

**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 16, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

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

MOTION TO VACATE DISMISSAL OF CASE
2-11-2021 [\[64\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
DEBTOR DISMISSED: 01/20/2021

No Ruling

2. [19-27001](#)-A-13 **IN RE: ANTHONY/MARILYN KING**
[MRL-1](#)

MOTION TO INCUR DEBT
2-28-2021 [\[22\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

3. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[GMR-1](#)

MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7
TRUSTEE
1-30-2021 [\[25\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Compensation and Expenses

Disposition: Disapproved without prejudice

Order: Civil minute order

All creditors and parties in interest have not received sufficient notice. The hearing on an application for approval of compensation or reimbursement of expenses, when the application requests approval of an amount exceeding \$1000, must be noticed to all creditors and parties in interest in the debtor's bankruptcy case as required by Federal Rule of Bankruptcy Procedure 2002(a)(3). Here the movant has only served the U.S. Trustee, William H White and Janell Ealy White, Timothy J. Walsh, Russell D. Greer, and Synchrony Bank, ECF No. 29. None of the other creditors or parties in interest have been served.

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

mailing list should indicate a date near in time to the date of service of the notice.

4. [20-25403](#)-A-13 **IN RE: LARRY/LISA MCLAIN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
1-21-2021 [[19](#)]

GARY FRALEY/ATTY. FOR DBT.

No Ruling

5. [20-25403](#)-A-13 **IN RE: LARRY/LISA MCLAIN**
[FF-1](#)

OBJECTION TO CLAIM OF CHRYSLER CAPITAL, CLAIM NUMBER 1
1-28-2021 [[23](#)]

GARY FRALEY/ATTY. FOR DBT.

No Ruling

6. [20-25104](#)-A-13 **IN RE: MARTIN/LINDA GLASENAPP**
[SS-2](#)

CONTINUED MOTION TO CONFIRM PLAN
1-12-2021 [[35](#)]

SCOTT SHUMAKER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

7. [20-25104](#)-A-13 **IN RE: MARTIN/LINDA GLASENAPP**
[VC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2021 [\[57\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
MICHAEL VANLOCHEM/ATTY. FOR MV.
REGIONAL ACCEPTANCE CORPORATION VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Dodge Journey

Liens: \$17,539.00

Value: \$6,000.00 (Schedule A, ECF No. 1)

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

RELIEF FROM STAY

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 3 postpetition payments are past due. The total postpetition delinquency is approximately \$1,588.50.

Alternatively, the court concludes that such property is not necessary to the debtor's financial reorganization. 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.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Dodge Journey, 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.

8. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[DPC-2](#)

MOTION TO DISMISS CASE
2-3-2021 [\[66\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [19-22509](#)-A-13 **IN RE: ULISES MEZA**
[PGM-1](#)

MOTION TO MODIFY PLAN
2-3-2021 [\[52\]](#)

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 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).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms. Also, courts have historically found balloon payments or otherwise that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they are contingent on a speculative event to take place during the life of the plan, See *In Re Gavia* 24 BR 573,574 (9th Cir. BAP 1982).

The last Schedules I/J filed by the debtor, ECF No. 1, states a monthly net income of \$1,600.00. The proposed plan payments are \$1,600.00 per month, ECF No. 54. The plan also calls for the following additional payments: \$5000.00 from "Corporation sale of real property," 4 payments of \$16,400.00 on September 25 of each year from 2021 to 2024 from "sale of real property," and \$14,000.00 on Sept 25, 2025 from "sale of real property," *Id.* The six lump sum payments stated in the plan are contingent on speculative events to take place during the life of the plan. The court will deny modification of the plan, as the debtor has not demonstrated ability to pay according to 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 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.

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

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

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

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

CASE DISMISSAL

The trustee moved to dismiss this chapter 13 case under § 1307(c)(1), stating that the debtor failed to confirm a plan within a reasonable time. The debtor subsequently filed an amended plan. The trustee filed a non-opposition to confirmation of the plan, ECF No. 83, and the court granted the motion to confirm.

