

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

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

DAY: TUESDAY
DATE: APRIL 5, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[PGM-1](#)

MOTION TO REFINANCE
3-3-2022 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

2. [22-20107](#)-A-13 **IN RE: TEDDIE/SHARION BROWN**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
3-10-2022 [\[26\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained 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).

Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as
Trustee for PNPMS Trust II objects to confirmation of the debtors'
plan under 11 U.S.C. § 1325(a)(5)(B)(ii), 1322(b)(2), 1325(a)(6).

Section 1325(a)(5)(B)(ii)

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

. . . .

(5) with respect to each allowed secured claim provided for by the plan--
(A) the holder of such claim has accepted the plan;
(B) (i) the plan provides that--
(I) the holder of such claim retain the lien securing such claim until the earlier of--
(aa) the payment of the underlying debt determined under nonbankruptcy law; or
(bb) discharge under section 1328; and
(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

11 U.S.C. § 1325(a) (5) .

The objecting creditor holds a note secured by a deed of trust on property located at 3370 Gas Canyon Ct, Foresthill, California. The note will mature during the pendency of the proposed chapter 13 plan on or about January 15, 2023. The creditor has filed Claim No. 7 in the amount of \$23,155.98, which must be paid in full through the plan. The proposed plan calls for payment of the claim in Class 2(A) - claims which are not subject to a motion to value collateral. Yet the amount provided for in the plan is incorrect as it calls for payment of only \$20,300.00. Because the plan does not propose to pay the full amount due under the claim it contravenes 11 U.S.C. § 1325(a) (5) (B) (ii) .

Section 1322 (b) (2)

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

. . . .

(2) modify the rights of holders of secured claims, *other than a claim secured only by a security interest in real property that is the debtor's principal residence*, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

. . . .

11 U.S.C. § 1322(b) (2) (emphasis added) .

The plan calls for payment of creditor's claim in Class 2(A), yet the amount of the claim is incorrect and proposes to modify the interest rate. The interest rate stated in the claim is 12.38% yet the plan calls for interest at 5%.

DEBTORS' REPLY

The debtors have filed a reply to the objection, ECF No. 30. In the reply the debtors offer to pay the claim in the full amount, pay 6% interest on the claim and increase the monthly dividend to the objecting creditor to \$447.65. It is unclear if the debtor's budget will allow for this correction without altering the remaining provisions of the plan which includes 100% payment to unsecured creditors. Additionally, the solution proffered by the debtors continues to modify the contractual interest rate.

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.

Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Trustee for PNPMS Trust II'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.

3. [22-20533](#)-A-13 **IN RE: LEEANN ATTERBERRY**
[MOH-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-22-2022 [\[17\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

The debtor seeks an order extending the automatic stay under 11 U.S.C. § 362(c)(3).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the

petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The debtor has failed to file the following documents in support of her motion: Schedules I and J; Statement of Financial Affairs; Form 122C (Means Test). These documents are essential to the court's evaluation of the debtor's ability to perform the proposed plan and her current financial circumstances.

Schedules I and J

LBR 9004-1(c)

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

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

Federal Rule of Bankruptcy Procedure 1008 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.

On March 29, 2022, the debtor filed Schedules I and J, Statement of Financial Affairs, and Form 122c (Means Test) in support of the motion to extend the stay, ECF No. 28. While Form 122c and the Statement of Financial Affairs are signed, Schedules I and J are unsigned. Neither Schedule I nor J were filed at the inception of the case.

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:

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

IT IS ORDERED that the motion is denied.

4. [22-20142](#)-A-13 **IN RE: BOUPHA BOUNGNASIRI**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
3-4-2022 [\[14\]](#)

SETH HANSON/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Creditor’s Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

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

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

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

The objecting creditor holds a note secured by a deed of trust in property located at 1082 Ironwood Street, Arboga, California. The creditor has filed a claim which shows pre-petition mortgage arrears are owed in the amount of \$80,180.31. See Claim No. 6. The plan provides for the objecting creditor in Class 1 but does not provide for the full amount of pre-petition arrears as stated in the claim. The creditor contends that the plan does not fund with the full amount of the pre-petition arrears included in the calculation, thus rendering the plan mathematically not feasible.

