

**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 29, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [21-20100](#)-A-13 **IN RE: JORGE VASQUEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[46\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 11, 2022 - timely

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$6,853.00, with another payment of \$3,514.92 due March 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 50-51. The debtor's declaration states that the debtor will file a motion to modify the plan to provide for two missed payments in August 2021 and October 2021. The debtor states he will file the motion to modify plan prior to the date of the hearing on this motion. See Declaration, ECF No. 51.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date the opposition was due. A statement of intent to file a modified plan and a motion to modify the plan on or before a future date is not equivalent to cure of the delinquency or the filing of a modified plan. The court notes that no modified plan was filed on or before the opposition due date. Moreover, the parties acknowledge that the missed payments occurred in August and October 2021, yet they have not explained why a modified plan was not already filed to provide for the missed plan payments, the latter of which occurred five months ago. The court is unable to deny the motion given the outstanding delinquency.

Moreover, the court notes that the debtor filed a Modified Chapter 13 plan, ECF No. 56, and a motion to confirm the modified plan, ECF No. 53, on March 17, 2022, which is 12 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on April 20, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed March 1, 2022, giving the debtor only 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

TRUSTEE REPLY - Fed. R. Civ. P. 41

The trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

2. [18-22701](#)-A-13 **IN RE: MARCOS FLAVIO LOYOLA RAMIREZ AND
RECHEL BAUTISTA CORRO
[DPC-2](#)**

MOTION TO DISMISS CASE
3-1-2022 [\[77\]](#)

RUPERT CORKILL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Conditionally Denied

Condition: Trustee's timely receipt of March 25, 2022, plan payment

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 15, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,540.00, with another payment of \$770.00 due March 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and supporting Exhibits, ECF Nos. 81-83.

The declaration states that the debtor made two payments of \$770.00 after March 1, 2022, and will make a further payment by March 16, 2022, to bring the plan payments fully current. The court notes that the third payment represents the March 2022 payment which is due on or before March 25, 2022. These payments will bring the plan payments current and resolve the motion. See Declaration, ECF No. 82. The exhibits submitted with the motion contain copies of two postal money orders, each dated March 2, 2022, and each in the amount of \$770.00, made payable to the chapter 13 trustee. The debtor has also submitted a copy of the certified mail receipt showing that payments were sent to the trustee on March 2, 2022. See Exhibits, ECF No. 83.

The court will conditionally deny the motion.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is conditionally denied. The motion will be denied if the trustee received the March 25, 2022, plan payment on or before March 25, 2022.

3. [20-24801](#)-A-13 **IN RE: PETER/NATALIE MAXWELL**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 15, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that plan payments are delinquent in the amount of \$9,512.15, with another payment of \$4,908.22 due March 25, 2022.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 25-26. The declaration states that the debtors will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 26.

The 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.

The court is aware that the motion to dismiss was filed March 1, 2022, giving the debtors only 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed

himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

4. [18-22405](#)-A-13 **IN RE: GEORGE/TRISHA VAUGHN**
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [\[126\]](#)

RICHARD JARE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 15, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$4,132.00, with another payment of \$1,833.00 due March 25, 2022.

The debtor has filed a timely opposition, ECF No. 130. The opposition states:

The delinquency is as alleged by the movant. They have close to no money to put a dent in the delinquency. They were going to give up on this Ch. 13, but today I convinced them to send me 3 months of paystubs so that I could ascertain if moving to modify the plan would be appropriate.

Opposition, ECF No. 130, 1:17-23.

The opposition consists of an unsworn statement by the debtors' attorney. There is no evidence offered in support of the opposition as required by LBR 9014-1(f)(1)(B). For example, there is no declaration from the debtor(s) under penalty of perjury indicating that they intend to or have filed a modified plan. Moreover, the opposition acknowledges the delinquency. The court notes that no modified plan has been filed by the date opposition to this motion was due.

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 review information from the debtors to ascertain if a modified plan is appropriate is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

VIOLATION OF LBR 9014-1(c)

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

The docket control number used by the chapter 13 trustee when filing this motion was used in a previous motion by the trustee - a motion to dismiss filed on August 25, 2020, ECF No. 96.

CIVIL MINUTE ORDER

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

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

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

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

5. [19-27805](#)-A-13 **IN RE: PHILLIP ROBERTS**
[DPC-3](#)

MOTION TO DISMISS CASE
3-1-2022 [\[65\]](#)

ASHLEY AMERIO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$990.00 with a further payment of \$250.00 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

6. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[TLA-3](#)

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

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling

7. [21-22205](#)-A-13 **IN RE: SHELBY HILL**
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [[36](#)]

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

The trustee has filed a request to withdraw his motion to dismiss under Fed. R. Civ. P 41(a)(2). See ECF No. 42. The debtor has not previously filed an opposition to the trustee's motion. The motion is withdrawn and will be removed from the calendar. No appearances are required. A civil minute order will issue.

8. [19-24407](#)-A-13 **IN RE: MARIA TERESA MERCADO**
[WW-3](#)

MOTION TO INCUR DEBT
3-7-2022 [\[35\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling

9. [17-24111](#)-A-13 **IN RE: DOUGLAS/DOLORES GIANNI**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[73\]](#)

DAVID FOYIL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 11, 2022 - timely

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 plan payments are delinquent in the amount of \$3,112.00, with another payment of \$1,810.00 due on March 25, 2022.

The debtors have filed a motion for hardship discharge (DEF-5). The motion for hardship discharge will be heard on May 3, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the motion for hardship discharge.

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 3, 2022, at 9:00 a.m.

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

10. [19-23812](#)-A-13 **IN RE: JINA HALE**
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [\[76\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,810.05 with a further payment of \$2,507.15 due March 25, 2022.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may

convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

11. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[PGM-1](#)

OBJECTION TO CLAIM OF MEB LOAN TRUST IV, U.S. BANK NATIONAL
ASSOCIATION, CLAIM NUMBER 2
2-8-2022 [[36](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

The hearing on this matter is continued by stipulation, ECF No. 48, and order, ECF No. 56, to May 3, 2022, at 9:00 a.m.

12. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[PGM-2](#)

MOTION TO CONFIRM PLAN
2-14-2022 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

The chapter 13 trustee opposes the motion to confirm on several bases as follows: the debtor's failure to provide documents and cooperate with the trustee in his administration of the plan; the plan's lack of feasibility under 11 U.S.C. § 1325(a)(6); the plan term overextension under 11 U.S.C. § 1322(d) as the trustee estimates it will take 93 months to complete; the plan's failure to satisfy the liquidation test under 11 U.S.C. § 1325(a)(4). The court notes that most of the matters raised in this opposition are the same as those raised in the trustee's objection to confirmation, ECF No. 26. The objection was sustained on January 19, 2022, ECF. No 33, yet the debtor has proposed a subsequent plan without addressing the matters raised in the trustee's previous objection.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001)

("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Failure to Provide Financial Information

The debtor and her nonfiling spouse are both self-employed. Yet the debtor has failed to amend the Statement of Financial Affairs to identify or disclose any businesses operated during the past 4 years.

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

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The debtor has also failed to provide the trustee with the following requested documents: six individual months of Profit and Loss Statements for each business operated by the debtor and her spouse; business information for the debtor's nonfiling spouse, including the trustee's completed Business Questionnaire with all required attached documents, and any bank statements not previously provided.

In addition to failing to cooperate with the trustee, by failing to provide all the fiscal information the debtor has failed to sustain her burden of proving that the plan is feasible.

Plan Overextension

The trustee calculates that the plan will take 93 months to complete. This exceeds the maximum length of 60 months allowed under 11 U.S.C. § 1322(d). The trustee also contends the plan is not feasible noting that the plan provides for mortgage arrears in an amount which is significantly less than what is owed to creditor, MEB Loan Trust IV, U.S. Bank National Association. Claim No. 2.

The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court is aware of the pending objection to Claim No. 2. However, as the matter remains unresolved, the motion to confirm

is premature, and the remaining objections to the plan raised by the trustee preclude confirmation of the plan.

LIQUIDATION

Failure to Amend Schedules to Include Lexus

The debtor testified at the 341 meeting that she owns and operates a 2010 Lexus vehicle. The schedules do not list the Lexus – thus the value of the vehicle has not been included in the calculation of the bankruptcy estate's value. Without amended schedules the trustee cannot represent whether, in his estimation, the plan satisfies the liquidation test of 11 U.S.C. § 1325(a)(4). The court notes that while the 341 meeting of creditors was held on December 16, 2021, the debtor has yet to amend schedules to list her interest in the Lexus.

Plan Fails Liquidation Test at Zero Percent

The amended plan proposes to pay 0% to unsecured creditors, ECF No. 44. Because the debtor has failed to properly amend schedules there is nonexempt equity in assets totaling approximately \$134,105.00. Therefore, the plan does not pass the liquidation test of 11 U.S.C. § 1325(a)(4).

The debtor has failed to amend schedules which allow the trustee to accurately determine if the plan passes the liquidation test. The court finds the plan as currently proposed does not pass the liquidation test of 11 U.S.C. § 1325(a)(4).

DEBTOR'S REPLY

The debtor filed a timely reply to the trustee's opposition, ECF No. 58. The reply consists of an unsworn statement by the debtor's counsel and contains a request to continue this motion until the date of the hearing on the objection to claim (PGM-2). Were the claim objection the only unresolved matter the court would grant the debtor's request. However, there are other critical matters which are in dispute as the court has discussed above in this ruling. The reply addresses the liquidation and request for business information as follows:

LIQUIDATION The debtor will have amended schedules A and B appropriately, before this hearing.
(B) BUSINESS INCOME AND EXPENSES The debtor will have provided the required documents concerning the profitability of both the E-bay and Smog test businesses.

Reply, *Id.*, 1:24-26, 2:1-4.

The debtor has not explained why the schedules have not yet been amended as requested or why the business documents have not yet been provided to the trustee. Moreover, the reply acknowledges that the trustee's contention that the plan is overextended and not in a

posture to be confirmed as follows: "[a]s presently proposed, if no deferment, the Trustee stands correct." Id., 2:6-7.

The court denies the request for a continuance.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

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

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

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

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 14, 2022 - timely

Motion to Modify Plan Filed: March 14, 2022 - timely

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 \$6,618.44, with another payment of \$2,648.56 due on March 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 3, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 3, 2022, at 9:00 a.m.

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

14. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [[117](#)]

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 8, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$2,349.84, with another payment of \$2,350.00 due March 25, 2022.

The debtor has filed a timely opposition which is accompanied by an Exhibit, ECF Nos. 121-122. The Exhibit, ECF No. 122, is a copy of a cashier's check, dated February 28, 2022, made out to the chapter 13 trustee in the amount of \$2,350.00. The opposition consists of an unsworn statement by the debtor's attorney contending that the March payment will be made on time and that the cashier's check shown in the exhibit was sent to the trustee. See ECF No. 121.

LBR 9014-1(f)(1)(B)

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

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

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions contained in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtors delivered the payment to the chapter 13 trustee or the method of delivery. Neither is there evidence that the debtor will make additional plan payments.

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.

Henceforth the court will not consider opposition which fails to provide sworn testimony by the party making the allegations. Unsworn statements by counsel are not evidence and will not be considered.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

15. [19-22717](#)-A-13 **IN RE: SIGIFREDO SANCHEZ AND CONSUELO**
RAMIREZ
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [\[61\]](#)

THOMAS GILLIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

16. [19-22719](#)-A-13 **IN RE: JOSEPH HYLER AND ANDREA GERBER**
[DPC-2](#)

MOTION TO DISMISS CASE
3-1-2022 [\[33\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 15, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,795.00, with another payment of \$415.00 due March 25, 2022.

The debtor has filed a timely opposition which is accompanied by an Exhibit, ECF Nos. 37-38. The opposition consists of an unsworn statement by the debtors' counsel. The opposition states that payments were tendered via TFS and that the remainder of the plan payment will be brought current prior to the hearing on the trustee's motion. There is no declaration by either debtor regarding the payments which have yet to be tendered or their intention to do so. The Exhibit is a printout from TFS which shows that the debtors tendered payments totaling \$1,660.00 on March 3, 2022.