Since the debtor's failure to confirm a plan was the sole basis of this motion to dismiss and since the court granted the debtor's motion to confirm, the court will deny the trustee's motion to dismiss.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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 denied. The court hereby dismisses this case.

11. [20-23811](#)-A-13 **IN RE: DENISE BATTS**
[PGM-3](#)

MOTION TO CONFIRM PLAN
2-4-2021 [\[75\]](#)

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); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, February 4, 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).

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.

12. [20-22712](#)-A-13 **IN RE: BRYAN JONES**
[DPC-2](#)

MOTION TO DISMISS CASE
2-3-2021 [\[27\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

13. [20-25612](#)-A-13 **IN RE: CHESTER KATZ**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
1-27-2021 [\[13\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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: Overruled

Order: Civil minute order

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

The trustee objected to confirmation. The trustee stated that the debtor did not show ability to pay under the plan under 11 U.S.C. § 1325(a)(6). The trustee also stated that under the plan, unsecured creditors wouldn't receive the amount they would under a Chapter 7, § 1325(a)(4).

The trustee subsequently filed a status report, ECF No. 30, stating that the trustee is now satisfied as to feasibility of the plan under § 1325(a)(6), and as to the debtor's proposed resolution of the § 1325(a)(4) issue, ECF No. 21. The trustee stated he is amenable to the court overruling his objection.

For the foregoing reasons, the court will overrule the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

The 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.

14. [20-25612](#)-A-13 **IN RE: CHESTER KATZ**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-9-2021 [\[17\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

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

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

C.C.P. § 704.225

The debtor has claimed an exemption in a Tri Counties Bank checking account (account ending 0965) of \$15,822.00 under C.C.P. §704.225, ECF No. 1. Under C.C.P. § 704.225, "Money in a judgment debtor's deposit account that is not otherwise exempt under this chapter is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

The debtor's Schedule C states, "This money consist mostly of funds returned[sic] from earier[sic] bankruptcy, and is being reserved to handle unanticipated shortcoming in monthly income, or Covid related financial situations," *Id.* However, no declaration has been filed yet explaining a possible variance of monthly income or anticipated COVID-related financial situations. The debtor's Schedule I does not identify this account as needed income. The debtor has not shown the extent these funds are necessary for the support of the debtor, his spouse or his dependents under C.C.P. § 704.225. For the foregoing reasons, the trustee's objection is 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.

The trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection,

oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained.

15. [17-24834](#)-A-13 **IN RE: PATRICIA LEMKE**
[PGM-4](#)

MOTION TO MODIFY PLAN
2-1-2021 [\[113\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR DISCHARGED: 11/20/2017; RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted with changes in the order confirming

Order: Prepared by movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, February 1, 2021

CHAPTER 13 PLAN MODIFICATION

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

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

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification. The court will also modify the order confirming the plan so that it reads, "Section 7 of the plan shall read \$64,600.00 through December 2020 (not December 2021 as stated) and plan payments of \$1,050.00 shall be for 54 months (not 53 as stated)."

16. [18-20337](#)-A-13 **IN RE: CAROL SMITH**
[BHS-1](#)

MOTION TO MODIFY PLAN
1-28-2021 [\[57\]](#)

BARRY SPITZER/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 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).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible and that the debtor is able to comply with its terms. Here the plan calls for payments of \$5,360.00 on February 2021, \$5,358.00 for March 2021, and \$2,678.04 for the remainder of the plan. The debtor did not file supplemental Schedules I and J. The declaration filed by the debtor does not explain how the debtor would be able to make a payment of \$5,360.00 in February 2021 and \$5,358.00 in March 2021.

In addition, the debtor’s most recent Schedules I and J, ECF No. 1, reflect the debtor’s the ability to pay \$2,600.00 monthly. However, those schedules were filed on January 22, 2018; the court finds that these schedules do not provide sufficient evidentiary value of the debtor’s *current* financial situation (emphasis added). The debtor has not shown that the plan is feasible or her ability to pay under the plan. The court will deny modification under § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

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

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

17. [21-20037](#)-A-13 **IN RE: ANDREW HUNLEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-18-2021 [\[26\]](#)

TIMOTHY WALSH/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.

