



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: TUESDAY
DATE: MARCH 21, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. You are required to give the court 24 hours advance notice. Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
3. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

Please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until your matter is called.

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PRE-HEARING DISPOSITION

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. However, 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. [22-22103](#)-A-13 **IN RE: DIANE/ANDREW GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-21-2023 [\[35\]](#)

HARRY ROTH/ATTY. FOR DBT.
3/3/2023 FEE PAID \$25

Final Ruling

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

2. [22-23009](#)-A-13 **IN RE: THOMAS LAWSON**
[CYB-1](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
2-21-2023 [\[34\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

This case was dismissed on March 13, 2023. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

3. [23-20014](#)-A-13 **IN RE: MARK SENORES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-28-2023 [\[47\]](#)

TRACY WOOD/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156

(9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

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 Chapter 13 trustee objects to confirmation of the debtor's plan contending that: 1) the debtor has failed to provide evidence of Social Security information as required under Fed. R. Bankr. P. 4002(b)(1)(B); 2) the plan is not feasible under 11 U.S.C. § 1325(a)(6); 3) bankruptcy documents are incomplete; and 4) the plan contains inconsistent provisions in Sections 3.05 and 3.06 impacting feasibility of the plan.

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 court will sustain the objection without the need for further hearing as follows. The proposed Chapter 13 Plan provides:

Debtor's attorney was paid \$1,500.00 prior to the filing of the case. Subject to prior court approval, additional fees of \$2,500.00 shall be paid through this plan.

Chapter 13 Plan, Section 3.05, ECF No. 27 (emphasis added).

The plan also provides:

In accordance with sections 5.02 and 5.03 below, \$_____ of each monthly plan payment shall be paid on account of: (a) compensation due a former chapter 7 trustee; (b) approved administrative expenses; and (c) approved additional attorney's fees.

Id., Section 3.06.

Section 3.06 of the plan fails to provide a monthly amount payable in administrative fees so that the trustee can disperse monies in payment of the \$2,500.00 compensation owed to the debtor's attorney as provided in Section 3.05 of the plan.

As these two provisions are inconsistent it is impossible to determine if the plan as proposed is feasible under 11 U.S.C. § 1325(a)(6).

To correct this inconsistency the debtor must file an amended plan. Because the court sustains the feasibility objection of the trustee on these grounds it need not at this time reach the other objections raised by the Chapter 13 trustee.

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.

4. [22-23031](#)-A-13 **IN RE: ANDREW COLLIER**
[DPC-1](#)

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

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from February 7, 2023

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued from February 7, 2023, to allow for the debtor to reply to the trustee's objection and for the court to rule on the debtor's motion to value the collateral of the Internal Revenue Service.

The trustee's objections to the plan were made under 11 U.S.C. § 1325(a)(6). On March 6, 2023, the trustee filed a status report, ECF No. 35. In his report the trustee states that the parties have agreed to a minor increase in plan payments of \$96.00 per month to be included in the order confirming the plan. The trustee reports that the debtor is current in plan payments, and that the debtor has agreed to pay any tax returns exceeding \$2,000.00 to the trustee during the pendency of the plan. Finally, on March 7, 2023, the court granted the debtor's motion to value collateral of the Internal Revenue Service (CYB-1).

With these changes the court finds the plan is feasible under 11 U.S.C. § 1325(a)(6). The debtor shall provide an order confirming the plan containing provisions consistent with this ruling to the trustee for his approval.

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 good cause appearing,

IT IS ORDERED that the objection is overruled. A confirmation order consistent with this ruling shall be submitted by the debtor after approval by the Chapter 13 trustee.

5. [23-20035](#)-A-13 **IN RE: MONICA PRATHER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-2-2023 [\[38\]](#)

Final Ruling

This case was dismissed on March 10, 2023. Accordingly, the trustee's objection to confirmation will be removed from the calendar as moot. No appearances are required.

6. [22-22845](#)-A-13 **IN RE: CHRISTOPHER LEE**
[TLA-1](#)

OBJECTION TO CLAIM OF NETCREDIT, CLAIM NUMBER 18
1-31-2023 [\[20\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Objection to Allowance of Claim
Notice: LBR 3007-1(b)(1); written opposition required
Disposition: Sustained
Order: Civil Minute Order

Claims Bar Date: January 10, 2023
Claim Filed: January 19, 2023

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 objection. 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 objects to the claim of creditor NetCredit in the amount of \$6,441.04 (Claim No. 18).

The debtor's objection is brought on grounds that the claim of the responding party was filed after the deadline for filing claims provided in the Notice of Chapter 13 Bankruptcy Case, No. 8 Deadlines, ECF No. 10. 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).

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

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. The claimant has not opposed the objection. None of the grounds for extending time to file a proof of claim under Rule 3002(c) have been argued by the responding party. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. 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 NetCredit (Claim No. 18) 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. The claim of NetCredit, Claim No. 18, is disallowed in its entirety.

7. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-2](#)

MOTION TO EMPLOY ELIEZER COHEN AS ATTORNEY(S)
2-27-2023 [\[73\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: To Employ Counsel

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

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

Order: Civil minute order

The hearing on the debtor's motion to employ will be continued to April 4, 2023, at 9:00 a.m. No party is required to file opposition to the motion.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the debtor's motion to employ counsel is continued to April 4, 2023, at 9:00 a.m.

8. [22-20165](#)-A-13 **IN RE: JENNIFER BARNES AND ANNE SOON**
[MRL-1](#)

MOTION TO MODIFY PLAN
2-8-2023 [\[28\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, filed February 8, 2023

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 approving the modified Chapter 13 Plan filed February 8, 2023, ECF No. 31. The plan is supported by Schedules I and J filed February 8, 2023, ECF No. 32. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 34.

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.

9. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[KMT-4](#)

MOTION TO ABSTAIN
3-6-2023 [[189](#)]

MARK BRIDEN/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.

Final Ruling

Motion: To Abstain

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

Disposition: Continued to May 16, 2023, at 9:00 a.m.

Order: Civil minute order

The hearing on creditor Nicholas Loper's motion requesting that the court abstain from ruling on the debtor's objection to the claim of Nicholas Loper will be continued to May 16, 2023, at 9:00 a.m. Not later than April 18, 2023, the debtors and the Chapter 13 trustee may file opposition, if any, to the motion. The movant may file a

reply, if any, no later than May 2, 2023.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to abstain is continued to May 16, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than April 18, 2023, the debtors and the Chapter 13 trustee may file and serve opposition, if any, to the motion.

IT IS FURTHER ORDERED that not later than May 2, 2023, the movant may file and serve a reply, if any, to the opposition.

10. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-5](#)

OBJECTION TO CLAIM OF NICOLAS LOPER, CLAIM NUMBER 10
1-4-2023 [\[143\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: To Allowance of Claim

Notice: LBR 3007-1(b)(1); written opposition filed by claimant

Disposition: Continued to May 16, 2023, at 9:00 a.m.

Order: Civil minute order

The hearing on the debtors' objection to the claim of creditor Nicholas Loper, Claim No. 10, will be continued to May 16, 2023, at 9:00 a.m. to coincide with the related motion to abstain (KMT-4). Not later than April 18, 2023, the debtors and the Chapter 13 trustee may file and serve a reply to the opposition of the claimant.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to claim of Nicholas Loper is continued to May 16, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than April 18, 2023, the debtors and the Chapter 13 trustee may file and serve a reply, if any, to the opposition filed by the claimant.

11. [23-20178](#)-A-13 **IN RE: TAMMY RAJAH-ALLEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-28-2023 [\[12\]](#)

ERIC GRAVEL/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

Order: Civil minute order

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 has objected to confirmation of the debtor's plan contending that the debtor failed to attend the meeting of creditors and that the debtor is delinquent under the proposed plan. 11 U.S.C. § 1325(a)(6).

The court will continue the hearing on this objection to allow the trustee to conduct the continued meeting of creditors, and for the debtor to file and serve opposition, if any, to the trustee's objection.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection,

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

IT IS FURTHER ORDERED that not later than March 28, 2023, the debtor may file and serve opposition, if any, to the trustee's objection. Should the debtor fail to file opposition the court will rule on the matter without further notice or hearing.

IT IS FURTHER ORDERED that not later than March 28, 2023, the Chapter 13 trustee shall file and serve a status report apprising the court of the status of the plan payments, whether the debtor

appeared at the continued meeting of creditors, and any additional objections he may have to the proposed plan.

12. [22-22985](#)-A-13 **IN RE: BRANDY ORR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-21-2023 [\[20\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
2/22/2023 INSTALLMENT FEE PAID \$78

Final Ruling

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending. No appearances are required.

13. [19-23889](#)-A-13 **IN RE: BRAEDEN/BETHANY BUTLER**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-2023 [\[29\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
PERITUS PORTFOLIO SERVICES II, LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject Property: 2018 Nissan Sentra

Plan Confirmed: August 16, 2019

Peritus Portfolio Services II, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

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:

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

Peritus Portfolio Services II, LLC's motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

14. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[RJ-2](#)

MOTION TO CONFIRM PLAN
1-17-2023 [\[63\]](#)

RICHARD JARE/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).

ORAL ARGUMENT

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

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 the plan payments are delinquent in the amount of \$1,200.00. The plan cannot be confirmed if the plan payments are not current.

Failure To Provide Financial/Business Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). For the following reasons the court will deny the debtor’s motion.

First, the trustee requested that the debtor provide him with documents which the trustee required to properly analyze the proposed plan. The debtor(s) failed to produce the following requested documents: 1) completed Business Questionnaire (with attachments); 2) 2020 individual tax returns; 3) any tax returns filed on behalf of Traci’s Janitorial LLC, or any other business entity, partnership and/or corporation; and 4) six months of individual Profit and Loss Statements for each business, including but not limited to Janitorial, Instacart and Uber Eats.

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

Second, the court notes that the trustee requested the same information in his objection to confirmation filed August 17, 2022. See Trustee’s Objection to Confirmation of Plan, ECF No. 31. The court finds that the debtor has failed to cooperate with the trustee’s investigation of the debtor’s financial affairs. 11 U.S.C. § 521(a)(2)(b)(3).

Third, the debtor derives \$2,870.00 per month from the operation of a business, or businesses. See Schedule I, ECF No. 67. The court notes that in filing Schedules I and J the debtor failed to attach the Business Income and Expense attachment to these schedules for the business(es) operated. *Id.* Debtor’s failure to include this attachment deprives not only the trustee, but the court and any interested creditors from evaluating the feasibility of the proposed plan. 11 U.S.C. § 1325(a)(6).

Finally, the debtor acknowledges that the required information had not been sent to the trustee when the instant motion was filed. The motion to confirm states:

The latest possible hearing date on the self set calendar was chosen because the debtor still needs to provide further routine documentation to the trustee.

Motion to Confirm Plan, 3:10-12, ECF No. 63.

The requested information goes to the heart of the feasibility of the debtor's plan, and is part of the debtor's prima facie case for confirmation of the plan. It is information, as counsel has noted, routinely requested in cases where a debtor is self-employed. As such, the information should have been provided to the trustee, and filed with the court as applicable, *prior to the filing of this motion to confirm the plan and not in response to the trustee's opposition to the motion*. The information should have been available at the filing of the petition and at the latest at the meeting of creditors. The petition was filed July 7, 2022, and the debtor has had ample time to provide the requested information to the trustee.

Because the trustee requested the same documents more than 7 months ago, and the debtor has failed to produce the information the court finds that the debtor has failed to properly prosecute the Chapter 13 plan.

The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6) and will deny the debtor's motion to confirm the Chapter 13 plan. The court need not reach any of the remaining bases in the trustee's opposition to the motion at this time.

The court notes that opposition to the motion was incorrectly filed by U.S. Bank, National Association as an objection to confirmation. See ECF No. 80. The court need not address the substantive issues raised in the creditors' motion as it has denied the debtor's motion based upon the Chapter 13 trustee's opposition 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 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,

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

15. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[RJ-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
3-7-2023 [\[80\]](#)

RICHARD JARE/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

Final Ruling

Motion: Objection to Confirmation

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

Disposition: Overruled as moot

Order: Civil minute order

Creditor U.S. Bank Trust, National Association opposes the debtor's motion to confirm plan (RJ-2). This opposition is improperly filed and presented as an objection to confirmation.

INCORRECT PLEADING BY OPPOSING CREDITOR

The debtor properly filed and noticed a motion to confirm plan with the docket control number RJ-2. The creditor has also used docket control number RJ-2 in filing documents in response to the debtor's motion.

However, Counsel for the opposing creditor has improperly presented and titled this opposition as a separate "objection to confirmation of the plan". See LBR 3015-1(d)(1). The pleading is not properly presented as an objection to confirmation, but rather should be *opposition to the debtor's motion to confirm*. *Id.* The improper presentation of what should be opposition to a motion creates confusion in the clerk's office, on the court's docket, and hinders the court's ability to properly locate and analyze all documents relating to a particular motion.

Further complicating the matter is the filing of a separate notice of hearing which is not appropriate. See Notice of Hearing, ECF No. 81.

Failure to properly title documents in the future or to plead in accordance with the Eastern District Local Rules may result in denial of relief and/or sanctions as appropriate. LBR 1001-1(g).

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 objection will be overruled as moot. The court has previously denied the debtor's motion to confirm plan, RJ-2, based upon the Chapter 13 trustee's opposition.

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 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. The court has denied the debtor's motion to confirm plan to which this objection relates.

16. [21-22594](#)-A-13 **IN RE: PETER/REBECCA DELGADO**
[PGM-3](#)

MOTION TO SELL
2-18-2023 [\[46\]](#)

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

Final Ruling

Motion: Sell Property [Real Property]

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

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

Order: Civil Minute Order

The debtor's motion to sell real property will be continued to April 4, 2023, at 9:00 a.m. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 51. The evidentiary record in this matter is closed.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the debtor's motion to sell real property is continued to April 4, 2023, at 9:00 a.m. The evidentiary record in this matter is closed.

17. [22-23296](#)-A-13 **IN RE: PAVEL BARDOSH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-1-2023 [\[41\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

The Chapter 13 trustee has objected to confirmation of the debtor's plan filed December 20, 2022, ECF No. 3. The debtor has filed a response, declaration and exhibits in opposition to the trustee's objection. See ECF Nos. 45, 46, 47.

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

PLAN FEASIBILITY

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

Plan Delinquency

This petition in this case was filed on December 20, 2022. The case was filed as a Chapter 7. A Chapter 13 Plan was filed on December 20, 2022, the same date relief was ordered. On December 29, 2022, the debtor filed a motion to convert the case to Chapter 13 (MS-1). The Motion to Convert the case was granted and the case was converted to Chapter 13 on January 23, 2023.

The debtor's motion to convert to Chapter 13 was supported by a declaration of the debtor which stated "[m]y case was at all times supposed to be filed under Chapter 13." See Declaration, 1:26-27, ECF No. 22.

The trustee indicates that the plan payments are delinquent in the amount of \$2,952.00 with a further payment of \$1,476.00 due on March 25, 2023. The debtor failed to tender a plan payment in January 2023.

The debtor disputes the trustee's calculation, contending that payments are current as he tendered a payment in February 2023 and that only one payment has come due. The court disagrees. Plan payments came due beginning January 25, 2023.

Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

11 U.S.C. § 348(a).

Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, *whichever is earlier*,

. . . .

11 U.S.C. § 1326(a)(1) (emphasis added).

The court declines to order otherwise. The plan was filed on December 20, 2022. Therefore, the first payment under the plan is due not later than January 25, 2023, LBR 3015-1(f).

The debtor intended to file a Chapter 13 petition at the outset of this case. This is evidenced in the statements offered in support of the motion to convert by the debtor. To suggest that the debtor should enjoy a one-month reprieve in plan payments because of his inadvertence in filing the petition as a Chapter 7 is disingenuous.

The court finds that the plan payments are delinquent as no January 25, 2023, plan payment was tendered. The court need not reach the

remaining issues in the trustee's objection. The court will sustain the 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 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. [22-23198](#)-A-13 **IN RE: TRACY THIBODEAU**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
1-25-2023 [\[13\]](#)

JOSEPH ANGELO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from February 22, 2023

Disposition: Withdrawn by objecting party

Order: Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the trustee to review late filed documents submitted by the debtor and to file a status report after doing so.

The trustee has filed a status report, ECF No. 24. In the report the trustee indicates that he no longer wishes to pursue his objection, that the plan payments have been brought current, and that the debtor has supplied the information requested by the trustee.

Fed. R. Civ. P. 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 objection. 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.

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 withdrawn.