Both the chapter 13 trustee and the debtor have filed responses to the objection.

The debtor contends that the current plan payments are sufficient to pay the arrears at the higher amount indicated in the claim. See ECF No. 18. The court notes that the proposed plan also pays 100% to unsecured creditors.

The chapter 13 trustee supports the debtor's response and indicates that according to his calculations sufficient funds are available through the plan (as currently proposed) to pay the increased arrears owed pursuant to the filed claim and the unsecured creditors at 100%. See ECF No. 20.

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.

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

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

5. [19-20544](#)-A-13 **IN RE: JOSE/MAUREEN MARIANO**
[WW-2](#)

MOTION TO INCUR DEBT
3-8-2022 [\[42\]](#)

MARK WOLFF/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approve New Debt - Refinance Mortgage Loan

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

Disposition: Granted

Order: Prepared by moving party

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 to incur new debt to refinance an existing mortgage loan. The purpose of the new debt is in part to pay off the chapter 13 plan. The court will grant the motion and approve the debtor's incurring of this new debt.

6. [19-20544](#)-A-13 **IN RE: JOSE/MAUREEN MARIANO**
[WW-3](#)

MOTION TO MODIFY PLAN
3-8-2022 [\[46\]](#)

MARK WOLFF/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The debtors move for modification of their chapter 13 plan. The plan, notice of hearing, and motion were served on March 8, 2022, ECF No. 51. This provides only 28 days' notice to all parties in interest.

The debtors did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires at least 21 days' notice of the time fixed for filing objections to a proposed

modification of a plan. To comply with both Federal Rule of Bankruptcy Procedure 3015-(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(2). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

CIVIL MINUTE ORDER

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

The debtor's Motion to Confirm Plan 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.

7. [22-20246](#)-A-13 **IN RE: GUILLERMO MIRALRIO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-15-2022 [\[23\]](#)

W. SHUMWAY/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).

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308." 11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The trustee's objection states that the debtor admitted at the meeting of creditors, that he was required to file tax returns for 2017 and 2019 and has not yet done so. See ECF No. 23.

If the debtor has not filed 2017 or 2019 tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

The court will sustain the objection.

FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: trustee's Business Questionnaire, 6 months of profit and loss statements, proof of license and insurance.

The trustee reports that the business questionnaire and request for documents were mailed to the debtor on February 7, 2022. The trustee notes that the debtor provided a copy of his 2020 Tax Return although the trustee has requested two years of tax returns. See ECF No. 23.

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

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

8. [21-23848](#)-A-13 **IN RE: GERMAN/MARIANA GARCIA**
[MRL-1](#)

MOTION TO CONFIRM PLAN
2-15-2022 [\[36\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

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 79 months to fund as proposed. See ECF No. 41.

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.

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.

9. [21-23852](#)-A-13 **IN RE: SHANNON BUTLER**
[DPC-1](#)

MOTION TO DISMISS CASE
2-22-2022 [\[18\]](#)

BERT VEGA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Opposition Due: March 22, 2022

Opposition Filed: Unopposed

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$1,296.00 with another payment of \$648.00 due March 25, 2022.

Failure to Confirm Plan

The trustee also moves to dismiss as the debtor has failed to file a motion to confirm the plan, which was filed on November 24, 2021, ECF No. 13. Because the plan was filed more than 14 days after the filing of the petition the debtors are required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1). The failure to file a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

MOTION TO CONFIRM

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

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

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

On March 28, 2022, the debtor filed an amended plan and Schedules I and J, ECF Nos. 30-31. On March 29, 2022, the debtor filed a motion to confirm the amended plan and set it for hearing on May 17, 2022. The debtor has never filed an opposition to the trustee's motion.

Moreover, the court notes that the debtor's motion to confirm the amended plan was filed 7 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on May 17, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The trustee's motion to dismiss was filed February 22, 2022, giving the debtor 28 days to resolve the grounds for dismissal or to timely file a motion to modify. The court finds that this was sufficient time to respond to the motion and to file a motion to confirm. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

10. [22-20152](#)-A-13 **IN RE: BRIDGET ARMSTEAD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-7-2022 [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308." 11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The trustee's objection states that the debtor admitted at the meeting of creditors, that she was required to file tax returns for 2019 and has not yet done so. See ECF No. 13.

