

**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: WEDNESDAY
DATE: APRIL 7, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [20-24503](#)-A-13 **IN RE: CASEY MOLLERA AND ANGELA MARBRAY**
[JTN-1](#)

MOTION TO INCUR DEBT AND/OR MOTION TO APPROVE LOAN
MODIFICATION
2-18-2021 [\[33\]](#)

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

No Ruling

2. [20-24503](#)-A-13 **IN RE: CASEY MOLLERA AND ANGELA MARBRAY**
[JTN-2](#)

MOTION TO CONFIRM PLAN
2-18-2021 [\[38\]](#)

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

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, February 18, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN CONFIRMATION

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

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

3. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
11-10-2020 [[60](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

4. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-3](#)

CONTINUED MOTION TO CONFIRM PLAN
1-19-2021 [[100](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

5. [21-20806](#)-A-13 **IN RE: JEFFREY/NIKEA HARRISON**
[TLA-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-22-2021 [[15](#)]

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

No Ruling

6. [19-20007](#)-A-13 **IN RE: NICHOLAS BONANNO**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-5-2021 [[148](#)]

MARC VOISENAT/ATTY. FOR DBT.
NANCY LEE/ATTY. FOR MV.
U.S. BANK, N.A. VS.
RESPONSIVE PLEADING

No Ruling

7. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[DPC-2](#)

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

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

8. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[TBG-1](#)

MOTION TO MODIFY PLAN
3-2-2021 [[74](#)]

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [21-20811](#)-A-13 **IN RE: LANDER GREEN**
[KLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-15-2021 [[11](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [19-24412](#)-A-13 **IN RE: KIT/JUDY WHITE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2021 [[57](#)]

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

No Ruling

11. [20-24514](#)-A-13 **IN RE: LATANYA MERRIWEATHER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-10-2021 [\[38\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

11 U.S.C. § 1308

Section 1308 of the Bankruptcy Code provides: "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 debtor failed to show he filed all state tax returns. The Franchise Tax Board's Claim No. 9-1 reflects the debtor did not file a state tax return filed for 2019. The meeting of creditors has been concluded on March 4, 2021.

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.

12. [20-20915](#)-A-13 **IN RE: VICTOR/IRMA JIMENEZ**
[JHK-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-8-2021 [\[51\]](#)

LEN REIDREYNOSO/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
ACAR LEASING LTD VS.
TRUSTEE NON-OPPOSITION

No Ruling

13. [20-24519](#)-A-13 **IN RE: PRAKHONG/JENNIFER CHANTHORN**
[DPC-2](#)

MOTION TO DISMISS CASE
2-24-2021 [\[23\]](#)

JAMES KEENAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [20-23733](#)-A-13 **IN RE: RYAN MCCULLOUGH**
[DPC-1](#)

MOTION TO DISMISS CASE
2-24-2021 [\[65\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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

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

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 8 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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 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. The court hereby dismisses this case.

15. [20-23635](#)-A-13 **IN RE: CAROL ANDRESEN**
[SLE-2](#)

MOTION FOR RELIEF FROM MISTAKE, INADVERTENCE OR EXCUSABLE
NEGLECT

3-16-2021 [\[77\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
DEBTOR DISMISSED: 03/02/2021

No Ruling

16. [19-24237](#)-A-13 **IN RE: ELENA PEREZ GONZALEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
12-18-2020 [\[106\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

17. [19-24237](#)-A-13 **IN RE: ELENA PEREZ GONZALEZ**
[PGM-3](#)

CONTINUED MOTION TO MODIFY PLAN
1-15-2021 [\[113\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995). 11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan be feasible, and that the debtor is able to comply with its terms.

Payments under the proposed plan are delinquent in the amount of \$1,950.00 under the proposed modified plan. Therefore, the debtor failed to show feasibility of and ability to comply with the proposed plan under 11 U.S.C. § 1325(a)(6).

The debtor’s opposition, ECF No. 136, states the debtor “will be current with the proposed Chapter 13 plan payments on or before the hearing date.” The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to grant the motion given the outstanding delinquency. The court will deny modification 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 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.