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.

LBR 9014-1(f)(1)(B)

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

Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

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

The opposition is deficient in that it does not include a declaration of the debtors which explains their intention to make additional plan payments.

Henceforth the court will not consider opposition which fails to provide sworn testimony by the party making the allegations. Unsworn statements by counsel are not evidence and will not be considered.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

17. [19-22420](#)-A-13 **IN RE: JORUNE JONIKAS**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[36\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: Non-opposition filed March 15, 2022

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,325.00 with a further payment of \$1,775.00 due March 25, 2022.

DEATH OF DEBTOR

On March 15, 2022, counsel for the debtor filed a non-opposition to the trustee's motion to dismiss informing the court of the debtor's death and indicating that there is no opposition to the motion to dismiss. Counsel has also filed a Notice of Death pursuant to Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025, LBR 1016-1(a).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

18. [20-21722](#)-A-13 **IN RE: DEBORAH RISING**
[DPC-1](#)

MOTION TO DISMISS CASE
2-16-2022 [\[30\]](#)

JAMES KEENAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$22,650.00 with further payments due as follows: \$1,200.00 due February 25, 2022; and \$1,200.00 due March 25, 2022.

Failure to Set Plan for Confirmation Hearing

The debtor has failed to confirm a plan within a reasonable time. The debtor filed this case on March 23, 2020, yet a plan has never been confirmed. The trustee states that a plan has not been filed since July 7, 2020, when the court denied the last motion to confirm a plan. The failure to file a plan and a motion to confirm a plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case and because the debtor has failed to confirm a plan. The court hereby dismisses this case.

19. [22-20025](#)-A-13 **IN RE: JUAN SALAZAR**
[TLA-1](#)

MOTION TO CONFIRM PLAN
2-15-2022 [\[15\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by the trustee and secured creditor U.S. Bank National Association.

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 and secured creditor U.S. Bank National Association oppose 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).

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 \$715.00 with another payment of \$715.00 due on March 25, 2022. The plan cannot be confirmed if the plan payments are not current.

Drafting Error in Additional Provisions

The trustee contends that the plan is not feasible because of a drafting error contained in Section 7.01 of the plan. The provision states that the debtor will make payments totaling \$715.00 from February 2022 through June 2024. The plan is not mathematically feasible with the total sum due of \$715.00 from February 2022 through June 2024.

IMPROPER CLASSIFICATION OF MORTGAGE IN THE PLAN

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

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

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

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

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the

amount of \$6,139.88. Compare Claim No. 8 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

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

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

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

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

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

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

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

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

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

...

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

Chapter 13 Plan § 3.07, EDC 3-080(emphasis added).

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

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

Id. at § 3.10.

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

Creditor Opposition

Creditor U.S. Bank National Association has filed an opposition to the motion, ECF No. 36. The opposition is based upon the improper classification of the Class 1 claim of the creditor. While the opposition is filed late under LBR 9014-10(f)(1)(B) the court will allow the opposition as the objection to confirmation filed by this creditor was to be heard on March 15, 2022, but was denied as moot at the hearing on the objection because of the pending instant motion to confirm. As March 15, 2022, was also the date opposition to this motion was due it would have been impossible for the secured creditor to comply with the deadline for opposition imposed by LBR 9014-1(f)(B). The court will not deprive the secured creditor of a hearing on the merits of its objection to the plan in this case.

DEBTOR'S REPLY

The debtor filed a timely reply to the oppositions filed, ECF No. 38. The reply includes the declaration of the debtor, ECF No. 39.

Plan Delinquency

The debtor states that he mailed a cashier's check for \$715.00 to the trustee on February 24, 2022. That payment did not post until March 7, 2022. The debtor has since enrolled in the TFS payment system.

Plan Overextension

The debtor proposes to correct the typographical error in the order confirming the plan.

Mortgage Payments

The debtor maintains that the obligation owed to U.S. Bank National Association is properly provided for in Class 4.

The debtor's declaration states that the debtor attempted to make a payment in person at US Bank contemporaneously with the present case being filed but that the debtor was informed that US Bank would not accept an in-person payment for his mortgage. As such the debtor made the payment through the bank's automated system.

The payment made through the automated system is the payment which posted on January 19, 2022, in the amount of \$3,116.87. The debtor also states that he has made all subsequent payments directly to U.S. Bank N.A.

The reply does not resolve the plan's treatment of the U.S. Bank National Association claim. The creditor has filed a claim, which indicates that the loan was in default on the date of the petition. Absent proof that the loan was instead current on the date the petition was filed the loan is properly provided for in Class 1 of the plan as the court has indicated above. See Claim No. 8. The debtor has not objected to the claim or proven that the payment was current the day the petition was filed.

CIVIL MINUTE ORDER

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

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

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

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

20. [20-25127](#)-A-13 **IN RE: RYAN/KANDA HOTZE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[23\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 21, 2022 - untimely

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

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$6,780.52 with a further payment of \$2,717.94 due March 25, 2022.

UNTIMELY OPPOSITION

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition is late, the court gives it no weight.

On March 21, 2022, the debtors filed an opposition to the motion to dismiss, ECF No. 27. The opposition consists of a declaration by

the debtors' attorney stating his intention to file a modified plan by March 24, 2022. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtors will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

Moreover, the court notes that the debtor filed a Modified Chapter 13 plan, ECF No. 33, and a motion to confirm the modified plan, ECF No. 31, on March 23, 2022, which is 6 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on May 17, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed March 1, 2022, giving the debtor only 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

21. [21-23728](#)-A-13 **IN RE: DESIREE JACKSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-3-2022 [[22](#)]

ANH NGUYEN/ATTY. FOR DBT.

Final Ruling

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

22. [16-28129](#)-A-13 **IN RE: JERRY/JOANNE BENNETT**
[MET-1](#)

MOTION TO MODIFY PLAN
2-10-2022 [\[198\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
STEPHEN MURPHY/ATTY. FOR MV.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Third Party Supporting Declaration

The proposed modified plan calls for a payment of \$12,600.00 to be paid by a third party in month 63 of the plan - which is March 2022. The motion and the supporting declaration state that the funds will be provided by the debtors' son. The trustee indicates that the required payment has not yet been tendered and there is no declaration or other evidence that the debtors' son is willing and able to make the payment for his parents. Without either the payment or the declaration the plan is not feasible. The court notes that by the time of the hearing the March 2022 payment will have come due.

Supplemental Schedules I and J

On February 10, 2022, the debtor(s) filed supplemental Schedules I and J in support of the motion and plan, ECF Nos. 202 and 203.

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

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

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

EDC 002-015.

LBR 9004-1(c)

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

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

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

However, in this matter the debtor(s) have filed a declaration under penalty of perjury in support of the motion which states:

Disposable Income. Our projected disposable income, as listed on Current Schedules I and J filed with this motion has been devoted to our plan. We are familiar with both the sources and amounts of income as stated, as well as the categories and amounts of the monthly expenses.

Declaration, ECF No. 201, 4:17-20.

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

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

January 2022 Class 1 Payment

The previously confirmed plan and the modified plan provide for treatment of Carrington Mortgage Services in Class 1. Because the debtors failed to make timely plan payments the trustee lacked sufficient funds to pay the post-petition contract installment to Carrington Mortgage Services for the month of January 2022 in the amount of \$2,572.45. The modified plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate and monthly dividend, or to provide documentary evidence that the payment has otherwise been made. The trustee is therefore unable to fully comply with §2.08(b) of the plan. The plan is not feasible under 11 U.S.C. 1325(a)(6).

Attorney Fees

Counsel, who has recently substituted into the case, is attempting to "opt in" to the Local Bankruptcy Rule 2016-1(c) to be paid her fees in the amount of \$2,750.00.

Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

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

LBR 2016-1(c) provides, in part, that attorneys can be paid through the "opt-in" provisions if they are approved at

confirmation. Because this plan was previously confirmed attorney fees must be approved by the filing of a separate motion under 11 U.S.C. §§ 329, 330, and Fed. R. Bankr. P. 2002, 2016, 2017. The trustee has not indicated that the plan fails mathematically with the inclusion of the proposed fees. Thus, counsel may apply separately for attorney fees with appropriate changes to the order modifying the plan.

DEBTORS' REPLY

The debtors filed a timely reply to the trustee's opposition on March 21, 2022, ECF No. 215. The reply documents include a declaration of Wayne Miller, which states his intention to make the lump sum payment on behalf of his mother and indicates the source of the funds. See Declaration, ECF No. 210.

The debtors' counsel has filed a motion for compensation and set the matter for hearing on May 5, 2022, although the court notes that this motion is not supported by a declaration of the debtors and is noticed on an improper date.

The debtors have not yet authenticated the supplemental Schedules I and J although they have offered to do so.

The debtors contend that the plan funding through March 2022 will be sufficient to pay the January 2022 Class 1 payment.

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.

23. [18-27529](#)-A-13 **IN RE: YESENIA GONZALEZ**
[DPC-3](#)

MOTION TO DISMISS CASE
3-1-2022 [\[78\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

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

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 16, 2022 - not timely filed

Cause: 11 U.S.C. § 1307(c)(6) - delinquency under confirmed plan

Best Interests of Creditors/Estate: Dismiss

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

Chapter 13 trustee David Cusick seeks dismissal or conversion of the debtor(s) confirmed chapter 13 case for cause under 11 U.S.C. § 1307(c)(6). The trustee contends that payments under the currently confirmed plan are delinquent in the amount of \$2,699.00 with a further payment of \$2,702.00 due March 25, 2022.

LATE OPPOSITION

Opposition to the motion was due not later than March 15, 2022, see LBR 9014-1(f)(1)(A), (B). The debtor filed an opposition on March 16, 2022, ECF No. 82. The opposition is late and will not be considered. The court notes that the debtor failed to request an enlargement of time to oppose the trustee's motion under Fed. R. Bankr. P. 9006(b).

LBR 9014-1(f)(1)(B)

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

Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

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

The court notes that the opposition consists of an unsworn statement by debtor's counsel. Even if the opposition had been filed timely it would not have been given any weight.

Henceforth the court will not consider opposition which fails to provide sworn testimony by the party making the allegations. Unsworn statements by counsel are not evidence and will not be considered.

The court will grant the motion.

11 U.S.C. § 1307(c) BEST INTERESTS OF CREDITORS

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause...

11 U.S.C. § 1307(c).

The court finds that it is in the best interests of the creditors to dismiss the case.

CIVIL MINUTE ORDER

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

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

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

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

24. [17-20031](#)-A-13 **IN RE: JAMES MURRAY**
[RS-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FINANCIAL
RELIEF LAW CENTER, APC FOR RICHARD STURDEVANT, DEBTORS
ATTORNEY(S)
2-22-2022 [\[124\]](#)

RICHARD STURDEVANT/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Denied without prejudice

Order: Civil minute order

The applicant seeks an order approving the allowance of additional compensation under 11 U.S.C. § 330.

NOTICE NOT PROVIDED TO ALL INTERESTED PARTIES

(a) (1) *After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103--*

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

. . .

11 U.S.C. § 330 (emphasis added).

The proof of service fails to list the following interested parties: Ascension Capital Group; Auburn Lake Trails Property; Walter Dahl; M&T Bank; Wollemi Acquisitions, LLC.

As these parties were not served, they failed to receive notice of the motion as required under § 330.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

The proof of service, ECF No. 128 was filed on February 22, 2022. The court notes that the mailing matrix, *id.*, used in connection with the service of this motion and supporting documents is not dated.

The use of a current and dated matrix is essential. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is not dated does not allow the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the proof of service.

FRCP 41

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, the Chapter 13 trustee has signaled his abandonment of his motion as follows.

On March 22, 2022, the movant filed a notice of withdrawal of his motion, ECF No. 132. The chapter 13 trustee had previously filed opposition to the motion. Therefore, the movant may not unilaterally withdraw his motion.

The court will exercise its discretion and simply deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Richard Sturdevant's motion for allowance of additional compensation has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

25. [18-27132](#)-A-13 **IN RE: STUART KOPPLE**
[DPC-3](#)

MOTION TO DISMISS CASE
3-1-2022 [\[183\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 14, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(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 \$492.40, with another payment of \$369.30 due March 25, 2022.