If the debtor has not filed 2019 tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

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.

11. [21-23759](#)-A-13 **IN RE: MARY BUAN-IGNACIO**
[DPC-2](#)

MOTION TO DISMISS CASE
3-7-2022 [\[33\]](#)

RICHARD JARE/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 22, 2022

Opposition Filed: March 23, 2022 - untimely

Cause: 11 U.S.C. § 1307(c)(1) - Failure to Confirm Plan

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case as the debtor has failed to file a motion to confirm a plan, after the court sustained an objection to the debtor's plan on January 5, 2022, ECF Nos. 24, 26.

The trustee contends that the debtor's failure to file an amended plan and a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

UNTIMELY OPPOSITION

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). The debtor filed an opposition to this motion on March 23, 2022. Since this opposition is late, the court gives it no weight.

The opposition consists of an unsworn statement by the debtor's attorney as follows:

In the next few hours, I should be able to present to the debtor the documents required to confirm a 1st Modified plan.

Opposition, ECF No. 37, 1:16-19.

The opposition does not resolve the motion to dismiss as it offers no evidence from the debtor regarding her intention to file an amended plan, nor does the opposition indicate when a plan might be filed.

Moreover, the court notes that the debtor has not filed an amended plan by the date opposition to the trustee's motion was due.

Rule 9006(b)

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, *the court for cause shown* may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) *on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.*

Fed. R. Bankr. P. 9006(b) (1) (emphasis added).

The court notes that the debtor filed an amended plan and a motion to confirm the amended plan on March 29, 2022. The debtor's motion to confirm the amended plan was filed 7 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on May 17, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed March 7, 2022, giving the debtor only 15 days to resolve the grounds for dismissal or to file a motion to confirm a plan. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of an amended plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

The debtor has filed an additional opposition to the motion to dismiss, ECF No. 45. In this opposition the debtor argues as follows:

[T]he initial opposition to the motion to dismiss should be construed to be that request for time to file a new plan.

Opposition, ECF No. 45, 2:5-8

Rule 9006(b) requires a showing of cause for enlarging the time to respond to the motion and the debtor has provided no such showing. The initial opposition, as the court has previously discussed, was untimely, and was an unsworn statement by counsel. The opposition contained no showing of cause to enlarge the time to file a motion to modify nor did the debtor request any additional time to do so.

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. [21-23871](#)-A-13 **IN RE: LARRY MILLER**
[DPC-1](#)

MOTION TO DISMISS CASE
2-22-2022 [\[21\]](#)

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 22, 2022

Opposition Filed: March 21, 2022 - untimely

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

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,110.00 with further payments of \$1,395.26 due February 25, 2022, and March 25, 2022.

Failure to Confirm Plan

The trustee also moves to dismiss as the debtor has failed to file a motion to confirm the plan, which was filed on November 26, 2021, ECF No. 16. Because the plan was filed after the court issued the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines on November 22, 2021, the debtor was required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1). The failure to file a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

OPPOSITION

On March 21, 2022, the debtor filed an opposition to the motion to dismiss, ECF No. 28. While the document is titled "Declaration" it is an *unsworn statement* by the debtor stating that he will become current with his plan payments and that his attorney will file a new plan and a motion to confirm the plan by the date of the hearing on this motion.

The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor will take future action to

resolve the delinquency is not a resolution of the motion to dismiss.

The court notes that the trustee's motion was filed and served on February 22, 2022. *This is 42 days prior to the hearing on the motion and 35 days prior to the date opposition to the motion was due.* No plan has been filed prior to the date the opposition was due.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

The court will grant the motion.

CIVIL MINUTE ORDER

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

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

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.

13. [22-20277](#)-A-13 **IN RE: PAMELA AMBUNAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
3-15-2022 [\[27\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 74 months to fund as proposed. See ECF No. 27.

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).

IMPROPERLY CLASSIFIED SECURED OBLIGATIONS

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

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper. The obligation is owed to the Golden One Credit Union, Claim No. 4.

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

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$1022.18. Compare Claim No. 4 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

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

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

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay

the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

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

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

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

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

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

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

...

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

Chapter 13 Plan § 3.07, EDC 3-080.