11 U.S.C. § 521(a)

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor's schedule I indicates the debtor's non-filing spouse has a business income of \$5,725.72, but no business income/expense statement has been attached, Schedule I, Line 8a., ECF No. 1. The court will sustain the trustee's objection under § 521(a).

11 U.S.C. § 1322(d)

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). The plan calls for \$5,053.00 per month for 60 months with 100% to unsecured creditors, ECF No. 4. The trustee calculates that the plan will complete in 63 months. In addition, Schedule J, ECF No. 1, shows the debtor has a net income is \$9,332.72. This indicates the debtor has additional income to pay toward the plan so that it funds within 60 months. Since the plan as

set forth is overextended under § 1322(d), the court will sustain the objection under § 1322(d).

CIVIL MINUTE ORDER

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

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

The 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.

18. [20-23441](#)-A-13 **IN RE: JEFFREY MAYHEW**
[DPC-2](#)

MOTION TO DISMISS CASE
2-3-2021 [\[71\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$14,000.00.

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

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

19. [20-24643](#)-A-13 **IN RE: JAMES RHOADES**
[MB-1](#)

CONTINUED MOTION TO CONFIRM PLAN
1-4-2021 [\[32\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1)

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, January 4, 2021

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.

20. [20-24643](#)-A-13 **IN RE: JAMES RHOADES**
[MB-2](#)

OBJECTION TO CLAIM OF ETHAN CONRAD, CLAIM NUMBER 3
2-9-2021 [\[40\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Objection to Allowance of Claim

Notice: LBR 3007-1(b)(1); trustee's non-opposition filed

Disposition: Sustained

Order: Civil Minute Order

The debtor's objection is brought on grounds that the claim of the responding party was filed after the deadline for filing claims. The claimant opposes the sustaining of the objection. The court takes judicial notice of the claims register, and the filing date imprinted on the claim itself confirms that the claim was filed after the claims bar date. Fed. R. Evid. 201(b)(2), (c).

LATE-FILED CLAIMS IN CHAPTER 13 AND 12 CASES

Ordinarily in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

The deadline for non-governmental creditors to file claims in this case was December 14, 2020. Here, the non-governmental respondent's proof of claim No. 3-1 was filed on January 21, 2021. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So the claim will be disallowed.

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 objection to claim of exemptions 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 objection

IT IS ORDERED that the objection is sustained.

21. [20-21544](#)-A-13 **IN RE: MARCUS WOODFORK AND SHERI TOMKINS**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[29\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

22. [19-26149](#)-A-13 **IN RE: SALLY DAVIDSON**
[DPC-3](#)

MOTION TO DISMISS CASE
2-3-2021 [\[52\]](#)

JEFFREY MEISNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

23. [20-24851](#)-A-13 **IN RE: MARGO SWIFT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-22-2021 [\[38\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

24. [20-23552](#)-A-13 **IN RE: REGINALD/RAMONA BURTON**
[DPC-6](#)

CONTINUED MOTION FOR EXAMINATION
12-23-2020 [\[51\]](#)

THOMAS MOORE/ATTY. FOR DBT.
DEBTORS DISMISSED: 11/27/2020; RESPONSIVE PLEADING

Final Ruling

The court is satisfied that counsel has disgorged fees as previously ordered and the hearing is concluded. A civil minute order will issue.

25. [21-20052](#)-A-13 **IN RE: CONSUELO MORRISON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
2-17-2021 [\[21\]](#)

MICHAEL HAYS/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.

11 U.S.C. § 1325(a) (6)

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan be feasible and that the debtor is able to comply with its terms. Also, courts have historically found balloon payments or otherwise that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they are contingent on a speculative event to take place during the life of the plan, *See In Re Gavia* 24 BR 573,574 (9th Cir. BAP 1982).

Incomplete Plan

Here the debtor's plan has no express statement of plan payment or plan length, ECF No. 11. Therefore, the trustee is unable to determine feasibility of the plan.

Schedules I and J

The debtor's Schedules I and J show that the debtor's expenses exceed the debtor's income by \$59.00, ECF No. 12, signaling lack of feasibility.

