



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

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

DAY: TUESDAY
DATE: APRIL 4, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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PRE-HEARING DISPOSITION

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [19-24300](#)-A-13 **IN RE: MARK/CANDY GRAY**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
2-1-2023 [\[58\]](#)

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

Final Ruling

Motion: Dismiss Case

Notice: Continued from March 7, 2023

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from March 7, 2023, to coincide with the hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, MET-2, has been granted. Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

2. [19-24300](#)-A-13 **IN RE: MARK/CANDY GRAY**
[MET-2](#)

MOTION TO MODIFY PLAN
2-20-2023 [\[65\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Modified Chapter 13 Plan, filed February 20, 2023

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on February 20, 2023, ECF No. 62. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 72.

CHAPTER 13 PLAN MODIFICATION

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

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

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

3. [22-20300](#)-A-13 **IN RE: STEVEN AMBROSE**
[DPC-1](#)

CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
1-3-2023 [[134](#)]

W. SHUMWAY/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

4. [22-20300](#)-A-13 **IN RE: STEVEN AMBROSE**
[WSS-3](#)

MOTION TO AVOID LIEN OF CITY OF LINCOLN
2-17-2023 [[158](#)]

W. SHUMWAY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of the City of Lincoln under 11 U.S.C. § 522(f).

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Service of the motion must comply with Fed. R. Bankr. P. 7004(b)(6).

SERVICE

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

. . .

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the *person or office upon whom process is prescribed to be*

served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

Fed. R. Bankr. P. 7004(b) (6) (emphasis added).

Rule 7004 requires that service be made in compliance with California law.

Service upon a city or municipality in California is governed by C.C.P. § 416.50 as follows:

(a) A summons may be served on a public entity by delivering a copy of the summons and of the complaint to *the clerk, secretary, president, presiding officer, or other head of its governing body.*

(b) As used in this section, "public entity" includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state.

Cal. Civ. Proc. Code § 416.50 (emphasis added).

Service of the motion in this matter was made by first class mail to the City of Lincoln but was not served upon the clerk, secretary, president, presiding officer or other head of its governing body as required under C.C.P. § 416.50. See Certificate of Service, ECF No. 162.

The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Judicial Lien 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.

5. [22-20300](#)-A-13 **IN RE: STEVEN AMBROSE**
[WSS-4](#)

MOTION TO CONFIRM PLAN
2-17-2023 [\[163\]](#)

W. SHUMWAY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 67 months to fund as proposed.

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

The court will deny confirmation of the debtor's plan.

PLAN RELIES ON MOTION TO AVOID LIEN

LBR 3015-1(i) provides that "[t]he hearing [on a motion to avoid lien] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the feasibility of the plan relies upon the debtor's successful avoidance of the lien of creditor City of Lincoln. But the debtor has not yet obtained a favorable order on a motion to avoid the creditor's lien. Accordingly, the court must deny confirmation of the plan.

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.

Both the Chapter 13 trustee and the City of Lincoln argue that the plan is not proposed in good faith.

This case is the debtor's second bankruptcy filing in the Eastern District. The first case, 21-21576, filed under Chapter 7 was dismissed by the court on December 4, 2021. The case was dismissed on the motion of the City of Lincoln under 11 U.S.C. § 707(b). On February 10, 2022, the debtor filed the instant bankruptcy case under Chapter 7. The City of Lincoln filed a motion to dismiss this case again under 11 U.S.C. § 707(b).

Unsupported Medical Expenses

The objecting creditor contends the dental expenses projected in the debtor's Schedules are not necessary.

Debtor's Schedule J projects monthly medical and dental expenses of \$927.00 during the pendency of the Chapter 13 plan. Schedule J, ECF No. 128. Form 122C-2 forecasts uninsured medical expenses of \$791.00 per month. Form 122C-2, Line 22, ECF No. 128.

The debtor states:

My wife needs to have most of her teeth replaced with implants. These replacements are being performed over a long period of time due to the expense and recovery time needed for each surgery.

Declaration, 2:18-21, ECF No. 188.

The exhibits filed by the debtor in support of the non-filing spouse's projected dental expenses only show expenses which were incurred during 2021. They do not show what type of treatments are required going forward nor do they project the amounts of any future treatments. The debtor has provided no evidence from the non-filing spouse or her treating dentist indicating required treatments or the projected costs. Neither is there any proof that the debtor has incurred expenses since 2021. No receipts, invoices or billing statements are provided for 2022 or 2023. See Exhibit B, ECF No. 189.

The court finds that the debtor's information regarding the need for dental expenses and the amount of the projected expenses has not been sufficiently proven. Moreover, it is unclear to the court why the projected amounts on Schedule J and Form 122C-2 are different. The court will deny the motion.

Motivation of Debtor/Unreported Income

Additional bases under 11 U.S.C. § 1325(a)(3) have been plead by the Chapter 13 trustee and the opposing creditor.

The creditor and the Chapter 13 trustee contend that the plan is not filed in good faith and question the motivation and sincerity of the debtor in reorganizing his debts under Chapter 13. *In re Warren*, 89 B.R. 87 (B.A.P. 9th Cir. 1988). Specifically, the trustee and the creditor call into question the debtor's motives given the expenditures of significant sums of money on non-essential items e.g. vacation, time share, patio cover, swimming spa, unsecured credit cards of the debtor's non-filing spouse. While the funds which were spent appear to have been from exempt deferred compensation accounts, the debtor indicates the accounts were entirely depleted. Declaration of Steven Ambrose, 2:9, ECF No. 185.

Additionally, the creditor contends that the debtor has failed to report all of his income for the 6-month period prior to filing the case, and has submitted 66 pages of bank statements in support of its contentions.

Had the court not denied the motion as indicated above on other grounds these remaining objections under 11 U.S.C. § 1325(a)(3) would require an evidentiary 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.

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.

6. [23-20006](#)-A-13 **IN RE: KIMBERLY PROCK**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID
P. CUSICK
2-8-2023 [\[17\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from March 7, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

The Chapter 13 trustee objected to confirmation of the debtor's plan contending that the debtor had failed to provide social security information and that the proposed plan did not represent the debtor's best effort under 11 U.S.C. § 1325(b). In response to the trustee's objection the debtor filed: 1) Schedules I and J, ECF No. 23; 2) a Declaration in support of Schedules I and J, ECF No. 24; and 3) Amended Form 122-C, ECF No. 25.

The hearing on the trustee's objection was continued to allow the trustee to review the documents filed by the debtor and amend his objection as necessary. The trustee filed a status report detailing his additional objections. ECF No. 29. The trustee reports that the debtor provided the missing social security information at the continued meeting of creditors and that this issue has been resolved.

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).

After reviewing the trustee’s status report and the evidence proffered by the debtor the court finds that the proposed plan is not feasible as follows.