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

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the

completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

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

The debtor filed a reply and declaration in response to the trustee's objection. The declaration is silent regarding the obligation to the Golden One Credit Union. As it relates to the misclassification of the Class 4 obligations the reply generally states as follows:

Classification Is Correct The debtor's non-filing spouse is the primary on the loans for both class 4 claims, however, the debtor has agreed to increase the plan payments as the account is satisfied.

Reply, ECF No. 32, 2:14-17.

The reply does not adequately address the objection raised by the trustee. The plan does not comply with § 1325(a)(5) and will not be confirmed.

In addition to the misclassification of Claim No. 4 the court observes that NewRez LLC dba Shellpoint Mortgage Servicing, which holds the first deed of trust on the debtor's residence has filed Claim No. 21. While provided for in Class 4 of the debtor's plan, the claim lists pre-petition mortgage arrears in the amount of \$1,742.20. See Claim No. 21. As the claim was filed on March 25, 2022, the trustee could not have included this in his objection to confirmation, but the court finds that this claim is improperly classified in the plan for the same reasons described above in this ruling.

FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: documents relating to the operation of debtor's spouse's online retail business, including the trustee's Business Questionnaire; six (6) months of profit and loss statements; six (6) months of financial institution statements for the business and any other accounts belonging to the debtor's spouse, or written statements that no such documentation exists.

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

The court will sustain the trustee's objection.

GOOD FAITH

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

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The trustee contends that the following schedules and statements require amendment such that he is unable to complete his review of the debtor's proposed plan:

Schedule I which currently fails to list self-employment income for debtor's spouse; Schedule J which currently makes no provision for payments to creditors on behalf of debtor's spouse outside the plan; Form 122c which currently fails to provide self-employment income and expenses for debtor's spouse.

The debtor's reply indicates that she has filed the additional and amended schedules. However, it is unclear if the objection has been resolved. Moreover, the objection is well taken as the schedules were not accurate at the time the trustee was required to file his 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.

14. [22-20180](#)-A-13 **IN RE: DMITRY/TATYANA VARAKUTA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-9-2022 [\[15\]](#)

SCOTT JOHNSON/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: Overruled

Order: Civil minute order

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

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

The chapter 13 trustee objected to confirmation of the debtors' plan contending that the plan did not satisfy the requirements of 11 U.S.C. § 1325(b). The debtor filed a response and amended schedules which the trustee has reviewed.

On March 28, 2022, the trustee filed a Status Report which states as follows:

The Debtors' plan payments are current. 2. On March 23, 2022, the Debtors filed a Declaration, which identifies the income that will be used to fund the Plan, (DN 20), along with amended Schedules I and J (DN 19) both resolves the Trustee's concern as to the sources and amount of income each debtor earns. The Trustee is satisfied with the documents filed with the Court and no longer wishes to pursue his objection to confirmation.

Status Report, ECF No. 23.

The court will overrule the trustee's objection and confirm the plan.

CIVIL MINUTE ORDER

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

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

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

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

15. [21-23781](#)-A-13 **IN RE: LEILA MONDARES**
[DPC-2](#)

MOTION TO DISMISS CASE
3-2-2022 [\[27\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Chapter 13

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

Disposition: Continued to May 17, 2022, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to confirm a plan.

Opposition to the motion was timely filed. Additionally, a modified plan was timely filed and set for hearing in opposition to the trustee's motion. The scheduled hearing on the modification is May 17, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the 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 17, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

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.

16. [21-24082](#)-A-13 **IN RE: TONIA BEAIRD**
[MET-2](#)

MOTION TO CONFIRM PLAN
2-20-2022 [\[42\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); non-opposition filed by the chapter 13 trustee

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Chapter 13 Plan - Amended, filed February 20, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of her Chapter 13 plan filed February 20, 2022, ECF No. 45. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 52.

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).

SUPPLEMENTAL SCHEDULES I AND J

On February 20, 2022, the debtor(s) filed supplemental Schedules I and J in support of the motion and plan, ECF Nos. 46 and 47.

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

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

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

EDC 002-015.

LBR 9004-1(c)

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

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

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

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

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

Declaration, ECF No. 44, 3:25-26, 4:1-2.