Proposed short sale of debtor's home

The plan's nonstandard provisions call for a sale of her home to complete the plan by May 15, 2021. The court has not authorized employment of a broker in connection to the sale. The secured creditor who retains a lien on the home did not consent to the sale and objects to any short sale of the property without its consent, ECF No. 25. Therefore, the debtor has not demonstrated ability to pay, as the plan heavily relies on the proposed sale which is a speculative event.

In addition, the plan discloses two Class 1 claims, but does not disclose arrears, ECF No. 11. The debtor has not made clear what sums are to be paid to the trustee from the proposed sale, and has therefore not demonstrated ability to pay under the plan. For the foregoing reasons, the court will sustain the trustee's objection under § 1325(a) (6).

CIVIL MINUTE ORDER

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

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

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

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

26. [21-20052](#)-A-13 **IN RE: CONSUELO MORRISON**
[EMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PROVIDENT FUNDING
ASSOCIATES, L.P.
2-18-2021 [\[25\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
ERIN MCCARTNEY/ATTY. FOR MV.

No Ruling

27. [20-25155](#)-A-13 **IN RE: NADIYAH MCKINNEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-16-2021 [\[20\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
2/17/2021 FINAL INSTALLMENT PAID \$153

Final Ruling

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

28. [19-27456](#)-A-13 **IN RE: TYNITRA LANE**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[41\]](#)

STEELE LANPHIER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to

make all payments due under the confirmed plan. Payments are delinquent in the amount of \$10,373.53.

CIVIL MINUTE ORDER

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

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

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

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

29. [19-21258](#)-A-13 **IN RE: TROY EMRY**
[PSB-4](#)

MOTION TO INCUR DEBT
2-26-2021 [[101](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

30. [20-20259](#)-A-13 **IN RE: RHONDA FELLMAN**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [[18](#)]

MICHAEL BENAVIDES/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$19,480.00.

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

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

31. [19-26161](#)-A-13 **IN RE: CIRILO/RIZEL LARON**
[DPC-2](#)

MOTION TO DISMISS CASE
2-3-2021 [\[94\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

32. [19-26161](#)-A-13 **IN RE: CIRILO/RIZEL LARON**
[PGM-3](#)

MOTION TO MODIFY PLAN
2-3-2021 [\[89\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, February 3, 2021

CHAPTER 13 PLAN MODIFICATION

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

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

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

33. [17-21962](#)-A-13 **IN RE: SUANNE GRANDERSON**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-2021 [\[81\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
THE BANK OF NEW YORK MELLON VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 7620 Pine Valley Drive, Sacramento, CA

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as 19 postpetition payments totaling \$34,463.53 are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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.

The Bank of New York Mellon'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 7620 Pine Valley Drive, Sacramento, CA, 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.

34. [19-26862](#)-A-13 **IN RE: JO-ELLEN TAYLOR-SNOW AND JOHNNY SNOW**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[21\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

35. [19-26764](#)-A-13 **IN RE: JASON SCOTT**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[22\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

36. [19-26165](#)-A-13 **IN RE: KIMBERLY BRADLEY**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[19\]](#)

STEELE LANPHIER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$8,400.00.

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

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

37. [19-27775](#)-A-13 **IN RE: RANKIN LYMAN**
[PGM-1](#)

MOTION TO MODIFY PLAN
2-4-2021 [[34](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

38. [20-24781](#)-A-13 **IN RE: PHILIP/KATHRYN MALAN**
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.

No Ruling

39. [20-21783](#)-A-13 **IN RE: TEMA ROBINSON**
[DPC-3](#)

MOTION TO DISMISS CASE
2-3-2021 [\[79\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$14,090.00.

The debtor's opposition states that the debtor will come current prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$14,090.00.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$14,090.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

40. [20-22384](#)-A-13 **IN RE: DANNIE BROWN AND LINDA RAMIREZ**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[30\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$15,480.00.

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

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

41. [19-23685](#)-A-13 **IN RE: ERIC/SAXON JOHNSON**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2021 [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
NATIONSTAR MORTGAGE LLC VS.; RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 4382 Lombardia Way, El Dorado Hills, CA 95762

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

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as 6 postpetition payments totaling \$11,031.08 are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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.