18. [20-25037](#)-A-13 **IN RE: GREGG MITCHELL**

MOTION TO AVOID LIEN OF THE FAMILY LAW CENTER
3-3-2021 [\[40\]](#)

BONNIE BAKER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Continued to May 4, 2021 at 9:00 a.m.

Order: Civil minute order

CONTINUANCE

The motion seeks to avoid a judicial lien. However, the judgment has not been attached as an exhibit. Thus, the motion does not sufficiently demonstrate an entitlement to lien avoidance. See L.B.R. 9014-1(d)(3)(D). Therefore, this matter will be continued to May 4, 2021. Not later than April 13, 2021, the movant shall file the judgment as an exhibit and give notice of the continued hearing and indicate that oppositions are due no later than April 27, 2021.

SERVICE

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). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Here the movant served this motion to Sharon Claire Brooks for the judgment lienholder The Family Law Center, but the certificate of service does not clarify whether Sharon Claire Brooks is an officer or agent for the lienholder. Once the movant files the judgment in accordance with the civil minute order, the court will review whether service is sufficient.

DOCKET CONTROL NUMBER

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

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 4, 2021 at 9:00 a.m. No later than April 13, 2021 the movant shall augment the record by filing the judgment as an exhibit.

IT IS FURTHER ORDERED that the movant shall give notice of the continued hearing and indicate that opposition is due on April 27, 2021.

19. [21-20739](#)-A-13 **IN RE: JANET CLARK**
[MS-1](#)

MOTION TO AVOID LIEN OF MARYAH PIMENTAL
3-2-2021 [[11](#)]

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

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 5635 Manmar Way, Sacramento, CA 95823

Judicial Lien: \$3,999.56

All Other Liens: \$17,564.13

Exemption: \$371,521.00

Value of Property: \$371,521.00

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 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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that

such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

20. [20-24242](#)-A-13 **IN RE: ROBERT MAC BRIDE**
[DPC-2](#)

MOTION TO DISMISS CASE
2-25-2021 [\[56\]](#)

RESPONSIVE PLEADING

No Ruling

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

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

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee consents to the court dropping this motion to dismiss if the court grants the debtor's motion to modify (Item 22), ECF No. 41, and since said motion was granted, the court will drop this matter from the calendar as moot.

22. [20-21544](#)-A-13 **IN RE: MARCUS WOODFORK AND SHERI TOMKINS**
[MRL-2](#)

MOTION TO MODIFY PLAN
2-20-2021 [\[35\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, February 20, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

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

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

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

23. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-1-2021 [\[55\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

24. [21-20248](#)-A-13 **IN RE: JACQUELINE CHIN**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MUFG UNION BANK, N.A.
3-10-2021 [\[18\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

No Ruling

25. [21-20248](#)-A-13 **IN RE: JACQUELINE CHIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-10-2021 [\[14\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

No Ruling

26. [20-25356](#)-A-13 **IN RE: CHRISTOPHER FIGUEROA**
[KAZ-1](#)

MOTION TO DISMISS CASE
2-26-2021 [\[56\]](#)

GORDON BONES/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.
DEBTOR DISMISSED: **3/23/21**

Final Ruling

Since this case was already dismissed on March 23, 2021, the court will drop this matter from the calendar as moot.

27. [20-23859](#)-A-13 **IN RE: KYLIE AGOSTA**
[DPC-2](#)

MOTION TO DISMISS CASE
2-24-2021 [[124](#)]

STEELE LANPHIER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 8 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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 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. The court hereby dismisses this case.

28. [19-27461](#)-A-13 **IN RE: RICHARD ACOSTA**
[MOH-7](#)

MOTION TO RECONSIDER
3-23-2021 [\[111\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Oral argument will not be helpful in the resolution of this case.
The motion will be denied.

Federal Rule of Civil Procedure 60(b) allows relief from mistaken, inadvertence and/or surprise. Fed. R. Civ. P. 60(b), *incorporated* by Fed. R. Bankr. P. 9024.