The debtor has filed a timely opposition ECF No. 187. The opposition states that the debtor tendered \$738.06 on March 4, 2022, and will bring the plan payment current with a payment of \$123.37 on March 14, 2022, see *id.*, 1:16-18.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

26. [21-20133](#)-A-13 **IN RE: VALERIE RAMIREZ**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[17\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,668.00, with a further payment of \$891.50 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

27. [19-22034](#)-A-13 **IN RE: ERNEST/SAIFON BOND**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[25\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 15, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$5,884.35, with another payment of \$4,476.87 due March 25, 2022.

LBR 9014-1(f)(1)(B)

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

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

While the debtor has filed a timely opposition, ECF No. 29, the opposition is deficient. The opposition consists of an unsworn statement by the debtor's attorney stating that an amended plan will be filed prior to the hearing date on this motion. There is no evidence offered in support of the opposition as required by LBR 9014-1(f)(1)(B). For example, there is no declaration from the debtor(s) under penalty of perjury indicating that they will, or have, filed a modified plan. The court notes that no modified plan has been filed by the date opposition to this motion was due.

Cause exists to dismiss the case. First, the opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to file a modified plan on a future date is not equivalent to cure of the delinquency.

Second, and more importantly, opposition to the motion is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Here, the argument is that the debtor will offer opposition to the motion to dismiss by filing a modified plan but will do so less than 14 days prior to the hearing on the motion to dismiss. If filed, such a motion to modify would be deemed an untimely opposition to the motion to dismiss the case and would not be considered. The court is unable to deny the motion given the outstanding delinquency and the failure to timely file a proposed modified plan.

Moreover, the court notes that the debtor filed a Modified Chapter 13 plan, ECF No.34, and a motion to confirm the modified plan, ECF No. 31, on March 22, 2022, which is 7 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on May 3, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed March 1, 2022, giving the debtor only 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

28. [19-21543](#)-A-13 **IN RE: ESTER NINO**
[DPC-3](#)

MOTION TO DISMISS CASE
3-1-2022 [\[78\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 15, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,039.32, with another payment of \$1,488.27 due March 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 82-83. The debtor's declaration states that the debtor made plan payments as follows: \$750.00 on February 28, 2022; and \$750.00 on March 2, 2022. The declaration

further states that the debtor will send \$1,027.59 on March 15, 2022, to bring the plan payments current.

The 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 plan payments on a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency and the failure to timely file a proposed modified plan.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

29. [21-21644](#)-A-13 **IN RE: EDWARD MEDINA**
[DPC-1](#)

MOTION TO DISMISS CASE
3-1-2022 [\[35\]](#)

HARRY ROTH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$13,334.61 with a further payment of \$4,450.20 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

30. [19-20747](#)-A-13 **IN RE: DANIEL/TERESA STALTER**
[DPC-3](#)

MOTION TO DISMISS CASE
3-1-2022 [\[90\]](#)

CATHERINE KING/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 15, 2022

Opposition Filed: March 14, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$7,232.09, with another payment of \$3,550.00 due March 25, 2022.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in

opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

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

While the debtor has filed a timely opposition, ECF No. 94, it is deficient. The opposition consists of an unsworn statement by the debtors' attorney. There is no evidence offered in support of the opposition as required by LBR 9014-1(f)(1)(B), which requires that the opposition be accompanied by evidence. For example, there is no declaration from the debtor(s) under penalty of perjury indicating that they have made the payments as stated in the opposition. The opposition indicates that the debtors made payments via TFS bringing the payments current yet there is no exhibit showing the TFS payments were received. Because the opposition does not comply with LBR 9014-1(f)(1)(B) the court gives it no weight.

The court is unable to deny the motion given the outstanding delinquency. The court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this

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

31. [20-21047](#)-A-13 **IN RE: PAUL DENNO AND SANDRA MURRAY**
[MWB-9](#)

MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS
ATTORNEY(S)
3-10-2022 [[140](#)]

MARK BRIDEN/ATTY. FOR DBT.

Tentative Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

Number of Requests for Additional Compensation: Second

Additional Compensation Requested: \$2,820.00

Additional Cost Reimbursement Requested: \$46.50

COMPENSATION AND EXPENSES

In this chapter 13 case, Mark Briden, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$2,820.00 and reimbursement of costs in the amount of \$46.50.

This is the applicant's second request for additional compensation. The previous motion, MWB-5 was granted, and additional compensation allowed in the amount of \$1,770.00 and reimbursement of costs allowed in the amount of \$34.48.

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

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant drafted a motion to approve sale of real property and prosecuted the motion on behalf of the debtors. The proceeds of the sale were used to pay the chapter 13 plan.

The amounts requested represent a reduction after negotiation with the debtors. The debtors have filed a declaration in support of the compensation and reimbursement of costs sought in this motion, see ECF No. 144. The court observes that there appears to be one typographical error in the Exhibit in support of the motion, ECF No. 143. The Exhibit lists the services performed by date, and indicates the time spent on each task. There is one entry on page 2 with a date of "January 12, 2021" which the court believes is intended to be January 12, 2022. Given the reduction in compensation already agreed to by counsel the court will approve the request despite the scrivener's error.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$2,820.00 and reimbursement of costs in the amount of \$46.50.

CIVIL MINUTE ORDER

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

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

Mark Briden's application for allowance of additional compensation under LBR 2016-1(c) 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 application,

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$2,820.00 and reimbursement of costs in the amount of \$46.50. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

32. [19-23948](#)-A-13 **IN RE: C/SANDRA SMITH**
[CYB-5](#)

MOTION TO APPROVE THE RETROACTIVE SALE OF PERSONAL PROPERTY
2-14-2022 [\[94\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Approve Sale of Personal Property - Retroactive

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).

The debtor seeks an order retroactively approving the sale of a 2016 Cruiser Fun Finder Travel Trailer for \$19,000.00. The chapter 13 trustee has filed a non-opposition to the motion.

Given the extraordinary circumstances surrounding the co-debtor's illness and subsequent death, the lack of opposition to the motion, and the debtor's exemption of nearly all the equity in the subject property, the court will grant the motion.

CIVIL MINUTE ORDER

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

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

Debtor's Motion for Retroactive Approval of Sale of Personal Property 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.

33. [19-23948](#)-A-13 **IN RE: C/SANDRA SMITH**
[CYB-6](#)

MOTION TO MODIFY PLAN
2-14-2022 [\[86\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

NOTICE

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

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

The plan calls for a 3% dividend to unsecured creditors while the motion in support of the plan states a 6% dividend is to be paid. The chapter 13 trustee calculates that the plan will pay 11% to filed and allowed unsecured claimants and contends that a correction to 11% in the order granting the motion would both clarify the percentage to creditors while harming no creditors.

The inconsistency is confusing, and the court will not presume what conclusion a creditor reading both documents might reach. If the debtor agreed to provide for the higher disbursement at 11% the court could authorize this change in the order, assuming the plan would fund, as the conflicting information would be resolved in favor of the creditors.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The 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.

34. [19-26448](#)-A-13 **IN RE: DUANE OTT**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-9-2021 [\[41\]](#)

MARC VOISENAT/ATTY. FOR DBT.

No Ruling

35. [19-26448](#)-A-13 **IN RE: DUANE OTT**
[MEV-4](#)

MOTION TO MODIFY PLAN
2-9-2022 [\[87\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself,

coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$721.28 under the modified plan. The trustee notes that further payments are due as follows prior to the hearing on this matter: \$3,675.00 due February 25, 2022; and \$3,675 due March 25, 2022. The plan cannot be approved if the plan payments are not current.

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.

36. [15-22149](#)-A-13 **IN RE: MATTHEW MCKEE**
[PGM-6](#)

MOTION TO APPROVE LOAN MODIFICATION
3-1-2022 [\[153\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted

Order: Civil minute order

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

The debtor seeks an order approving a modification of the Mortgage Loan held by Wells Fargo Bank. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 158.

LOAN MODIFICATION

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

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

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

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

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

37. [20-20851](#)-A-13 **IN RE: ROBERT RISPOLI**
[PGM-4](#)

MOTION TO INCUR DEBT
2-22-2022 [\[74\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

38. [21-23852](#)-A-13 **IN RE: SHANNON BUTLER**
[BMV-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
2-25-2022 [\[22\]](#)

BERT VEGA/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral Motor Vehicle

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

Disposition: Granted

Order: Civil minute order

Property: 2015 Chrysler 200 Limited

Value: \$9,094.00

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2015 Chrysler 200 Limited. The debt secured by the vehicle was not incurred within the 910-day period

preceding the date of the petition. The court values the vehicle at \$9,094.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2015 Chrysler 200 Limited has a value of \$9,094.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$9,094.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

39. [19-27056](#)-A-13 **IN RE: BONITA MELENDEZ**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2022 [\[71\]](#)

RICK MORIN/ATTY. FOR DBT.
NANCY LEE/ATTY. FOR MV.
BANK OF AMERICA, N.A. VS.

Final Ruling

This case was dismissed on March 18, 2022, see ECF No. 82. As such this motion is moot and the matter will be removed from the calendar. No appearances are required.

40. [21-24162](#)-A-13 **IN RE: CASEY WOODBURY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-9-2022 [\[49\]](#)

SARAH SHAPERO/ATTY. FOR DBT.

Final Ruling

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

41. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
2-7-2022 [\[22\]](#)

MARK SHMORGON/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Wells Fargo Bank, N.A. objects to confirmation of the debtor's plan as follows: the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3); the plan is not feasible under 11 U.S.C. § 1325(a)(6) and the plan fails to satisfy 11 U.S.C. § 1322(b)(5).

Section 1322(b)(5)

(b) Subject to subsections (a) and (c) of this section, the plan may—

. . .

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

11 U.S.C. § 1322(b)(5).

Section 7.01 of the debtor's plan provides as follows:

A. Debtor shall list and sell his rental property located at *2112 Lincoln Street East Palo Alto, CA 94303*. This will not only satisfy the secured claim of Select Portfolio Servicing, Inc., it will also provide sufficient equity to pay all unsecured and priority claims in full. B. Debtor shall close escrow in six months or convert to Chapter 7.

Plan, ECF No. 11 (emphasis added).

The plan makes no other provision for the payment of the debt secured by the property indicated in Section 7.01.

The objecting creditor's claim is evidenced by a promissory note executed by Elizabeth B. Shoaga who is the borrower. See Claim No. 11. The debtor is not obligated on the note. On July 8, 2009, an unauthorized Warranty Deed in which Ms. Shoaga purported to convey the property to the debtor was recorded in the official records of the San Mateo County Recorder's office. See *Exhibit C*, ECF No. 24.

The failure to make provision for payment the note and deed of trust contravenes 11 U.S.C. § 1322(b)(5). While the debtor is not obligated on the note and deed of trust, he has elected to treat the loan in the Plan. Therefore, Section 1322(b)(5) requires the Plan provide for ongoing post-petition payments. Because the Plan fails to provide for the maintenance of post-petition payments, it does not satisfy Section 1322(b)(5) and cannot be confirmed.

GOOD FAITH

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

It is the debtor's burden to demonstrate that the plan meets the conditions essential for confirmation. *Warren v. Fidelity & Casualty Co. of N.Y. (In re Warren)*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988).

Objecting creditor contends the following factors support the finding that the plan is not proposed in good faith:

(1) the extent to which secured claims are modified; (2) the existence of special circumstances; (3) the frequency with which the debtor has sought relief under the Bankruptcy Code; and (4) the motivation and sincerity of the debtor in seeking chapter 13 relief. See *Id.*, at 93.

During the past three years the debtor has filed the following prior Chapter 13 cases in the Northern District of California: 1) case number 18-52678 filed December 5, 2018, and dismissed on February 4, 2019; 2) case number 19-50887, filed April 30, 2019, and dismissed on August 6, 2019. See *Exhibits D and F*, ECF No. 24. Each case was unsuccessful subsequently dismissed.

The objecting creditor has been attempting to foreclose on the property since 2018. The foreclosure sales have been halted by the filing of the debtor's two prior chapter 13 bankruptcy cases, each of which was been dismissed. The most recently scheduled sale date was January 19, 2022, (with a total unpaid balance on the Loan of \$837,398.02) and was halted by the filing of the instant case. See *Objection to Confirmation*, ECF No. 22, 3:4-25.

As indicated above the proposed plan makes no provision for monthly payments to the objecting creditor. Moreover, as indicated in the court's ruling on the trustee's objection to confirmation (DPC-1) of the debtor's plan the proposed plan is not feasible under 11 U.S.C. § 1325(a) (6).

The court finds that the plan is not proposed in good faith.

CIVIL MINUTE ORDER

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

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

Wells Fargo Bank N.A.'s 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.

42. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-23-2022 [\[35\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

During the past three years the debtor has filed the following prior Chapter 13 cases in the Northern District of California: 1) case number 18-52678 filed December 5, 2018, and dismissed on February 4, 2019; 2) case number 19-50887, filed April 30, 2019, and dismissed on August 6, 2019.

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

PLAN FEASIBILITY

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

exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Attorney Fees

The plan contains conflicting provisions regarding the amount of attorney fees to be paid through the plan and makes no provision for a monthly payment to counsel. Therefore, the trustee cannot assess the impact the payment of fees will have on the feasibility of the plan.

Failure to Provide Income Information

The debtor is self-employed and operates a security firm. The debtor has failed to provide the trustee with required income information which is essential to the trustee's review of the proposed plan prior. The trustee requires the following information which has not been properly indicated in the schedules or otherwise provided to the trustee: 1) income/expenses of debtor's nonfiling spouse; 2) business attachment to Schedules I and J; 3) 6 months Profit & Loss statements for the debtor's business; 4) 6 months bank statements; 5) Corporate tax returns for 2019, if any, and 2020 for Top Gunn Security Services; and 6) completed Business Questionnaire.

The failure to provide this 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).

The trustee's frustration with the debtor's failure to provide information is understandable. It impedes the assessment of plan feasibility assessment the trustee is charged with under the Bankruptcy Code. Moreover, the debtor's failure to file complete schedules and failure to provide income information is not evidence that the debtor has proposed the plan in good faith under 11 U.S.C. § 1325 (a)(3)).

Failure to File Complete Bankruptcy Schedules

The trustee's examination of the debtor at the meeting of creditors revealed that there are significant inaccuracies and deficiencies in the debtor's bankruptcy schedules, and statements as follows:

1) the debtor has failed to attach a Business Statement of Income and Expenses to Schedules I and J. The debtor has testified he operates a business and has rental property income. There is no required business attachment for either source of income. 2) Schedule H does not disclose any information regarding the debtor's non filing spouse on mutually owed obligations; 3) the Statement of Financial Affairs, appears to be improperly completed indicating that payments were not made to Class 4 secured creditors prior to

the filing of the petition; 4) the debtor also admitted at the First Meeting of Creditors that he owned real property located at 329 Hawk Ridge Creek, Richmond, California which also has not been disclosed; 5) Schedule I fails to list income of debtor's non filing spouse while the debtor admitted at the meeting of creditors that his spouse receives SSI; 6) Schedule J does not reflect any credit card debt for the debtor's spouse while the debtor testified at the meeting of creditors that the his spouse owes credit card debt.

All these deficiencies impact the feasibility of the proposed plan. Moreover, the failure to provide accurate and complete information is evidence that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Prior Bankruptcy Filings

The debtor has filed two prior chapter 13 cases, indicated above, in the Northern District of California during the past three years. Each of these cases were dismissed. The trustee has requested evidence from the debtor explaining the reasons for the dismissal of the prior chapter 13 cases and evidence from the debtor regarding the likelihood of success prosecuting the instant chapter 13 plan given the dismissals of the prior cases.

Sale of Real Property

Section 7.01 of the debtor's plan provides as follows:

A. Debtor shall list and sell his rental property located at 2112 Lincoln Street East Palo Alto, CA 94303. This will not only satisfy the secured claim of Select Portfolio Servicing, Inc., it will also provide sufficient equity to pay all unsecured and priority claims in full. B. Debtor shall close escrow in six months or convert to Chapter 7.

Plan, ECF No. 11.

The plan makes no other provision for the payment of the debt secured by the property indicated in this section. The note and deed of trust are held by Wells Fargo Bank, c/o Select Portfolio Servicing, Inc. See Claim No. 11. The borrower on the note is Elizabeth B. Shoaga, see *Objection to Confirmation of Wells Fargo*, (AP-1) ECF No.22, 2:10-11.

The failure to make provision for payment the note and deed of trust contravenes 11 U.S.C. § 1322(b)(5). While the debtor is not obligated on the note and deed of trust, he has elected to treat the Loan in the Plan. Therefore, Section 1322(b)(5) requires the Plan provide for ongoing post-petition payments. Because the Plan fails to provide for the maintenance of post-petition payments, it does not satisfy Section 1322(b)(5) and cannot be confirmed.

The trustee further objects because the plan is not supported by evidence regarding the proposed sale of the property. The plan does

not state if sufficient funds will be generated from the sale of the property to pay the liens and the debts as stated in the plan. Moreover, the plan does not state when the sale of the property is anticipated. Also missing is any evidence stating whether the property is currently listed for sale, the name of the listing broker or the list price.

The court will sustain the trustee's objections 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.

43. [22-20063](#)-A-13 **IN RE: NATHANIEL SOBAYO**
[SDN-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY WHEELS FINANCIAL GROUP,
LLC
2-24-2022 [[39](#)]

MARK SHMORGON/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

Creditor, Wheels Financial Group, objects to confirmation of the debtor's plan as follows.

Section 1325(a) (5) (b) (ii)

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . .

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that--

(I) the holder of such claim retain the lien securing such claim until the earlier of--

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

11 U.S.C. § 1325(a) (5) .

The creditor has filed Claim No. 8, which is secured by a 2006 Toyota Tacoma. The claim indicates the secured value of the vehicle is \$6,511.00. The debtor has not listed the vehicle in Schedules A/B and does not provide for the secured obligation in the plan. The debtor's intentions regarding the vehicle are unclear and as such the plan does not satisfy the requirements of § 1325(a) (5) (B) (ii) .

CIVIL MINUTE ORDER

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

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

Wheels Financial Group'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.

44. [21-23969](#)-A-13 **IN RE: KRISTIE HER
AVN-1**

MOTION TO CONFIRM PLAN
2-16-2022 [\[31\]](#)

ANH NGUYEN/ATTY. FOR DBT.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

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 \$1,221.00 with an additional payment of \$681.00 due on March 25, 2022. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

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

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

45. [20-21276](#)-A-13 **IN RE: OLAF/SUSAN HELENA OLSEN**
[MB-1](#)

MOTION TO MODIFY PLAN
2-14-2022 [\[43\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
DEBTOR DISMISSED: 2/18/2022; JOINT DEBTOR DISMISSED: 2/18/2022

Final Ruling

The case having been dismissed on February 18, 2022, the matter is dropped as moot.

46. [21-23978](#)-A-13 **IN RE: RYAN PICCHI**
[PSB-3](#)

MOTION TO CONFIRM PLAN
2-8-2022 [\[36\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed February 8, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of his First Amended Chapter 13 Plan filed February 8, 2022. The debtor filed Schedules I and J in support of the motion on December 22, 2021, ECF No. 20. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 49.

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.

47. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-2](#)

MOTION FOR VIOLATION OF 11 U.S.C. 362(A) IN THE OBSTRUCTION
OF THE LISTING AND SALE OF REAL PROPERTY
2-22-2022 [\[116\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Motion for Violation of 11 U.S.C. § 362(a)

Notice: LBR 9014-1(f)(1); written opposition filed by trustee and creditor Charley Smith

Disposition: Denied without prejudice

Order: Civil minute order

The debtor alleges that the automatic stay of 11 U.S.C. § 362 has been violated by creditor Charley Smith. Specifically, the debtor contends that Smith has interfered with the marketing of the property located at 6020 McCourtney Road, Lincoln, California. The debtor requests an order preventing Smith from interfering with the debtor's efforts to market the property and for further hearing to determine damages under 11 U.S.C. § 362(k).

EVIDENCE

The chapter 13 trustee has filed an opposition to the motion as has creditor Smith. See ECF Nos. 120 and 124. Each of the oppositions contends that the motion is unsupported by admissible evidence.

Evidence. Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

The debtor submitted no declaration in support of her motion. The only evidence presented is an Exhibit, ECF No. 118. The exhibit consists of a copy of a letter from the debtor's Real Estate Agent, Amanda Todd, regarding her interactions with creditor Charley Smith. There is no declaration authenticating the letter. The court finds that the letter is hearsay under Fed. R. Evid. 802 and thus gives it no weight. The debtor has failed to present any admissible evidence in support of her request for relief.

DEBTOR'S REPLY

On March 22, 2022, the debtor filed a reply stating:

The motion will be moot if the parties continue as the bankruptcy counsel are working together to resolve these issues. There is no dispute that the

Creditor, Charley Smith, has notice of the bankruptcy, has retained counsel, and has filed a proof of claim, that the pending chapter 13 plan, calls for the debtor to sell the real property, and to make "all payments under the Contract" via a Sale of the Property, and Smith with "receipt of all payments" from the Sale of the property, and the Creditor shall furnish a Warranty Deed and Full Reconveyance.

Reply, ECF No. 129, 1:20-28.

The debtor requests a 60-day continuance of the motion. Because the debtor has failed to file evidence in support of her motion, or to respond to the objections raised by the trustee or creditor Smith regarding her failure to support the motion with evidence, the court will deny the debtor's request for a continuance and will deny the motion without prejudice.

Moreover, the court notes that there is an inaccuracy regarding the case status as indicated in the reply.

The reply, *id.*, refers to a sale of property pursuant to a pending chapter 13 plan. The court sustained the trustee's objection to confirmation of the debtor's plan (DPC-1) on September 14, 2021. See ECF No. 35. The court docket shows that the debtor has not filed an amended plan since the trustee's objection was sustained. Thus, there is currently no plan pending.

CIVIL MINUTE ORDER

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

The debtor's motion for violation of the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

48. [19-26789](#)-A-13 **IN RE: ADAM/JESSICA CHAPPELL**
[DPC-1](#)

MOTION TO ALLOW DEBTOR'S EX PARTE MOTION TO AMEND CLAIM #24
2-15-2022 [\[27\]](#)

AUGUST BULLOCK/ATTY. FOR DBT.

No Ruling

49. [20-22192](#)-A-13 **IN RE: ERIN/COURTNEY STUHR**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2022 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
CARMAX BUSINESS SERVICES, LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2012 Toyota Sienna

Location: Voluntarily Surrendered to Movant

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).

Movant CarMax Business Services, LLC, seeks an order granting relief from the automatic stay regarding the collateral for its loan, a 2015 Toyota Sienna.

The vehicle is provided for in Class 2 of the debtors' confirmed plan, ECF No. 2. The vehicle was voluntarily surrendered to the movant on November 7, 2021, *see Declaration*, ECF No. 26. The chapter 13 trustee has filed a non-opposition to the motion.

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.

While the plan which has been confirmed provides for the movant's claim in Class 2, the movant reports that the vehicle was voluntarily surrendered to it on November 17, 2021. The debtors have not opposed the motion for relief from the automatic stay. As such the court concludes that such property is not necessary to the debtors' financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Toyota Sienna, 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.

50. [22-20093](#)-A-13 **IN RE: AISHA HAMILTON**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
2-22-2022 [\[12\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: January 14, 2022

Previous Chapter: 7

Previous Petition Filed: March 9, 2021

Previous Discharge: December 22, 2021

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4-year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously

imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case (which was originally filed under Chapter 13 and then converted to Chapter 7 on September 10, 2021) on March 9, 2021, the debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Discharge has been presented to the court. Having entered the default of the debtor 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; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

51. [22-20399](#)-A-13 **IN RE: DEAN GREEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-9-2022 [\[11\]](#)

DEBTOR DISMISSED: 3/14/2022

Final Ruling

The case having been dismissed on March 14, 2022, the matter is dropped as moot.