Schedules I and J

The debtor discloses increased income at new employment. At the inception of the case the debtor’s gross monthly income at her job in San Francisco was \$10,676.68. Schedule I, ECF No. 1. At her new job in Sacramento the debtor’s current gross monthly income is \$11,250.01, Schedule I, ECF No. 23. The debtor’s monthly gross income has *increased* by \$573.33.

The debtor’s deductions from wages and tax withholdings have changed significantly since the filing of the case. At the inception of the case the debtor claimed \$3,416.83 in monthly deductions for income taxes, social security, and Medicare, plus \$1,850.00 per month additional tax withholdings in 2023. Schedules I and J, ECF No. 1. This monthly withholding represents 49% of the debtor’s gross monthly income. The initial schedules do not present any analysis supporting this level of withholding, nor do they offer any explanation for the additional \$1,850.00 per month in tax payments.

Conversely, the debtor’s amended Schedule I shows monthly withholdings of \$2,499.23 for income taxes, social security, and Medicare, and removal of the additional taxes of \$1,850.00 from the Amended Schedule J. See ECF No. 23. The *only* explanation offered by the debtor regarding the significant changes to her projected withholdings is “[t]his change was necessary because the tax obligations, and the new requirements of the new employment and expenses.” Declaration of Debtor, 1:25-26, ECF No. 24. It is unclear to the court what the debtor means by this statement.

The IRS has filed a claim in this case, Claim No. 8., which lists priority taxes in the amount of \$41,534.45. This is significantly more than the amount stated by the debtor in Schedule E/F filed at the inception of the case which indicated an obligation to the IRS in the amount of \$28,399.49. See Schedule E/F, ECF No. 1.

The debtor has provided no analysis regarding the appropriate level of tax withholding given her income. It is unclear to the court how the debtor determined the proper amount of withholding taxes she has indicated in her most recently filed schedules. Given that the debtor’s monthly income has increased it seems counterintuitive that the debtor’s withholdings should decrease by such a substantial amount. Absent any explanation or evidence, the court concludes that the proposed plan is not feasible.

GOOD FAITH

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

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements does not evidence that the plan is proposed in good faith. Here, it is unclear to the court why the debtor has made certain substantial increases to her expenses.

In addition to the changes in her income the debtor has included significant changes to her expenses since the filing of the case. See Schedule J, ECF No. 23. Many monthly expenses were increased most notably: 1) Food from \$600.00 to \$1,000.00; 2) Clothing from \$150.00 to \$300.00; and 3) Automobile Expenses from \$400.00 to \$1,300.00. The only explanation proffered by the debtor is that these expenses have increased because of her new job which is a cursory and conclusory statement. See Declaration, 2:2-15, ECF No. 24. Additional detail is required if the court is to find that the expenses are reasonable. For example, the debtor has not explained how or why her transportation expenses have increased by \$900.00 per month where she was previously employed in San Francisco and is now employed in Sacramento, or how many miles she anticipates driving each month and at what cost. The debtor resides in Sacramento. The debtor has no dependents and lives alone. She has failed to explain why her food expenses have increased by \$400.00 per month (in just a six-week period) because of new employment or why her clothing expenses have increased by \$150.00 for the same reasons.

While the debtor has increased the plan payment, the trustee contends that the increase is conveniently sufficient to cover only the increased priority claim of the Internal Revenue Service.

Without further explanation of the need for, and accuracy of the projected increases in expenses, coupled with the significant and unsupported changes to the debtor's tax withholdings, the court concludes that the plan is not proposed in good faith. The court cannot determine which, if either, of the budget schedules filed by the debtor are accurate as the debtor has failed to provide sufficient explanations for the initial schedules or the changes proposed in the subsequently filed schedules.

The court need not reach the remaining issues raised in the trustee's objection. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

The 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.

7. [22-22307](#)-A-13 **IN RE: CARPIO GUINTU AND MARIA LAQUINDANUM**
[FEC-1](#)

CONTINUED ORDER TO SHOW CAUSE
1-26-2023 [[56](#)]

ARASTO FARSAD/ATTY. FOR DBT.
DEBTORS DISMISSED: 1/26/23; RESPONSIVE PLEADING

No Ruling

8. [22-23009](#)-A-13 **IN RE: THOMAS LAWSON**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-21-2022 [[16](#)]

CANDACE BROOKS/ATTY. FOR DBT.
DEBTOR DISMISSED: 3/13/23

Final Ruling

This case was dismissed on March 13, 2023. This objection is removed from the calendar as moot. No appearances are required.

9. [23-20210](#)-A-13 **IN RE: JOSEPH/MELANIE BARRON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
3-6-2023 [\[26\]](#)

DAVID RITZINGER/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

10. [23-20210](#)-A-13 **IN RE: JOSEPH/MELANIE BARRON**
[DPR-1](#)

MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION
3-6-2023 [\[21\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject Property: 2014 Jeep Grand Cherokee Limited

Value: \$12,000.00

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

Debtors seek an order valuing the collateral of Safe Credit Union, a 2014 Jeep Grand Cherokee Limited, at \$12,000.00.

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 2014 Jeep Grand Cherokee Limited. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$12,000.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2014 Jeep Grand Cherokee Limited has a value of \$12,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$12,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

11. [20-25612](#)-A-13 **IN RE: CHESTER KATZ**
[DPC-4](#)

MOTION TO DISMISS CASE
3-6-2023 [\[53\]](#)

BRUCE DWIGGINS/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 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$ \$53,509.72 with a further payment of \$9,444.79 due March 25, 2023.

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.

12. [22-23013](#)-A-13 **IN RE: MARY JONES**
[PSB-1](#)

MOTION TO EMPLOY SIERRA DESTINATION REALTY AS BROKER(S)
3-8-2023 [\[18\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

13. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-10](#)

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-30-2022 [\[157\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling

14. [18-20422](#)-A-13 **IN RE: EFRAIN CELEDON**
[DPC-1](#)

MOTION TO DISMISS CASE
3-6-2023 [\[30\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,884.00 with a further payment of \$270.00 due March 25, 2023.

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.

15. [22-22222](#)-A-13 **IN RE: RODERICK SINGLETON**
[KLG-1](#)

MOTION TO VACATE DISMISSAL OF CASE
3-11-2023 [\[57\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
DEBTOR DISMISSED: 2/23/23

Tentative Ruling

Motion: Vacate Dismissal of Case

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

Disposition: Denied

Order: Civil minute order

The debtor seeks an order vacating the dismissal of this Chapter 13 bankruptcy case under Fed. R. Civ. P. 60(b)(1) *as incorporated by* Fed. R. Bankr. P. 9024. Specifically, the debtor asks the court to vacate the dismissal on the grounds of the attorney's excusable neglect.