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

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

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

17. [21-24183](#)-A-13 **IN RE: JOSE/CONSUELO MONREAL**
[MMM-2](#)

MOTION TO CONFIRM PLAN
2-28-2022 [\[28\]](#)

MOHAMMAD MOKARRAM/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: Chapter 13 Plan, filed February 28, 2022

DEFAULT OF RESPONDENT

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

The debtors seek an order confirming their plan filed February 28, 2022. The debtors have filed Amended Schedules I and J in support of the motion, ECF No. 32. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 36.

CHAPTER 13 PLAN CONFIRMATION

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

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

18. [22-20670](#)-A-13 IN RE: ELENA GONZALEZ
[PGM-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
3-22-2022 [[10](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Impose the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

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).

The motion indicates that 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).

For example, if applicable, the presumption may be rebutted by facts showing that, as to any of the prior cases in the past year that were dismissed, debtors had substantial excuse for any failure to file or amend the petition or other documents, or that such failure was caused by the negligence of debtors' attorney. See *id.* § 362(c)(4)(D)(i)(II). Alternatively, if applicable, the declaration 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).

DISCUSSION

The debtor has filed the following Chapter 13 cases in the Eastern District of California:

Case Number	Date Filed	Representation	Confirmed Plan?	Date Dismissed
18-27543	December 3, 2018	Pro Se	No	March 25, 2019
19-22169	April 8, 2019	Pro Se	No	June 24, 2019
19-24237	July 3, 2019	P. Macaluso	Yes	August 12, 2021
21-23833	November 8, 2021	P. Macaluso	No	March 10, 2022

Schedules I and J - Case No. 21-23833

The debtor's most recently filed case was dismissed as the debtor failed to tender plan payments and failed to confirm a plan. See Case No. 2021-23833, E.D. Cal. Bankr. (2021), *Civil Minutes*, ECF No. 69. The debtor failed to tender any of the plan payments totaling nearly \$7,000.00 which were due in the amount of \$2,270.00 per month. See *Id.*, Pages 2-3.

In the prior case 2021-23833, E.D. Cal. Bankr. (2021) the debtor filed Schedules I and J on March 4, 2022, see *id.*, ECF No. 62. Schedule I, shows income at line 8a in the amount of \$1,800.00.

Current Schedules I and J

The debtor's Schedule I (filed on March 21, 2022) in support of this motion to extend the automatic stay shows income at Line 8a of \$1,300.00, a decrease of \$500.00 per month from the schedule I filed in the previous case only 17 days before. No explanation has been offered regarding the significant reduction in income in such a short period of time. Moreover, the debtor filed a declaration in support of this motion which conflicts with the information presented in Schedule I and states:

Since my previous case was dismissed, my circumstances have changed as I am getting more clients that pay as they are more business people and are more reliable..(sic)

Declaration, ECF No. 12, 2:4-6.

The debtor has offered conflicting evidence in support of her plan and the court cannot determine which assertion is accurate.

Additionally, the debtor argues in her motion that:

The Debtor is a (sic) retired, receives social security, has been self-employed for more than fifteen

(15) years, has a current gross monthly income of \$4,282.00, deductions of \$2,882.00, and a net monthly income of \$1,400.00.

Motion, ECF No. 10, 3:15-18 (emphasis added).

The motion argues that the debtor has gross income of \$4,282.00 yet Schedule I shows gross monthly income of \$2,582.00, and Schedule J shows expenses of \$1,182.00, see ECF No. 1.

Statement of Business Income and Expenses

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

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

Federal Rule of Bankruptcy Procedure 1008 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.

The debtor has filed exhibits in support of this motion to impose the automatic stay, ECF No. 13. The first exhibit includes the Statement of Business Income and Expenses regarding the debtor's lawn care business. The statement is unsigned. It was not filed with the original statements and schedules at the inception of the case and was not included in the documents filed at ECF No. 1.

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the statement of Business Income and Expenses is of no evidentiary value, is not properly before the court and will not be considered. Thus, the debtor's income and expenses from her lawn care business are unsupported.

The motion to impose the stay will be denied because the debtor has failed to sustain her burden of proof regarding her income, expenses and ability to fund the proposed plan. The evidence in support of the motion is inconsistent with that filed in the prior case only 17 days before the instant case, and the evidence offered in support of this motion is conflicting.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied.