A/B, ECF No. 1.

The objection will be overruled because the plan's failure to provide for a secured creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. A proof of claim, not the plan, controls the amount of a claim. Ch. 13 Plan § 2.04. Under § 1325(a)(5), moreover, the plan does not have to provide for a secured claim, although if the plan does provide for a secured claim, the plan's treatment of the secured claim must meet the requirements of § 1325(a)(5). See 11 U.S.C. § 1325(a)(5).

This objection will be overruled.

FALURE TO PROPERLY IDENTIFY SECURED CLAIM

The creditor's second objection is regarding Claim No. 3, which is secured by a 2013 Ford Escape. The plan calls for the payments on a Ford Escape in Class 4. However, as the objecting creditor observes the claim is misidentified in the plan as a claim owed to "LANDMAK", see ECF No. 3, Section 3.10.

Because the plan is unclear and uncertain regarding whether the objecting creditor's claim is to be paid the objection will be sustained.

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.

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

IT IS ORDERED that the objection is overruled as to the marquis hot tub; the objection is sustained as to the objection regarding the 2013 Ford Escape.

11. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [\[111\]](#)

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

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

This matter will be heard on March 29, 2022, at 9:00 a.m.

12. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[JV-8](#)

MOTION TO CONFIRM PLAN
2-7-2022 [\[169\]](#)

JASON VOGELPOHL/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 by creditor

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, as does creditor SunWest Mortgage Company, Inc.

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

PLAN FEASIBILITY

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

Trustee Opposition

The trustee contends that the plan is not feasible arguing that the feasibility of the plan is premised on a successful modification of the mortgage held by creditor SunWest Mortgage, Inc. The opposition to the motion filed by creditor SunWest Mortgage Company, Inc., ECF Nos. 178-179, states that a loan modification is pending yet there is no pending motion to modify the loan on the court's docket. The plan is not feasible without the loan modification.

Creditor Opposition

Sunwest Mortgage confirms that the debtor has been offered a loan modification, and that the parties are finalizing the same. The creditor does not oppose the proposed Fifth Amended Plan so long as any order confirming the plan expressly states that the prior Relief Order, ECF No. 135, supersedes any conflicting terms of the confirmation order, and the creditor need not obtain stay relief again in order to proceed with its state law remedies in the event the loan modification agreement is not finalized, or the debtor subsequently defaults on the modified payments.

The court will deny the motion to confirm the plan.

CIVIL MINUTE ORDER

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

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

The 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.

13. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA
SIRUNANIAN
[PGM-2](#)**

MOTION TO CONFIRM PLAN
2-3-2022 [\[92\]](#)

PETER MACALUSO/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: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this jointly filed chapter 13 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 has filed a statement of non-opposition to confirmation, ECF No. 100.

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).

AMENDED SCHEDULES I AND J

Rule 1008

Despite the trustee's non-opposition, the court will deny the motion to confirm. The debtors filed Amended Schedules I and J in support of the motion to confirm, ECF No. 98. This is a jointly filed case, yet only one of the debtors has signed the amendment cover sheet, and the court cannot determine which debtor has signed the document as the printed name does not appear on the document.

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)

(cii) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications

shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

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

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court and may not be considered.

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.

14. [22-20019](#)-A-13 **IN RE: LILLIAN DEANER**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEB LOAN TRUST VI, U.S.
BANK NATIONAL ASSOCIATION
2-10-2022 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

schedule. Absent such opposition, the court will adopt this tentative ruling.

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

MORTGAGE ARREARS

11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

Creditor MEB Loan Trust, VI, objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$74,149.67. *Compare* Claim No. 8 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance). The court notes that while the motion contends that the arrearage is \$74,149.67 that the filed claim indicates a higher arrearage of \$125,556.68.

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no

absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler* (*In re Fulkrod*), 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage* (*In re Fulkrod*), 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. *All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.*

...

(b) Maintaining payments. *Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not 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.

MEB Loan Trust, VI'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.

15. [22-20019](#)-A-13 **IN RE: LILLIAN DEANER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-9-2022 [\[19\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

MATHEMATICAL FEASIBILITY

The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

The plan must 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 trustee objects to confirmation of the plan as it is not mathematically feasible. The trustee calculates that the plan will take 82 months to complete. The plan provides for priority creditors in the amount of \$0 and the Internal Revenue Service filed a claim

in the total amount of \$52,880.46. The priority portion of the claim is \$20,822.56. See, Claim No. 4. With the inclusion of the priority tax claim the plan does not fund in the required maximum plan length of 60 months.

CIVIL MINUTE ORDER

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

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

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

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

16. [22-20019](#)-A-13 **IN RE: LILLIAN DEANER**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL HOME LOAN
CORPORATION
2-10-2022 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Creditor, Federal Home Loan Mortgage Corporation, objects to the confirmation of the debtor's plan contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

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 obligation to the secured creditor is provided for in Class 1 of the plan, ECF No. 3. The amount of arrears scheduled to be paid under the plan is \$43,000.00. The creditor has filed a claim which lists mortgage arrears in the amount of \$65,385.74, Claim No. 7.

The creditor argues that Schedules I and J in support of the motion do not support an increase in the plan payment sufficient to pay the additional arrears owed. The plan proposes monthly payments of \$2,800.00 and the Schedules show net monthly income of only \$2,799.00. See ECF NO. 1.

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.

Federal Home Loan Mortgage Corporation's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

17. [22-20025](#)-A-13 **IN RE: JUAN SALAZAR**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
2-17-2022 [\[22\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained

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.

U.S. Bank, National Association objects to confirmation of the debtor's plan contending that the proposed plan improperly classifies its claim in Class 4 and does not provide for the curing of mortgage arrears owed at the time the case was filed.

11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed

amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$6,139.88. Compare Claim No. 8 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.

...

(b) Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards

may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

Debtor's Response

The debtor has filed a response to the objection and a supporting declaration, ECF No. 27. The debtor disputes the delinquency claiming that the payment was tendered but did not post until after the case was filed. The declaration provides no detail about the date the payment was tendered, how the payment was tendered or any documentary evidence of payment. The statements in the declaration are too conclusory to be of evidentiary value.

As a result, the plan does not comply with § 1325(a)(5) and will not 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.

U.S. Bank, National Association's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the debtor's plan.

18. [22-20038](#)-A-13 **IN RE: CYNTHIA DURAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
2-14-2022 [\[13\]](#)

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).

The chapter 13 trustee objects to the confirmation of the debtor's plan as follows.

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

FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code which the trustee required to properly prepare for the 341 meeting of creditors. The debtor failed to produce the following documents: pay advices, and the debtor's most recently filed income tax return, or a statement by the debtor indicating that no such document exists.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' 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 will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-14-2022 [[43](#)]

RICHARD JARE/ATTY. FOR DBT.
DEBTOR DISMISSED: 2/18/2022

Final Ruling

The case having been dismissed by Order, ECF No. 47, the matter is dropped as moot.

20. [21-23841](#)-A-13 **IN RE: DENNIS FRAZIER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-14-2022 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

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

21. [21-23841](#)-A-13 **IN RE: DENNIS FRAZIER**
[DPC-2](#)

MOTION TO DISMISS CASE
2-14-2022 [\[41\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This case has been reassigned to Department E. The hearing is continued to May 4, 2022, at 9:00 a.m. in Department E.

22. [21-21742](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
1-3-2022 [\[51\]](#)

JENNIFER LEE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from February 1, 2022

Disposition: Granted

Order: Civil minute order

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, because the debtors failed to file an amended plan after the court denied their motion to confirm amended plan on November 17, 2021. The hearing on this motion to dismiss was continued to coincide with the motion to confirm a further amended plan, (JLL-2). The motion to confirm amended plan has been denied.

TRUSTEE STATUS REPORT

FRCP 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). Here, the Chapter 13 trustee has signaled his abandonment of his motion as follows.

The chapter 13 trustee has filed a status report, ECF Nos. 67 and 68. In the status report the trustee has signaled his desire to abandon his motion to dismiss however, the court will not accede to the trustee's request in this instance.

Unreasonable Delay Prejudicial to Creditors

The court will grant the trustee's motion to dismiss for the following reasons.

The debtors have failed to confirm a plan within a reasonable time. The case has been pending for approximately 10 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtors that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). Moreover, the court has denied the debtors' most recently filed motion to confirm.

The trustee initially opposed the motion to confirm (JLL-2) indicating that the debtors have failed to provide: 6 months of bank statements for 3 different accounts held by the debtors at Bank of America; 5 months of profit and loss statements as the debtors derive income from the operation of a business; and a 2020 Corporate Tax Return. See Trustee's Opposition, ECF No. 64. The trustee objected to the plan under 11 U.S.C. § 1325(b) stating that he believed the calculation of disposable monthly income might be in error, and also because the debtors failed to correct Schedules D and H by amendment. The failure to provide the requested documents to the trustee is a separate basis for dismissing the case under 11 U.S.C. 521(a)(3), (4).

The trustee has been requesting the same information for some time. The court notes that the trustee filed his objection to confirmation of the debtors' initial plan on June 21, 2021, ECF No. 15. The trustee stated as a basis for his objection that the debtors had failed to provide requested documents including 6 months of bank statements and 6 months of profit and loss statements, *id.*, 2:15-16. The trustee also objected at the same time that the debtors had failed to amend Schedule D to provide for an admitted secured obligation to the Internal Revenue Service, *id.*, 3:3-14. The debtors have had nearly nine months to provide the requested

information to the trustee and to correct the record. Debtors have provided no explanation for their failure to address these issues during the past 9 months.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to confirm a plan within a reasonable time; failed to provide requested information to the trustee; and have failed to correct their bankruptcy schedules D and H. This constitutes cause to dismiss this case under 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

23. [21-21742](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[JLL-2](#)

MOTION TO CONFIRM PLAN
1-18-2022 [\[55\]](#)

JENNIFER LEE/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).

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend incorrect documents does not evidence that the plan is proposed in good faith.

The trustee has identified the following discrepancies and/or errors which have not yet been corrected: amend Schedule D to list the Internal Revenue Service secured claim, in the amount of \$18,582.16; amend Schedule H to list Renae Magana as a co-debtor to the claim of Ally Financial.

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 Financial/Business Documents

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the

following documents: six (6) months of Bank of America statements for all accounts listed in Schedule A/B; five (5) months of Profit and Loss statements; 2020 Corporate Tax returns.

The trustee acknowledges receipt of bank statements for one account at Bank of America but notes that the debtors currently have 4 accounts at that financial institution and have not yet provided statements for the remaining three accounts.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' 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).

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed at the inception of the case on May 11, 2021, over 10 months ago, ECF No. 1. Without current income and expense information 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).

11 U.S.C. § 1325(b)

The Plan proposes to pay 0% to unsecured creditors and the debtors are over the median income. See Plan, ECF No. 57. The trustee disputes the calculation of monthly disposable income contending that the debtors have claimed excessive payments for taxes at Line 16 of Form 122C-2, ECF No. 1. The debtors claim that they must pay \$1,896.66 each month but the trustee has reviewed the debtors' 2019 and 2020 tax returns which show the debtors received significant refunds as follows: 2019 - \$12,441.00 and 2020 - \$8,000.00. It is the debtors' burden to show how they have calculated the appropriate amount of taxes claimed in Form 122C-2 and Schedule I. The declaration in support of the motion to confirm does not address this issue. See ECF No. 58.

Debtors' Reply

On March 8, 2022, the debtors filed a timely reply in the form of a status report in response to the trustee's opposition, ECF No. 69. The report consists of an unsworn statement by debtors' counsel. The report states that on March 8, 2022, that debtors' counsel and counsel for the trustee conferred and reached an agreement regarding the issues raised in the trustee's opposition as follows: 1) the debtors will turn over tax refunds in excess of \$2,000.00 to the trustee each year during the pendency of the plan; 2) the debtors have satisfied the trustee's requests for documents; and 3) that the debtors *will* amend Schedules D and H to correct the schedules.

The court notes that the trustee filed his objection to confirmation of the debtors' initial plan on June 21, 2021, ECF No. 15. The trustee stated as a basis for his objection that the debtors needed

to amend Schedule D to provide for an omitted secured obligation to the Internal Revenue Service, and Schedule H to properly list the co-debtor, *id.*, 3:1-23. The debtors have had nearly nine months to provide the requested information to the trustee and to file the amended schedules correcting the record. The debtors have not yet corrected the deficient schedules, nor have they offered any explanation for their failure to do so. A statement at this late date, indicating that the debtors will take future action to remedy a problem identified 9 months ago does not resolve the objection.

The court will deny the motion to confirm.

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.

24. [22-20046](#)-A-13 **IN RE: LARHONDA SAUNDERS**

OBJECTION TO CONFIRMATION OF PLAN BY TRINITY FINANCIAL
SERVICES, LLC
2-17-2022 [[17](#)]

MARK SHMORGON/ATTY. FOR DBT.
S. YOO/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

25. [21-23547](#)-A-13 **IN RE: MISTY JACKSON**
[HDP-3](#)

MOTION TO DISMISS CASE
2-2-2022 [\[24\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
HENRY PALOCI/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Matter: Creditor's Motion to Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Creditor, Second Chance Mortgages Inc. seeks an order dismissing the debtor's bankruptcy case under 11 U.S.C. § 1307(c)(1) as the debtor failed to file an amended plan after the court sustained the creditor's objection to confirmation on December 17, 2021.

The court will deny the motion without prejudice as the proof of service filed with the motion does not indicate that the *debtor* was served with the motion, notice and supporting documents. See Proof of Service, ECF No. 26.

In addition to serving the chapter 13 trustee and debtor's counsel the debtor must be served with a motion to dismiss, Fed. R. Bankr. P. 1017(f), 9013(a), 9014(a).

FRCP 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). Here, the creditor has signaled its abandonment of its motion to dismiss as follows.

On March 8, 2022, the movant filed a withdrawal of its motion to dismiss, ECF No. 40. Both the trustee and the debtor have filed oppositions to the motion. See ECF Nos. 29-30 and 27. There is no stipulation evidencing the debtor's or trustee's acquiescence to withdrawal of the motion to dismiss. As such Fed. R. Civ. P. 41 prevents the creditor from unilaterally withdrawing its motion.

The court will exercise its discretion and deny the motion to dismiss. The basis for the creditor's motion was the lack of prosecution by the debtor in bringing a plan to confirmation. The

debtor has since filed a motion to confirm an amended plan and set it for hearing on April 20, 2022, ECF No. 32.

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:

Second Chance Mortgages, Inc.'s motion to dismiss case has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

26. [21-23647](#)-A-13 **IN RE: ROBERT KOEHLER**
[DNL-2](#)

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

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

Final Ruling

Objection: Creditors' Objection to Claim of Exemptions

Notice: Continued from February 15, 2022

Disposition: Overruled as moot

Order: Civil Minute Order

The hearing on the creditors' objection to the debtor's claim of exemptions was continued to allow the debtor an opportunity to amend his schedules.

On February 28, 2022, the debtor filed Amended Schedules A/B, C and D, ECF No. 65.

AMENDED SCHEDULE C RENDERS OBJECTION MOOT

Rule 1009(a) allows a debtor to amend schedules as a matter of course at any time, even after a case has been reopened. See *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 393 (B.A.P. 9th Cir. 2003). This includes the right to amend the list of property claimed as exempt. *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998).

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1).

The court will overrule the objection to the debtor's claim of exemptions as moot.

CIVIL MINUTE ORDER

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

Drew Prinz and Elizabeth Prinz' objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

27. [20-21151](#)-A-13 **IN RE: DAVID/CHRISTINA WONG**
[DPC-1](#)

MOTION TO DISMISS CASE
2-14-2022 [\[23\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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 confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$200.00 with another payment of \$100.00 due February 25, 2022.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtors, ECF No. 28. The debtors' declaration states that the debtors have brought the plan payments current as follows: plan payments have been brought current via TFS. See *Id.*, 2:1-2.

FRCP 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). Here, the Chapter 13 trustee has signaled his abandonment of his motion.

On March 9, 2022, the trustee supplemented the record and advised the court that plan payments have been brought current, ECF No. 30. The trustee further requests his motion be dismissed.

The court will simply 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 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.

28. [19-27056](#)-A-13 **IN RE: BONITA MELENDEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
2-15-2022 [\[66\]](#)

RICK MORIN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under §

1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$17,237.70 with a further payment of \$2,506.95.00 due February 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

29. [19-22357](#)-A-13 **IN RE: DARASY/JOHNSY ESIO**
[PSB-2](#)

MOTION TO MODIFY PLAN
2-3-2022 [\[48\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that payments are delinquent pursuant to the modified plan in the amount of \$309.99. The motion cannot be granted if the plan payments are not current.

Post-Petition Mortgage Arrears

The trustee opposes the motion indicating that post-petition arrears to Class 1 creditor Specialized Loan Servicing are owed in the amount of \$3,948.75 for the month of October 2021. While the modified plan attempts to cure this default and provide for payment to the creditor the trustee requires that the date of the missed payment be identified.

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.

30. [18-26260](#)-A-13 **IN RE: JESSICA TODD**
[DPC-2](#)

MOTION TO DISMISS CASE
2-15-2022 [\[40\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: March 1, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$2,560.02 with another payment of \$860.00 due February 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 44-45. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 45, 1:21-25.

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.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

31. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-15-2022 [\[27\]](#)

MARK SHMORGON/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.
WHEELS FINANCIAL GROUP, LLC VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2006 Toyota Tacoma

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).

Creditor, Wheels Financial Group, LLC, seeks an order for relief from the automatic stay under 11 U.S.C. § 362(d)(1).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as there is no proof of insurance, and the loan is fully matured with a balance due of \$19,856.69. The vehicle is not listed in the debtor's property schedules, ECF No. 10. No payments have ever been made on this loan to the creditor. See Declaration, ECF No. 30. This is cause to grant the relief requested under 11 U.S.C. 362(d)(1).

Alternatively, because the plan which has not been confirmed does not provide for the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well. See Chapter 13 Plan, ECF No. 11.

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.

Wheels Financial Group, LLC'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 2006 Toyota Tacoma, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

32. [18-23364](#)-A-13 **IN RE: BARRY RAASS**
[DPC-4](#)

MOTION TO DISMISS CASE
2-15-2022 [\[93\]](#)

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

Final Ruling

Motion: Dismiss Case

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

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 confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$5,175.42.00 with another payment of \$5,175.42 due February 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 98. The debtor's declaration states that the debtor has brought the plan payments current as follows: Plan payment of \$5,175.42 sent via TFS and received February 23, 2022; and a second payment overnighted on February 24, 2022, in the amount of \$5,175.42. *Id.*, 1:26-27, 2:1-2.

FRCP 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). Here, the Chapter 13 trustee has signaled his abandonment of his motion as follows.

On March 7, 2022, the trustee supplemented the record and advised the court that plan payments have been brought current, ECF No. 100. The trustee further requests his motion be dismissed.

The court will exercise its discretion and simply 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 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.

33. [20-21066](#)-A-13 **IN RE: VERONICA LARA**
[DPC-1](#)

MOTION TO DISMISS CASE
2-15-2022 [\[66\]](#)

MARK HANNON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion will be denied without prejudice as the debtor's attorney, Mark O'Toole, was not served at the proper address.

The court docket shows that the correct address for the attorney of record is: 1006 H Street, STE 1, Modesto, California, 95354.

The proof of service filed in this matter shows that the attorney was served as follows: Latino Law Inc., 1114 W. Fremont Street, Stockton, California 95203. See ECF No. 69.

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. Given the procedural defects noted in the ruling,

IT IS ORDERED that the motion is denied without prejudice.

34. [18-26867](#)-A-13 **IN RE: BAYARDO/LUCILLA VILCHEZ**
[DPC-1](#)

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

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

Final Ruling

Motion: Dismiss Case

Notice: Continued from January 19, 2022

Disposition: Granted

Order: Civil minute order

The hearing on this motion was continued to coincide with the hearing on the debtors' motion to modify plan. The motion to modify (EJS-1) has been denied.

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the plan is overextended. The currently confirmed plan term is 36 months, and the trustee calculates that the plan will take 49 months to complete. See ECF No. 46. Therefore, the trustee sought dismissal as provided under Section 6.04 of the plan.

The debtors filed an opposition to the motion to dismiss, stating their intention to modify the plan to extend the plan term, ECF No. 50. The debtors have filed no other evidence in opposition to the motion to dismiss.

As the court has previously noted the motion to modify has been denied. Accordingly, the court will dismiss the case.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

35. [18-26867](#)-A-13 **IN RE: BAYARDO/LUCILLA VILCHEZ**
[EJS-1](#)

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

ERIC SCHWAB/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 to allow the parties to augment the record. The debtors have failed to file any additional documents as ordered in support of their motion to modify the plan.

The trustee has filed a timely, amended opposition, ECF Nos. 72-73.

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

The trustee contends that the plan is not proposed in good faith as the debtors' amended Schedule J, ECF No. includes a \$300.00 per month automobile payment which was not present in previously filed schedules. The trustee notes that the debtors have likely not complied with LBR 3015-1(b)(2) which requires that debtors obtain Court authorization prior to obtaining new credit in excess of \$1,000.00 during the pendency of the chapter 13 case.

The trustee also objects to property taxes which appear to be duplicate expenses on Schedule J given that the taxes have previously been paid through escrow. He also argues that the expenses for food for the household are unreasonable.

Given the failure of the debtors to augment the record and refute the arguments raised by the trustee, the court will deny the motion to modify the plan.

CIVIL MINUTE ORDER

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

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

The 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.

36. [21-23769](#)-A-13 **IN RE: ELIZABETH CHAN-MAYETTE**
[MET-1](#)

MOTION TO CONFIRM PLAN
1-24-2022 [\[36\]](#)

MARY TERRANELLA/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: Civil minute order

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 motion requests confirmation of the Chapter 13 plan in this chapter 13 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 has filed a statement of non-opposition to confirmation, ECF No. 100.

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).

AMENDED SCHEDULES I AND J

Rule 1008

The debtor filed Supplemental Schedules I and J in support of the motion to confirm, ECF Nos. 40 and 41.

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

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

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

EDC 002-015.

LBR 9004-1(c)

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

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

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court.

However, in this matter the debtor has filed a declaration under penalty of perjury in support of the motion which states:

My projected disposable income, as listed on Current Schedules I and J filed with this motion has been devoted to my plan. I am familiar with both the sources and amounts of income as stated, as well as the categories and amounts of the monthly expenses.

Declaration, ECF No. 38, 3:21-24.

The supplemental budget schedules as referenced in the declaration will satisfy the evidentiary requirement for the supplemental schedules in this matter.

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

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

37. [21-22570](#)-A-13 **IN RE: NENITA ANTONIO**
[TJW-2](#)

MOTION TO CONFIRM PLAN
1-13-2022 [\[46\]](#)

TIMOTHY WALSH/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).

MATHEMATICAL FEASIBILITY

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 trustee objects to confirmation of the debtor's plan under 11 U.S.C. §§ 1325(a)(1), 1322(a)(1), as the plan contains conflicting provisions related to the payment of the Class 1 claim of Specialized Loan Servicing. The proposed plan calls for payments to be made through the trustee on this claim for the entirety of the 60-month plan. Conversely, the declaration in support of confirmation states that the debtor has made payments directly to the creditor from the filing of the case through January 2021. See Declaration, ECF No. 49, 2:1-3. Moreover, the plan payments do not increase in an amount sufficient to pay the Class 1 claim until February 2022.

The trustee had sufficient accumulated monies from prior plan payments to tender one payment to the Class 1 creditor and thus made one payment in January 2022 as required by the proposed amended plan. There is a significant inconsistency between the proposed plan and the evidence in support of confirmation such that the payments to the Class 1 creditor are duplicated through January 2022.

As the payments from the filing of the case through January 2022 are not possible given the plan payment of only \$740.00 through January

2022, the plan as proposed is not mathematically feasible under 11 U.S.C. § 1322(a)(1).

The court will deny the motion to confirm.

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.

38. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[SS-8](#)

MOTION TO MODIFY PLAN
2-2-2022 [\[131\]](#)

SCOTT SHUMAKER/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

Opposition Due: March 1, 2022

Opposition Filed: March 1, 2022

Reply Due: March 8, 2022

Reply Filed: March 9, 2022 - Amended Schedules I and J

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 objects to the modified plan because: 1) it relies on the granting of a motion to approve the debtor's mortgage modification; 2) because the supporting Schedules I and J are filed as exhibits only; and 3) because the motion fails to state a legal basis for relief.

LOAN MODIFICATION

The motion allowing the mortgage modification (SS-9) has been granted. Thus, the grounds for this opposition are moot.

SUPPORTING SCHEDULES I AND J

The trustee opposes the motion to confirm stating that: because Fed. R. Bankr. P. 1009(a) requires notice of the amended schedules to the trustee and any entity affected; that the debtor has filed the schedules only as an exhibit and not separately using the Amendment Cover Sheet EDC 2-015; and therefore, the debtor may not have given sufficient notice.

The court agrees with the trustee and further finds that the amended schedules do not comply with the requirements of Fed. R. Bankr. P. 1008.

Rule 1008

On February 2, 2022, the debtor filed supplemental Schedules I and J in support of the motion and plan, ECF No. 135.

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

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

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

EDC 002-015.

LBR 9004-1(c)

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

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

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

The declaration in support of the motion makes no reference to the supplemental schedules and thus will not otherwise satisfy the evidentiary requirements for authenticating the supplemental schedules in this matter, ECF No. 134.

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

NO LEGAL AUTHORITY CITED FOR RELIEF REQUESTED

"A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013.

A) *Motion or Other Request for Relief.* The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. *Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.*

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

Debtors' Motion to Modify

The debtor's motion contains numerous factual allegations in support of the modified plan, ECF No. 131. However, the motion fails to reference the legal grounds which authorize *modification* of a chapter 13 plan after confirmation. The court believes that 11 U.S.C. §§ 1329, and 1325 are intended but will not make this presumption. The debtor is required to support his motion by citing the appropriate legal basis for relief.

LATE FILED SUPPORTING DOCUMENTS

Reply. The moving party may, at least seven (7) days prior to the date of the hearing, serve and file with the Court a written reply to any written opposition filed by a responding party.

. . .

Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply.

LBR 9014-1(f)(1)(C).

On March 9, 2022, the debtor filed Amended Schedules I and J, ECF No. 148. These documents were filed after the deadline for reply and the evidentiary record closed on March 8, 2022. The court notes that the debtor did not request an enlargement of time to reply to the trustee's opposition under Fed. R. Bankr. P. 9006(b). The amended documents will not be considered.

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.

39. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[SS-9](#)

MOTION TO APPROVE LOAN MODIFICATION
2-2-2022 [\[137\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Final Ruling

Motion: Approval of Mortgage Loan Modification

Notice: LBR 9014-1(f)(1); 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). 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 requests approval of a proposed loan modification. The chapter 13 trustee has filed a statement of non-opposition to the motion, ECF No. 146.

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 stay 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 § 362(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.

40. [21-23472](#)-A-13 **IN RE: BARRY/GINA ROTHMAN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P
CUSICK
11-10-2021 [\[24\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from February 1, 2022

Disposition: Overruled

Order: Civil minute order

The hearing on the chapter 13 trustee's objection to confirmation of plan was continued from February 1, 2022, to allow the debtors to further negotiate the filing of an amended claim or otherwise resolve the plan deficiencies caused by the Internal Revenue Service claim.

The trustee has filed a status report, ECF No. 58. In his report the trustee indicates that the amended claim filed by the Internal Revenue Service resolves his concerns regarding the overextension of the proposed plan. The trustee recommends confirmation of the plan and requests that his objection be overruled.

The court will overrule the objection and confirm the plan.

CIVIL MINUTE ORDER

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

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

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

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

41. [16-20573](#)-A-13 **IN RE: FELICIANO RIOS**
[DPC-2](#)

MOTION TO DISMISS CASE
2-9-2022 [\[126\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: - Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for 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 \$2,370.00 with a further payment of \$1,185.00 due February 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

42. [21-23274](#)-A-13 **IN RE: JASON/SARAH SMITH**
[DPC-2](#)

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

ARETE KOSTOPOULOS/ATTY. FOR DBT.

No Ruling

43. [21-23274](#)-A-13 **IN RE: JASON/SARAH SMITH**
[KLG-1](#)

MOTION TO CONFIRM PLAN
2-8-2022 [\[37\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: February 16, 2022

Reply Due: March 8, 2022

Reply Filed: March 9, 2022

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).

The trustee objects to confirmation of the plan under 11 U.S.C. 1325(a)(6). The trustee contends the debtors have failed to provide sufficient factual evidence in support of the motion to confirm. Without providing sufficient evidence in support of their plan the debtors have failed to meet the burden of proof regarding the statutory requirements of confirmation.

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).

Insufficient Evidence

The trustee objects because the declaration in support of the motion to confirm fails to provide sufficient information 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 debtors' budget as evidenced in the amended Schedule J, ECF No. 41. The amended schedule was filed on February 8, 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: A) reduces food and housekeeping supplies by \$474.00. B) reduces transportation by \$30.00. C) reduces personal care, haircuts, and child activities each by \$150.00. D) fully removes school expenses by \$160.00 and school/work lunches by \$250.00. In total the trustee contends that \$1,364.00 in expenses have either been removed or reduced without explanation.

The court shares the trustee's concerns. The changes made to the debtors' budget are significant and call into question the ability of the debtors to perform the plan with such dramatic reductions to expenses. Additionally, the changes call into question the necessity of the expenses proposed in previously filed schedules.

The declaration in support of the motion to confirm makes no reference whatsoever to the amended schedules. The declaration should consist of factual statements which support the debtors' 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 mistaken or omitted expenses in the previously filed schedules and explain how the mistake/omission occurred; explain how the debtors will adjust their behavior to account for any newly reduced and/or omitted expenses for the duration of the plan.

The court need not reach the trustee's additional objection regarding the conflicting testimony about the debtors' intention to sell their home.

DEBTORS' LATE FILED REPLY

Reply. The moving party may, at least seven (7) days prior to the date of the hearing, serve and file with the Court a written reply to any written opposition filed by a responding party.

. . .

Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply.

LBR 9014-1(f)(1)(C).

On March 9, 2022, the debtors filed a reply to the opposition filed by the trustee, ECF No. 49. The reply is untimely under LBR 9014-1(f)(1)(C) as it was due not later than March 8, 2022, and the evidentiary record is closed. The court notes that the debtors did not file a request for enlargement of time to reply under Fed. R. Bankr. P. 9006(b) and also notes that the trustee's opposition was filed on February 16, 2022, which allowed sufficient time for a timely filed reply. The reply will not be considered.

The court will deny the motion to confirm.

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.

44. [21-23676](#)-A-13 **IN RE: GRACEMARIE MAC DULA-DALISAY**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-7-2022 [\[17\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
TOYOTA MOTOR CREDIT CORPORATION VS.; RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Plan Confirmed: December 17, 2021

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its

collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

CIVIL MINUTE ORDER

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

Toyota Motor Credit Corporation's Motion for Relief from Automatic Stay has been presented to the court. The confirmed plan provides for the movant's claim in Class 4 as discussed by the court in its ruling,

IT IS ORDERED that the motion is denied as moot.

45. [19-20882](#)-A-13 **IN RE: HENRY RODRIGUEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
2-15-2022 [[118](#)]

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: - Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,060.00 with a further payment of \$530.00 due February 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

46. [20-23982](#)-A-13 **IN RE: SHIRLEY KEHN**
[DPC-1](#)

MOTION TO DISMISS CASE
2-15-2022 [\[47\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Trustee's Motion to Dismiss or Convert Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: February 28, 2022 - timely

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

Best Interests of Creditors/Estate: - Dismiss

Chapter 13 trustee David P. Cusick seeks dismissal or conversion of the debtor(s)' confirmed chapter 13 case for cause under 11 U.S.C. § 1307(c)(1), (6) as follows.

PLAN DELINQUENCY

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$380.00 with another payment of \$190.00 due on February 25, 2022.

Opposition

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's opposition states that the "[d]ebtor is meeting with Counsel to discuss options and will be current under the confirmed plan, or propose a new plan, on or before the hearing in this matter." See ECF No. 51, 1:20-22. In effect, the opposition admits the current delinquent status of the plan.

The opposition is deficient. First, the opposition consists solely 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). There is no declaration in support of the opposition on the court's docket.

Second, the opposition states the debtor will alternatively be current or file an amended plan before the hearing. An amended plan has not been filed during the opposition period which closed March 1, 2022. Thus, the opposition does not cure the delinquency alleged by the trustee.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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, and the case is dismissed.

47. [21-22083](#)-A-13 **IN RE: BRYAN/BERBEL CONNEELY**
[DPC-1](#)

MOTION TO DISMISS CASE
2-15-2022 [\[23\]](#)

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency;
Plan Section 6.04 - Overextension

Best Interests of Creditors/Estate: - Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$8,342.86 with a further payment of \$2,795.46 due February 25, 2022.

PLAN OVEREXTENDED

The trustee contends: that the plan is overextended and will take 45 months to complete, noting that this violates Section 6.04 of the confirmed plan. The term of the confirmed plan is currently 30 months.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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, and the overextension of the plan term in this case. The court hereby dismisses this case.

48. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[BLG-3](#)

MOTION TO MODIFY PLAN
2-3-2022 [\[106\]](#)

CHAD JOHNSON/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: Third Modified Chapter 13 Plan, filed February 3, 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).

OPPOSITION

The trustee opposes the modified plan contending that it is not feasible as the payments under the proposed plan are delinquent in the amount of \$4,630.00. See ECF No. 115. The plan calls for payments of \$2,315.00 per month commencing January 25, 2022. Therefore, both the January and February payments have come due.

REPLY

The debtor has filed a reply, ECF No. 118, claiming the payments have been made and are current under the terms of the proposed plan. The reply is a statement by the debtor's attorney and is not accompanied by any admissible evidence.

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.

49. [21-24284](#)-A-13 **IN RE: RICHARD/CYNTHIA SPICKLER**
[BLG-1](#)

MOTION TO CONFIRM PLAN
2-1-2022 [\[16\]](#)

CHAD JOHNSON/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: First Amended Chapter 13 Plan, filed February 1, 2022

DEFAULT OF RESPONDENT

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

The debtors seek an order confirming the First Amended Chapter 13 Plan, ECF No. 21. The debtors filed Schedules I and J evidencing the feasibility of the plan on January 11, 2022, ECF No. 12. The chapter 13 trustee has filed a non-opposition to the proposed plan, ECF No. 26.

CHAPTER 13 PLAN CONFIRMATION

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

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

50. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[DPC-4](#)

MOTION TO DISMISS CASE
2-15-2022 [[90](#)]

SCOTT JOHNSON/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

Opposition Due: March 1, 2022

Opposition Filed: March 1, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$900.00 with another payment of \$350.00 due February 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 95. The debtor's declaration states that the debtor has paid \$350.00 via MoneyGram on February 28, 2022, *id.*, 1:24-25.

The debtor also states that \$900.00 will be paid via MoneyGram prior to the hearing on this motion, on March 10, 2022, *id.*, 1:25-27. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$900.00.

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.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

51. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[DPC-2](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-27-2021 [\[50\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

52. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[WSS-2](#)

PRE-TRIAL CONFERENCE RE: AMENDED OBJECTION TO DEBTOR'S CLAIM
OF EXEMPTIONS
9-22-2021 [\[48\]](#)

PETER MACALUSO/ATTY. FOR DBT.
W. SHUMWAY/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

53. [19-24187](#)-A-13 **IN RE: JOSEPH/MARYLOU LUTISAN**
[DPC-1](#)

MOTION TO DISMISS CASE
2-15-2022 [\[72\]](#)

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

Final Ruling

Motion: Dismiss Case
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Opposition Due: March 1, 2022
Opposition Filed: Unopposed
Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency
Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,732.00 with a further payment of \$866.00 due February 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

54. [21-24193](#)-A-13 **IN RE: KATHLEEN WIDICK**
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

55. [21-24193](#)-A-13 **IN RE: KATHLEEN WIDICK**
[GC-1](#)

MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION
1-19-2022 [\[13\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Lincoln MKC

Secured Value: \$13,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Lincoln MKC. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$13,000.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2015 Lincoln MKC has a value of \$13,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$13,000.00 equal to the value of the collateral that is unencumbered by senior liens.

The respondent has a general unsecured claim for the balance of the claim.

56. [20-21695](#)-A-13 **IN RE: DEANNA MENDES**
[DPC-2](#)

MOTION TO DISMISS CASE
2-15-2022 [\[39\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 1, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$866.00 with a further payment of \$433.00 due February 25, 2022.

As a courtesy to the court the debtor filed a statement of non-opposition, indicating that the debtor has no basis to oppose the motion and consents to dismissal of the case. See ECF No. 43, 1:16-18.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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