CASE HISTORY

This case was filed on August 21, 2022. A Chapter 13 plan was not confirmed. The case was dismissed on the Chapter 13 trustee's motion under 11 U.S.C. § 1307(c)(1). The trustee argued that the debtor's failure to file an amended plan after the court sustained an objection to confirmation on November 8, 2022. See Motion to Dismiss, ECF No. 39. An order dismissing the case was entered on February 23, 2023, ECF No. 54.

The Motion to Dismiss was served upon the debtor and the debtor's counsel as required. Certificate of Service, ECF No. 42. The movant does not argue that notice or service of the motion was deficient. The debtor did not file opposition to or otherwise oppose the motion to dismiss.

The debtor filed this motion to vacate the dismissal on March 11, 2023.

DISCUSSION

Fed. R. Civ. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9024, authorizes this court to grant relief after considering "all relevant circumstances surrounding the party's omission" including "[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith," *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 US 380, 395 (1993).

Prejudice to Debtor

The debtor has not articulated any prejudice that cannot be cured by re-filing, 11 U.S.C. § 349(a) or 11 U.S.C. § 362(c)(3)-(4) (stay limitations for serial filings). The motion to vacate the stay does not provide any reason a subsequent Chapter 13 proceeding could not be filed.

Impact of Reinstatement on Judicial Proceedings

Reinstatement of the Chapter 13 case negatively impacts the administration of the case because it: (A) engenders confusion among creditors as to the status of the case, i.e. dismissed or pending; (B) shortens the time in which creditors and the trustee have to perform statutorily required acts, e.g. convene the meeting of creditors (21-40 days in chapter 7, 21-50 days in chapter 13, Fed. R. Bankr. 2003(a)), file a proof of claim (70 days after the petition, Fed. R. Bankr. P. 3002(c)); and (C) adds administrative burdens associated with noticing duties for the Clerk of the Court, Fed. R. Bankr. P. 2002(a)(1).

The debtor has provided no information regarding his ability to make the plan payments which continued to accrue during the period the case was dismissed.

Reason for Delay

Additionally, the court must determine whether the neglect in this case was "excusable".

In *Pioneer*, the Supreme Court held that the determination of whether a party's neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." 507 U.S. at 395, 113 S.Ct. at 1498. Briones' conduct appears to have been at least negligent, so the issue is whether his neglect was excusable.

Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997).

Here counsel for the debtor has indicated his reasons for failing to file an opposition to the trustee's motion to dismiss as follows:

11. However, counsel for the Debtor missed the time to file a response to the trustee's motion to dismiss as he was distracted by the other activities in the case to the extent that he simply noncalendared the deadline to file a response.

12. Counsel's neglect is at least partially due to illness during the time that such response would have been due and while such illness did not prevent counsel from work, it made working difficult and

counsel was not operating at full capacity or to his abilities.

Declaration, 2:1-7, ECF No. 59.

Sufficient detail is not included which would assist the court in determining whether the failure to file an opposition to the trustee's motion to dismiss constitutes "excusable neglect". It is unclear how long counsel was ill or the extent of his impairment from illness, or how specifically the illness interfered with the calendaring of the opposition to the motion to dismiss. It appears to the court that counsel forgot to calendar the event, which absent other causes beyond the control of the attorney does not rise to the level of excusable neglect.

Good Faith of Movant

This issue is neutral. The court does not question the good faith or motives of the debtor in filing the motion to vacate the dismissal. However, because the conduct of the attorney is not "excusable" neglect the court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's Motion to Vacate Dismissal of Case 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.

16. [22-21923](#)-A-13 **IN RE: ANDREW/SHAWNI MILLER**
[TLA-3](#)

MOTION TO SELL
3-14-2023 [[37](#)]

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling

17. [23-20224](#)-A-13 **IN RE: TRISTAN JOSEPH/ROSEMARIE CASTILLO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-9-2023 [\[15\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

No Ruling

18. [22-23129](#)-A-13 **IN RE: MARIA ROWENA PENA**
[AVN-1](#)

MOTION TO CONFIRM PLAN
2-14-2023 [\[25\]](#)

ANH NGUYEN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

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 has filed a non-opposition to the motion. Despite this, the court will deny the motion because it is not supported by admissible evidence as follows.

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).

SCHEDULES I AND J

Rule 1008

On February 14, 2023, the debtor(s) filed Schedules I and J in support of the motion and plan, ECF No. 24. The Schedules are unsigned. *Id.*

The schedules were filed without the required amendment cover sheet, EDC 002-015 and are thus unsigned by the debtor. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which

requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

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

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

EDC 002-015.

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.

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.

19. [20-20731](#)-A-13 **IN RE: WILLIAM GUNN**
[DPC-2](#)

MOTION TO DISMISS CASE
2-24-2023 [\[28\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.

Final Ruling

This case was converted to a Chapter 7 on April 2, 2023.
Accordingly, the motion will be removed from the calendar as moot.
No appearances are required.

20. [20-22331](#)-A-13 **IN RE: BRANDON/JOVINA LIMOSNERO**
[DPC-3](#)

MOTION TO DISMISS CASE
2-24-2023 [\[106\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

As a courtesy to the court the debtors filed a statement on March 21, 2023. See ECF No. 110. The debtors have stated that they do not oppose the trustee's motion and that they will either allow the case to be dismissed or convert the case to Chapter 7. Should the debtors wish to convert the case to Chapter 7 they must do so prior to the entry of the court's order on this motion.

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$6,054.00 with a further payment of \$1,009.00 due March 25, 2023.

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. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[MEV-3](#)

MOTION TO CONFIRM PLAN
2-23-2023 [\[51\]](#)

MARC VOISENAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

The trustee opposes confirmation of the plan contending that feasibility of the plan is uncertain because the debtor has recently filed multiple Schedules I/J which present conflicting information

and the debtor has failed to reconcile the conflicting information in the declaration in support of the motion to confirm. The trustee also questions the feasibility of the plan as the debtor has failed to supply 60 days of pay advices for employment earned during the 60 day period prior to filing the petition. Without this information the trustee is unable to determine if the proposed plan, in his estimation, is feasible.

Schedules I and J

On February 20, 2023, the debtor filed Schedules I and J, ECF No. 49. The Schedules state that the debtor is currently an Iron Worker on call, with a monthly gross income of \$2,000.00.

On February 23, 2023, the debtor filed a new Schedule I, ECF No. 50. The new schedule states that the debtor is employed at Tove Audio Books, LLC (Tove). It further states that this has been the debtor's place of employment for the past 7 months. The gross monthly wages are identical to the previous Schedule I. As the case was filed on September 1, 2022, the debtor earned monies at Tove before the petition was filed. As such, the debtor must provide the trustee copies of any pay advices evidencing income from Tove earned within the 60 days prior to filing the petition. 11 U.S.C. § 521(a)(1)(B)(iv). The trustee indicates that the debtor has not provided any pay advices from Tove.

It appears to the court that the subsequently filed Schedule I is a correction to the document filed at ECF No. 49. However, the debtor has failed to indicate this in the filed schedule or in a declaration explaining the need to correct the evidentiary record. Moreover, the debtor has failed to provide required income documents which would allow the court or the trustee to evaluate the accuracy of the schedules filed.

The court considers accurate and complete income information to be part of the debtor's prima facie case for plan confirmation. The debtor has failed to explain inconsistencies between recently filed budget schedules and has failed to provide required income documents to the trustee. The debtor has failed to meet his burden for confirmation. 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.

22. [22-20635](#)-A-13 **IN RE: MARIA LUPERCIO**
[CYB-4](#)

MOTION TO CONFIRM PLAN
2-21-2023 [\[85\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, filed February 21, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Third Amended Chapter 13 Plan, ECF No. 91. The plan is supported by Schedules I and J filed, February 21, 2023, ECF No. 93. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 94.

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.

23. [23-20035](#)-A-13 **IN RE: MONICA PRATHER**
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
3-2-2023 [\[42\]](#)

DEBTOR DISMISSED: 3/10/23

Final Ruling

This case was dismissed on March 10, 2023. This objection is removed from the calendar as moot. No appearances are required.

24. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[DPC-3](#)

MOTION TO DISMISS CASE
2-24-2023 [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to May 2, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: March 21, 2023

Opposition Filed: March 20, 2023 - timely

Motion to Modify Plan Filed: March 20, 2023 - 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 \$1,680.00.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 2, 2023, 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 2, 2023, 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.

25. [22-22936](#)-A-13 **IN RE: COURTNEY WILSON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-7-2023 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: March 21, 2023

Opposition Filed: March 21, 2023 - timely

Motion to Modify Plan Filed: March 20, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to file an amended plan following the hearing on January 24, 2023, wherein the trustee's objection to confirmation was sustained.

On March 27, 2023, the trustee filed a request to withdraw his motion, ECF No. 57. Because the debtor has opposed the motion it cannot be unilaterally withdrawn by the trustee.

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 motion. No unfair prejudice will result from withdrawal of the motion 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.

26. [23-20238](#)-A-13 **IN RE: DAVID KIM AND JAE YONG MOON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-13-2023 [\[23\]](#)

MARK WOLFF/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).

11 U.S.C. § 1325(b)

Projected disposable income is a defined term. Projected disposable income is calculated in a two-step process. *Lanning v. Hamilton*, 560 U.S. 505 (2010). Initially, "disposable income" is calculated

by means of a rigid statutory formula. Disposable income is current monthly income less amounts reasonably necessary to be expended, which are determined under § 707(b)(2)(A) and (B). 11 U.S.C. § 1325(b)(2). After deducting amounts reasonably necessary to be expended under the means test, the remainder is presumptively the debtor's projected disposable income. See *Hamilton v. Lanning (In re Lanning)*, 545 F.3d 1269 (10th Cir. 2008), *aff'd*, 560 U.S. 505 (2010). Debtors, creditors, or the chapter 13 trustee have the opportunity to rebut the presumption and demonstrate that the projected disposable income is actually higher or lower than the amount derived under the disposable income calculus of § 1325(b). *Lanning*, 560 U.S. at 513-19, 524. The burden of proof is on the party attempting to rebut the presumption. *Lanning*, 545 F.3d at 1278-79.

Plan fails to Pay all Projected Disposable Income

The trustee objects to confirmation under 11 U.S.C. § 1325(b) contending that the above median income debtors are not paying the amount required after performing the calculation on Form 122C-2. The court will sustain the objection as follows.

The plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b). Form 122C-2 shows disposable income of \$178,270.20 over the next five years. The proposed plan only pays unsecured creditors 14% or \$36,820.00.

Involuntary 122C-2 Deductions Inconsistent with Projected Schedule I Deductions

Form 122C-2 indicates that the debtors anticipate paying monthly amounts of \$960.00 for involuntary deductions from work. The trustee opposes confirmation because the debtors project only \$512.33 on Schedule I in involuntary deductions for: 1) Mandatory Retirement \$472.33 and 2) Union Dues - \$40.00. The difference would increase the projected disposable income calculation by \$447.67 per month.

Similarly, the trustee objects to the inclusion of charitable contributions on Form 122C-2 in the amount of \$300.00 per month, because Schedule J does not show the debtor intends to make the contributions during the plan. Omission of the charitable contributions on Form 122C-2 would increase the projected disposable income calculation by \$300.00 per month.

Retirement Contributions

The debtors' Schedule I projects voluntary retirement contributions in the amount of \$2,436.9, Schedule I, ECF No. 1. While the debtors have not included the voluntary contributions in the Form 122C-2 calculation of disposable monthly income, the trustee objects to the voluntary contributions in Schedule I at the expense of payments to unsecured creditors.

Coupled with this is the debtors' failure to increase proposed plan payments when the payment of a retirement loan is completed. Schedule I shows the debtors are repaying a retirement loan in the amount of \$723.67 per month. The debtor admitted at the meeting of creditors that the loan should be paid in full in approximately 3 years. The plan does not propose an increase in plan payments once the loan is paid.

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.

27. [22-23039](#)-A-13 **IN RE: KAREN GARLINGTON**
[PGM-1](#)

MOTION TO CONFIRM PLAN
2-17-2023 [\[51\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION; RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

The opposing creditor contends the proposed plan is not feasible because: 1) the debtor has failed to provide proof of property insurance, which is contractually required, and which is not provided for in the debtor's Schedule J; and 2) uncertainty regarding the debtor's income given newly obtained employment.

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.

28. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[MC-8](#)

MOTION FOR COMPENSATION FOR MUOI CHEA, DEBTORS ATTORNEY(S)
2-23-2023 [\[118\]](#)

MUOI CHEA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final 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: First
Additional Compensation Requested: \$1,200.00
Additional Compensation Approved: \$1,200.00

COMPENSATION AND EXPENSES

In this chapter 13 case, Muoi Chea, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,200.00.

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).

The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 129. The debtors have filed a declaration in support of the motion, agreeing to pay the additional fees through the Chapter 13 plan, ECF No. 122.

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 achieved modification of the Chapter 13 plan, successfully prosecuted motions for employment of counsel and approval of settlements.

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 \$1,200.00.

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.

Muoi Chea'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 \$1,200.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

29. [23-20245](#)-A-13 **IN RE: CHERYL ADLER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY David P. Cusick
3-8-2023 [\[12\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

30. [20-21047-A-13](#) **DENNO AND SANDRA MURRAY**

[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
1-23-2023 [\[175\]](#)

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

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

[MWB-7](#)

MOTION TO MODIFY PLAN
2-2-2023 [\[182\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

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 because the additional provisions of the plan provide incorrect or unclear amounts paid to the trustee from the sale of the property located at Airport Road, Redding, California at the end of last year. In their Reply the debtors acknowledge that the sum received and paid to the trustee from the sale of the property differs from the amount indicated in the proposed plan at Section 7.01. Reply, 1:20-21, ECF No. 200. An unambiguous and accurate depiction of the payments received and the amounts due under the proposed plan is fundamental to any creditor's evaluation of the plan regarding its claim, and to the mathematical feasibility of the plan. This is not a correction which the court will allow to be made in an order approving the modified plan. The debtors must file a further modified plan.

Schedules I and J

The debtors have not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on February 26, 2020, nearly 37 months ago, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a) (3), (6).

Debtor Reply

On March 21, 2023, the debtors filed supplemental Schedule I and J. On March 27, 2023, the debtors filed a further supplemental Schedule regarding business expenses, although the Amendment Cover Sheet incorrectly indicates that this is an amended Schedule I and J. See ECF Nos. 192, 203. The filing of current budget schedules is part of a debtor's prima facie case for confirmation or modification of a Chapter 13 plan. This information is to be provided at the inception of the motion, and not in response to the filing of the trustee's opposition. The late filing, on March 27, 2023, does not give the trustee an adequate opportunity to review the documents and

report to the court whether the proposed plan in his estimation is feasible. This deprives the court of the benefit of the trustee's analysis when reviewing the motion.

The court will deny the motion because the terms in the proposed plan at Section 7.01 are unclear and uncertain, and because the plan was not supported by sufficient evidence when it was filed. As such, the court need not address the remaining issues raised in the Chapter 13 trustee's opposition to 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.

32. [15-22149](#)-A-13 **IN RE: MATTHEW MCKEE**
[PGM-7](#)

MOTION TO APPROVE LOAN MODIFICATION
3-2-2023 [\[163\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Civil minute order

The debtor seeks an order granting the following relief: 1) approval of a modification of the loan held by Wells Fargo which is secured by a second deed of trust on his property located at 1520 Yellowstone Court, Rocklin, California; 2) a modification of the confirmed Chapter 13 plan, which reclassifies the Wells Fargo Class 2 obligation to Class 4. The debtor suggests that if these orders were entered a discharge could be entered in this case as the plan would complete.

The trustee has filed a response to the motion, ECF No. 172. In his response the trustee states: 1) he does not oppose the loan

modification; 2) he does not oppose the reclassification of the Wells Fargo obligation from Class 2 to Class 4; and 3) that a discharge may not enter because the plan has not otherwise completed as additional monies are owed to priority creditors. The trustee also indicates that he has filed a motion to dismiss the case, and that motion is currently set for hearing on April 18, 2023, at 9:00 a.m.

PLAN TERM EXPIRED

This case was filed on March 18, 2015. The debtor filed a motion to modify the confirmed plan and the plan term was extended to 84 months under the CARES ACT on May 7, 2021. Order Modifying Plan, ECF No. 150.

Both the debtor and the Chapter 13 trustee acknowledge that the plan term has expired. The debtor states in his motion to approve the loan modification that the debtor has "been in the Chapter 13 for 96 months." Motion, 1:24, ECF No. 163. The trustee states in his motion to dismiss (DPC-1) that March 2022 was month 84 of the plan. Motion to Dismiss, 2:2, ECF No. 168.

The debtor requests that the court enter an order allowing the reclassification of the Wells Fargo obligation from Class 2 to Class 4. This represents a modification of the currently confirmed plan which provides for Wells Fargo in Class 2. First Modified Plan, Section 3.08, ECF No. 132. Neither the debtor nor the trustee have proffered any legal authority indicating how a modification of the plan at this juncture would comply with 11 U.S.C. § 1329(a) which provides:

(a) At any time after confirmation of the plan *but before the completion of payments under such plan*, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to--

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments;
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

...

11 U.S.C. § 1329(a) (emphasis added).

The court will deny the request to reclassify the obligation to Wells Fargo.

The court will hear from the Chapter 13 trustee regarding the delay in filing his motion to dismiss. March 2022 was month 84 of the confirmed plan and the motion to dismiss for failure to complete the plan was not filed until March 10, 2023, over 11 months later.

LOAN MODIFICATION

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

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

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

By granting this motion, the court is not approving the terms or conditions of the loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the terms and conditions of the loan modification agreement or other declaratory relief.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the

modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

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

IT IS FURTHER ORDERED that the request to reclassify the obligation to Wells Fargo from Class 2 to Class 4 in the currently confirmed plan is denied.

33. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-2](#)

OBJECTION TO HOMESTEAD EXEMPTION
2-24-2023 [\[64\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
ALAN NAHMIAS/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

34. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-2](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

35. [22-22758](#)-A-13 **IN RE: LEONARDO PADILLA ORTIZ**
[GC-2](#)

MOTION TO CONFIRM PLAN
2-8-2023 [\[35\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

36. [22-21567](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[CK-1](#)

MOTION TO MODIFY PLAN
2-14-2023 [\[39\]](#)

CATHERINE KING/ATTY. FOR DBT.
DEBTORS DISMISSED: 2/23/23

Final Ruling

This case was dismissed on February 23, 2023. This motion is removed from the calendar as moot. No appearances are required.

37. [20-23368](#)-A-13 **IN RE: CYNTHIA ANDERSON**
[DPC-2](#)

MOTION TO DISMISS CASE
2-24-2023 [\[40\]](#)

MARY TERRANELLA/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 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$6,520.00 with a further payment of \$1,630.00 due March 25, 2023.

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.

38. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[DPC-2](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
12-19-2022 [\[134\]](#)

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

Final Ruling

The hearing on this matter is continued to May 16, 2023, at 9:00 to coincide with hearings on related matters in this case. The court

intends this matter to be heard as a status conference. No appearances are required.

39. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[FEC-2](#)

CONTINUED ORDER TO SHOW CAUSE
1-23-2023 [[155](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The hearing on this matter is continued to May 16, 2023, at 9:00 to coincide with hearings on related matters in this case. No appearances are required.

40. [20-20970](#)-A-13 **IN RE: LESLIE BAKER**
[MEV-3](#)

MOTION TO MODIFY PLAN
2-18-2023 [[52](#)]

MARC VOISENAT/ATTY. FOR DBT.
DEBTOR DISMISSED: 2/24/23

Final Ruling

This case was dismissed on February 24, 2023. This motion is removed from the calendar as moot. No appearances are required.

41. [23-20375](#)-A-13 **IN RE: ANGELA LOPEZ**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
3-14-2023 [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.
CHERYL SKIGIN/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).

Capital One Auto Finance objects to confirmation of the debtor's plan as follows. The security for the creditor's claim is a 2017 Honda Accord Sport SE Sedan, which is listed in Class 2 of the debtor's proposed Chapter 13 Plan, ECF No. 3. The plan provides for interest on the creditor's claim at 3%. The creditor contends the proposed rate of interest does not comply with *Till*.

INTEREST ON SECURED DEBT

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

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

high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

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

Here, the plan provides for an interest rate of 3% on the objecting creditor's class 2 secured claim. The prime rate of interest on the date the petition was filed is 7.75%.

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So, the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 8.75%.

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.

Capital One Auto Finance'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. [19-26277](#)-A-13 **IN RE: JUAN MONGALO AND MILAGROS MONGALO**
ROBLETO
[MMN-9](#)

MOTION TO MODIFY PLAN
2-21-2023 [\[202\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

LBR 3015—(d) (1)

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, *the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it.* Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

LBR 3015-1(d)(1) (emphasis added).

The debtors move to confirm the Chapter 13 Plan filed on January 3, 2023. On January 4, 2023, the debtors filed a motion to confirm the same plan (MMN-8). The previous motion was denied on February 24, 2023, ECF No. 209.

In support of this motion to confirm the debtors have filed a Certificate of Service, ECF No. 206. The certificate does not list

the Chapter 13 Plan as a document which was served on interested parties. See Section 4, *id.*

LBR 3015-1(d)(1) requires that the debtor serve the plan under consideration with a motion to confirm. The debtors may move to confirm a plan, which was previously denied confirmation. However, when bringing the new motion, the plan must be served again under LBR 3015-1(d)(1). The purpose of the rule requiring service of the plan with a motion to confirm is to assure adequate notice of the plan terms upon all interested parties. If the plan is not served notice is not properly accomplished. The debtors' reply to the trustee's opposition states that the plan was served on January 4, 2023, thereby acknowledging non-compliance with LBR 3015-1(d)(1) in serving the instant motion. See Reply, 1:18-20, ECF No. 214.

The court will deny the motion for improper service under LBR 3015-1(d)(1). As such, the court need not reach the other issues raised in the trustee's opposition to 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.

43. [23-20777](#)-A-13 **IN RE: TIMOTHY WILLIAMS**
[PGM-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
3-17-2023 [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Impose the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

The debtor seeks an order imposing the automatic stay. The debtor has filed the following Chapter 13 bankruptcy cases in the Eastern District of California during the last twelve months: 1) 22-23082,

filed November 29, 2022, and dismissed March 10, 2023; 2) 22-22743, filed October 25, 2022, and dismissed November 23, 2022; and 3) 22-22381, filed September 21, 2022, and dismissed October 20, 2022.

IMPOSITION OF THE STAY

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." *Id.* (emphases added).

Because at least 2 or more cases were pending in the 1-year period preceding the current petition but were dismissed, a presumption that this case has not been filed in good faith arises under subsection (c)(4)(C) of section 362. See *id.* § 362(c)(4)(D)(i). Clear and convincing evidence is required to rebut the presumption. *Id.* Supporting declarations should proffer evidence that rebuts this presumption. The motion is not supported by sufficient evidence rebutting this presumption and demonstrating that the moving party is entitled to the relief requested. LBR 9014-1(d)(6).

The debtor states that his first case was dismissed because he failed to timely file documents. Declaration, 2:1-3, ECF No. 12. The debtor states that the second case was dismissed because he did not timely file documents with the court. *Id.*, 2:7-9. During the second case the debtor had applied for a loan modification. The loan modification was denied, which led to the filing of the third bankruptcy. The third case was dismissed because the debtor had failed to pay the filing fee installment. Order, ECF No. 56, Case No. 22-23082, Cal. E.D. Bankr. (2022). The court notes that the Chapter 13 trustee has also filed a motion to dismiss for plan delinquency, failure to file tax returns and failure to file a motion to confirm the Chapter 13 plan. The trustee's motion was rendered moot by the dismissal of the case pursuant to the court's Order to Show Cause for failure to pay filing fees.

Given the plan delinquency of \$14,400.00 the case would have surely been dismissed on the trustee's motion had it been heard. See *Id.*, Status Report, 1:24, ECF No. 49.

CURRENT CASE

The declaration in support of this motion should address facts indicating a "substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case" or "any other reason to conclude" that the current case will result in a "confirmed plan that will be fully performed." See *id.* § 362(c)(4)(D)(i)(III).

The proposed plan calls for payments of \$7,000.00 per month. Chapter 13 Plan, Section 2.01, ECF No. 3.

The debtor has gained new employment since the filing of the most recently dismissed Chapter 13 case. Schedule I shows the debtor has been employed by Paramount Residential Mortgage for one month. The debtor earns \$3,322.94 per month from wages and projects \$7,000.00 per month in commissions. Schedule, ECF No. 1. The declaration of the debtor in support of the motion to impose the stay provides scant information regarding the new employment. It states only as follows:

[s]ince my previous case was dismissed, my circumstances have changed as I have obtained employment. With this new employment I will receive a base pay plus commission.

Declaration, 3:4-6, ECF No. 12.

The debtor's income from commission is speculative. The debtor has offered no evidence regarding: 1) the nature of his employment; 2) how commissions are calculated; 3) why the debtor believes he will earn \$7,000.00 per month in commissions; 4) when/how often commissions are paid. No pay advices have been provided showing payment of any commissions since the debtor gained employment. The debtor has provided insufficient evidence substantiating his ability to make a plan payment of \$7,000.00 per month. The plan payment is substantial, represents the entirety of the debtor's projected commissions, and represents 69% of the debtor's projected gross monthly income.

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.

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

IT IS ORDERED that the motion is denied.

44. [22-22378](#)-A-13 **IN RE: MELINDA AGDIPA**
[DRE-1](#)

MOTION TO CONFIRM PLAN
2-15-2023 [\[50\]](#)

D. ENSMINGER/ATTY. FOR DBT.
DEBTOR DISMISSED: 2/24/23

Final Ruling

This case was dismissed on February 24, 2023. This motion is removed from the calendar as moot. No appearances are required.

45. [22-22378](#)-A-13 **IN RE: MELINDA AGDIPA**
[FEC-1](#)

ORDER TO SHOW CAUSE
2-17-2023 [\[55\]](#)

D. ENSMINGER/ATTY. FOR DBT.
DEBTOR DISMISSED: 2/24/23; RESPONSIVE PLEADING

Final Ruling

Because of counsel's inability to timely respond to the court's Order to Show Cause the hearing on this matter will be continued to May 1, 2023, at 1:00 p.m. Appearance by counsel is required but may be made in person, telephonically, or by Zoom video or Zoom phone.

No later than April 17, 2023, counsel may file and serve opposition and admissible evidence in response to the Order to Show Cause; any such response should include authenticated time and costs records or, in the event the attorney did not maintain such records in the ordinary course, a detailed explanation of the service rendered by task and an estimate of the time spent plus a showing of costs incurred. All such explanations regarding services provided must be tendered under oath.

Failing a timely and sufficient showing the court may resolve this matter without hearing or notice. The debtor, Melinda M. Agdipa, is invited to attend the hearing and make her views known. Chapter 13 trustee David Cusick and the U.S. Trustee are invited to file a statement of position not later than April 24, 2023, and attend the hearing.

The court will issue a Civil Minute Order.

46. [23-20178](#)-A-13 **IN RE: TAMMY RAJAH-ALLEN**
[DPC-1](#)

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

ERIC GRAVEL/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from March 21, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

COUNSEL SHALL PERSONALLY APPEAR AT THE HEARING

Debtor's counsel, Eric Gravel, is ordered to personally appear at the hearing on April 4, 2023, at 9:00 a.m. 501 I Street, 7th Floor, Courtroom 28, Department A, Sacramento, California. At that time counsel shall produce the following original documents which were filed with the court on January 22, 2023, at ECF Nos. 1 and 3: Petition, Summary of Schedules, Statement of Financial Affairs, Form 122C, and 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).

Plan Feasibility

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

530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

The hearing on the trustee's objection to confirmation was continued from March 21, 2023. The trustee objected to confirmation because the debtor had failed to appear at the meeting of creditors for examination as required. Since then, the trustee has conducted the meeting of creditors and examined the debtor.

The trustee has filed a status report indicating additional bases for his objection to confirmation. First, the trustee reports that the plan payments are delinquent in the amount of \$150.00. While the trustee also reports that a plan payment is pending in TFS which would bring the payment current by April 3, 2023, the trustee has not yet received the payment which was due on March 25, 2023. As such the payments are delinquent and the court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6). Status Report, 1:27-28, 2:1-2, ECF No. 19.

Unsigned Documents

All petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.

Fed. R. Bankr. P. 1008.

C. The Use of "/s/ Name" or a Software-Generated Electronic Signature. The use of "/s/ Name" or a software-generated electronic signature on documents constitutes the registered user's representation that an originally signed copy of the document exists and is in the registered user's possession at the time of filing.

D. Retention Requirements When "/s/ Name" or a Software-Generated Electronic Signature Is Used. When "/s/ Name" or a software-generated electronic signature is used in an electronically filed document to indicate the required signature(s) of persons other than that of the registered user, the registered user shall retain the originally signed document in paper form for no less than three (3) years following the closing of the case. On request of the Court, U.S. Trustee, U.S. Attorney, or other party, the registered user shall produce the originally signed document(s) for review. The failure to do so may result in the imposition of sanctions on the Court's own motion, or upon motion of the case trustee, U.S. Trustee, U.S. Attorney, or other party.

LBR 9004-1(c)(1)(C), (D).

Second, the trustee reports that the debtor testified at the meeting of creditors that "she has not physically signed the documents filed

at the start of this case, although she attempted to sign the documents electronically". *Id.*, 2:3-6.

On January 22, 2023, the debtor initiated this case by filing the following documents: Voluntary Petition; Schedules A-J inclusive; Summary of Schedules; Statement of Financial Affairs; Form 122C. Each of these documents is signed with the /S/ designation and the debtor's name printed on the documents. See ECF No. 1. Similarly, the proposed Chapter 13 Plan was signed in the same manner. Chapter 13 Plan, ECF No. 3. All the above documents were purportedly signed on January 22, 2023.

Rule 1008 requires that all documents must be verified by the debtor. As the debtor has admitted that she failed to sign documents they may not be considered by the court in support of the proposed plan.

Moreover, LBR 9004-1(c)(1)(C), (D) requires counsel for the debtor to retain and produce copies of the debtor's signature on documents which are filed with the court using the /S/ designation.

The court will sustain the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

The 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.

47. [23-20378](#)-A-13 **IN RE: ALBERT/MARY LEE**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAB WEST, LLC
3-8-2023 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

On March 28, 2023, the court signed an order confirming the debtor's plan after the objecting creditor filed a notice of withdrawal of its objection to confirmation. Order Confirming, ECF No. 26.

Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

48. [22-22782](#)-A-13 **IN RE: RONALD AHLERS**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
12-21-2022 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from January 24, 2023

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file plan

Best Interests of Creditors/Estate: Dismiss

The hearing on the trustee's motion to dismiss was continued and the trustee ordered to file a status report.

DISMISSAL

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 previously filed plan.

Case History

This is the debtor's third Chapter 13 filing since 2020. Each of the previous two cases was dismissed. The debtor failed to confirm a plan in either of the previous cases filed in 2020 or 2021.

The instant case was filed on October 27, 2022. The debtor filed a plan which proposed monthly payments of \$4,500.00 for the first 18 months of the plan. Chapter 13 Plan, ECF No. 16. A plan has not been confirmed.

On December 21, 2022, the trustee filed the instant motion requesting dismissal because the debtor was delinquent under the terms of the proposed plan.

The court notes that the trustee's initial motion contained errors: 1) it contended that the case had been converted from a Chapter 7; and 2) it contended that the debtor had not filed a plan. The court's docket does not reflect that this case was previously

converted from any other chapter and as the court has previously noted the debtor filed a plan on November 10, 2022.

On January 26, 2023, the court entered an order sustaining the trustee's objection to confirmation of the proposed plan, ECF No. 39.

Trustee Status Report

Both parties have filed a status report. The trustee's status report states that the debtor is still delinquent pursuant to the terms of the previously filed plan and that the trustee has received the following plan payments: 1) January 4, 2023 - \$1,800.00; 2) February 1, 2023 - \$4,500.00; and 3) March 3, 2023 - \$4,500.00. The court notes that no payments were made in November or December as required under the previous plan; and that the payment made in January 2023 was \$2,700.00 short. The trustee's arithmetic in the status report is incorrect. The trustee reports that the debtor is delinquent \$7,475.65 under the previously proposed plan. This is impossible as the scheduled plan payments were \$4,500.00 per month. The amount due from November 25, 2022, through March 25, 2023, totals \$22,500.00, or 5 months multiplied by \$4,500.00. The printout from the trustee's payment records shows that the debtor has paid \$10,800.00. Thus, the delinquency is \$11,700.00. See Trustee Status Report, ECF No. 58.

The trustee correctly observes that the debtor has yet to file an amended plan.

Debtor Status Report

On March 21, 2023, the debtor filed a status report which is supported by the Declaration of the Debtor. See ECF Nos. 60, 61.

The Status Report does not provide any explanation for the debtor's failure to file an amended plan. The report states "[t]he Debtor will set, serve, and file new plan, on or before the April 28, 2023." Status Report, 2:1-2, ECF No. 60. No reason is given for the need to wait until April 28, 2023, to file an amended plan.

The previous opposition to this motion filed by the debtor on January 10, 2023, stated "[t]he Debtor will set, serve, and file (sic) new plan on or before the hearing date, January 24, 2023." Opposition, 1:25-26, ECF No. 43.