Nationstar Mortgage 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 4382 Lombardia Way, El Dorado Hills, CA 95762, 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.

42. [19-26686](#)-A-13 **IN RE: TRACEY TURRUBIATE**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

43. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[23\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

44. [19-27689](#)-A-13 **IN RE: KEITH JOHNSON**
[DPC-3](#)

MOTION TO DISMISS CASE
2-3-2021 [\[88\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$10,200.00.

The debtor's opposition states that the debtor will come current prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$10,200.00.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$10,200.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

45. [19-22793](#)-A-13 **IN RE: ROGER/TENILLE JONES**
[PSB-2](#)

MOTION TO INCUR DEBT
2-16-2021 [\[53\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

46. [19-20995](#)-A-13 **IN RE: RUDY GONZALEZ, AND ROBERTA GONZALEZ**
[DPC-2](#)

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

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

Final Ruling

Since the trustee agreed to the court dropping his motion to dismiss if the court grants the debtor's Motion to Modify (Item 47), ECF No. 147, and since the court granted said Motion to Modify, the court will drop this matter from the calendar.

47. [19-20995](#)-A-13 **IN RE: RUDY GONZALEZ, AND ROBERTA GONZALEZ**
[SBT-7](#)

MOTION TO MODIFY PLAN
2-4-2021 [\[138\]](#)

SUSAN TERRADO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Fourth Amended Chapter 13 Plan, February 3, 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).

CHAPTER 13 PLAN MODIFICATION

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

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

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

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

48. [19-23696](#)-A-13 **IN RE: MICHAEL WILTON AND DAWN DUNN**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-21-2020 [\[45\]](#)

RICHARD HALL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

49. [19-23696](#)-A-13 **IN RE: MICHAEL WILTON AND DAWN DUNN**
[RAH-8](#)

MOTION TO MODIFY PLAN
1-22-2021 [\[104\]](#)

RICHARD HALL/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 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).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible and that the debtor is able to comply with its terms.

Delinquency

The debtors failed to make all payments due under the proposed modified plan. Payments are delinquent in the amount of \$2,909.34. The plan provides for \$8,764.84 in Class 2(A) post-petition arrears to creditor Quicken Loans, and \$2,191.21 in Class 1 ongoing payments to the same creditor Quicken Loans, *Id.* Because the debtor is behind in plan payments the arrears come out to be \$10,956.05. The debtors therefore failed to show ability to pay under the plan.

Schedule J

The debtors' supplemental Schedule J, ECF No. 102, includes a car payment for \$420.09. The debtor has not made clear whether this relates to the debtor's 2015 Kia Optima which is paid through the confirmed and proposed plan (Class 2, monthly dividend of \$420.09), ECF No. 106. Also, the debtors' prior and supplemental Schedules J budget a monthly expense of \$0.00 for medical/dental expenses, which appears unreasonably low for a family of four. The debtors did not sufficiently clarify their expenses.

Conflicting commitment periods

Also, the plan has conflicting commitment periods. Section 2.03 proposes payments of \$3,617.00 for 45 months while Section 7.01 indicates the commitment period is 66 months with 4 months suspended (April through July 2020). The debtor has not made clear the applicable commitment period and therefore hasn't shown ability to comply with the plan.

L.B.R. 9004-2(c)(1)

"Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." L.B.R. 9004-2(c)(1). The Declarations of Michael Raymond Wilton, Dawn Elizabeth Dunn and Richard A. Hall, attorney for the debtors, were not filed separately but rather as one continuous document in violation of Local Rule 9004-2(c)(1). For the foregoing reasons, the court will deny the debtor's motion to modify chapter 13 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 modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

50. [19-27599](#)-A-13 **IN RE: ROSA GONZALEZ-MUNOZ**
[DPC-1](#)

MOTION TO DISMISS CASE
2-3-2021 [\[21\]](#)

RONALD HOLLAND/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4,543.66.

CIVIL MINUTE ORDER

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

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

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

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