Similarly, the most recent declaration of the debtor filed on March 21, 2023, states "I will be meeting with my attorney to prepare a new plan so that I can continue to pay my creditors to the best of my ability through the sale of the home after I pass." Declaration, 2:18-20, ECF No. 61. This is nearly identical to the assertion in the debtor's declaration filed January 10, 2023, which stated "I will be meeting with my attorney to prepare a new plan so that I can continue to pay my creditors to the best of my ability." Declaration, 2:18-20, ECF No. 44. No explanation is provided regarding the debtor's failure to prepare and file a plan during the

period of January 10, 2023, and March 21, 2023, while this motion has been pending.

The debtor failed to file an amended plan after he previously indicated he would do so by January 24, 2023. The debtor has provided no explanation why an amended plan has not been filed since January 6, 2023, when the court sustained the trustee's objection to confirmation. The debtor has failed to maintain current plan payments under the previous plan and the debtor has provided no explanation why he requires an additional month to file an amended plan.

The court finds that the plan delinquency and the failure to file an amended plan constitute unreasonable delay which is prejudicial to creditors, under 11 U.S.C. § 1307(c)(1). The court will grant the trustee's 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 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.

49. [19-20685](#)-A-13 **IN RE: CHARLES/LOLA SAPPINGTON**
[DPC-1](#)

MOTION TO DISMISS CASE
2-27-2023 [\[29\]](#)

BRUCE DWIGGINS/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 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$ 4,060.00 with a further payment of \$580.00 due March 25, 2023.

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.

50. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-6](#)

CONTINUED OBJECTION TO CLAIM OF CHARLEY SMITH FAMILY TRUST,
CLAIM NUMBER 14-3
7-29-2022 [[214](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Charley Smith Family Trust, Claim No. 14

Notice: Continued from February 7, 2023

Disposition: Continued to October 3, 2023, at 9:00 a.m.

Order: Civil minute order

The hearing on the debtor's objection to the claim of Charley Smith Family Trust (Smith Trust) will be continued until October 3, 2023, at 9:00 a.m. for the following reasons.

On March 7, 2023, the court ordered the lifting of the automatic stay of 11 U.S.C. § 362(a) to allow the parties to proceed with the state court appeal of the judgment entered against the debtor in favor of Smith Trust. Additionally, the court abstained from hearing the objection to claim under the *Colorado River* doctrine, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), until the state court appeal is concluded.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to October 3, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days before the continued hearing date the debtor and Smith Trust shall file and serve a joint status report apprising the court of the status of the state court appeal.

IT IS FURTHER ORDERED that the hearing on this matter may be advanced at the request of the debtor, Smith Trust, or the Chapter 13 trustee, if the appeal is resolved prior to October 3, 2023.

51. [22-21286](#)-A-13 **IN RE: BRIAN/ANDREA BARANCHULK**
[DPC-1](#)

MOTION TO DISMISS CASE
2-24-2023 [\[27\]](#)

MARK SHMORGON/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 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$2,805.00 with a further payment of \$510.00 due March 25, 2023.

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.

52. [18-25589](#)-A-13 **IN RE: ROCHELLE WARD**
[DPC-1](#)

MOTION TO DISMISS CASE
2-27-2023 [\[67\]](#)

NIMA VOKSHORI/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: Withdrawn by moving party

Order: Civil minute order

Opposition Due: March 21, 2022

Opposition Filed: March 22, 2022 - untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee

contends that the plan payments are delinquent in the amount of \$5,733.67, with another payment of \$2,417.94 due March 25, 2023.

OPPOSITION

The debtor has filed opposition to the motion. The opposition was not timely filed as opposition to the motion was due no later than March 21, 2023. LBR 9014-1(f)(1)(B). However, because the Chapter 13 plan is so near completion, and in this instance only, the court will allow the late opposition.

The opposition is supported by Exhibits evidencing payments to the trustee, and the Declaration of the Debtor, ECF Nos. 72, 73. The debtor's declaration states that the debtor has tendered, and the trustee has received, payments in the amount of 5,734.67. The debtor further indicates that she has sent the remaining payments in the amount of \$2,415.00. The debtor indicates that the remaining amount which has been tendered will bring the plan payment current. See Declaration, ECF No. 73.

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. Status Report, ECF No. 75.

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 motion. No unfair prejudice will result from withdrawal of the motion 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.

53. [22-20591](#)-A-7 **IN RE: MICHAEL/KINDRA DICKERMAN**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-2023 [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
LAKEVIEW LOAN SERVICING, LLC VS.; CASE CONVERTED TO CH. 7 ON
3/13/2023

Final Ruling

Motion: Stay Relief

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

Disposition: Continued to May 1, 2023, at 10:30 a.m.

Order: Civil minute order

Subject Property: 30 White Fir Lane, Oroville, California

Movant Lakeview Servicing, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). On March 13, 2023, this case was converted to Chapter 7 and Nikki B. Farris was appointed as trustee.

The hearing on this motion will be continued to allow the Chapter 7 trustee to appear and be heard regarding the relief requested and the subject property.

The movant shall file and serve notice of the continued hearing date and time to all interested parties including Nikki B. Farris, Chapter 7 trustee. Written opposition to the motion is not required.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to May 1, 2023, at 10:30 a.m. No later than April 10, 2023, the movant shall file and serve notice of the continued hearing date and time on all interested parties to include Nikki B. Farris the Chapter 7 trustee. No party is required to file any written opposition to the motion.

54. [21-22594](#)-A-13 **IN RE: PETER/REBECCA DELGADO**
[PGM-3](#)

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

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

No Ruling

55. [22-20694](#)-A-13 **IN RE: AMICUS SALDITOS**
[DPC-3](#)

MOTION TO DISMISS CASE
2-24-2023 [\[27\]](#)

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: March 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$13,200.00 with a further payment of \$1,650.00 due March 25, 2023.

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.

56. [23-20295](#)-A-13 **IN RE: WARREN/AMBER COOK**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-9-2023 [\[22\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to May 2, 2023, at 9:00 a.m.

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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION; PLAN RELIES ON MOTION TO AVOID LIEN

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion or motion to avoid lien must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce OneMain's Class 2 secured claim based on the value of the collateral securing such claim. But the debtors have not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

The feasibility of the plan also relies upon the debtor's successful avoidance of the lien of creditor Asset Acceptance. But the debtors have not yet obtained a favorable order on a motion to avoid the creditor's lien. Accordingly, the court must deny confirmation of the plan.

The debtors have filed a motion to value collateral and a motion to avoid lien. Accordingly, the court will continue the hearing on the trustee's objection until after the date of the hearings on the other motions in support of the plan.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is continued to May 2, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that if either the debtors' motion to value collateral or motion to avoid lien is not granted then the court may rule on the trustee's objection without further notice or hearing.

57. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[DPC-4](#)

MOTION TO DISMISS CASE
2-28-2023 [\[85\]](#)

CHINONYE UGORJI/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 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$12,076.92 with a further payment of \$4,020.46 due March 25, 2023.

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.