The debtor argues that the court did not review pleadings, e.g., Amended Voluntary Petition and/or the Certificate of Credit Counselling, filed one business day before the hearing on confirmation. The argument fails for two reasons. First, those filings are not timely. The hearing on the debtor's confirmation motion was noticed for Tuesday, March 23, 2021, at 9:00 a.m. 11 U.S.C. § 1325(a)(1) requires fully compliance with Chapter 13 of the bankruptcy code and with the provisions of title 11. Local Bankruptcy Rule 3015-1(d) requires 35 days notice of a motion to confirm and it is the debtor's burden to prove confirmation of his plan. Here, the court posted its rulings on the March 23 Chapter 13 calendar on Thursday, March 18, 2021, at 8:21 a.m. On Friday, March 19, 2021, at 6:17 p.m. (after the court had ceased operations for the weekend) counsel for the debtor filed the amended pleadings that he contends the court should have considered. This court disagrees. The notice period of LBR 3015-1(d) requires that the debtor must make file and serve evidence on all persons entitled to notice of confirmation, Fed. R. Bankr. P. 2002(a), 3015(h), at least 35 days prior to the hearing. Here, the debtor's effort to augment the record Friday evening for 9:00 a.m. Tuesday hearing does not comply with the notice period of LBR 3015-1(d).

Second, the reason the court denied the debtor's motion was for lack of good faith, 11 U.S.C. § 1325(a)(3), (7), and lack of feasibility, 11 U.S.C. § 1325(a)(6). Civil Minute, March 23, 2021, ECF No. 110. Even if the court had considered the late filed pleadings the result would not change because the amended pleadings do not sufficiently address the issues raised by the Chapter 13 trustee, and identified by the court.

The motion will be denied. A civil minute order will issue.

29. [20-24065](#)-A-13 **IN RE: KAREN KNECHT**
[HAW-2](#)

MOTION TO CONFIRM PLAN
2-19-2021 [\[44\]](#)

HELGA WHITE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, February 18, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN CONFIRMATION

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

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

30. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-25-2020 [\[62\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

31. [18-23478](#)-A-13 **IN RE: TAMMY JACKSON**
[PGM-4](#)

CONTINUED MOTION TO MODIFY PLAN
1-19-2021 [[118](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

32. [20-25379](#)-A-13 **IN RE: JOANNE ASPIRAS**
[APN-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL LENDING SERVICES
LLC
3-2-2021 [[52](#)]

PETER CIANCHETTA/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling

33. [20-25379](#)-A-13 **IN RE: JOANNE ASPIRAS**
[PLC-5](#)

MOTION TO CONFIRM PLAN
2-23-2021 [[45](#)]

PETER CIANCHETTA/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).

11 U.S.C. § 1325(a)(6)

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

Delinquency

The debtor is delinquent \$1,462.34 in plan payments. There is currently \$1,500.00 pending in the TFS system which has not cleared, and the debtor has had several "failed" or "cancelled" payments. If the pending payment clears, the debtor will be delinquent \$1,428.34.

Schedules I, J and Form 122C-1

The most recently filed Schedule I, ECF No. 23, indicates allotments pay "140.00 to daughter, \$150.00 to Son, \$100.00 to Son." The debtor did not indicate how many sons she has or whether these allotments will be long-term or short-term. Also, while the debtor's previously filed Schedule J, ECF No. 23, indicated an infeasibly low budget for five people, the debtor's amended Schedule J, ECF No. 49, now decreases living expenses even more. In addition, the debtor's Form 122C-1 has not been amended and still reflects a gross monthly income of \$0.00, ECF No. 1. The debtor has failed to show ability to make plan payments and accuracy of the schedules.

Plan relies on Motion to Value Collateral

The debtor's plan relies on an unfiled Motion to Value Collateral for the secured claim of Global Lending Services (Class 2B). Without such a motion filed and granted, the debtor's plan does not have sufficient monies to pay the claim in full (\$24,663.86, Claim No. 8) within 60 months.

For the foregoing reasons, the debtor failed to show ability to pay under and feasibility of the plan. The court will deny confirmation under § 1325(a)(6).

ATTORNEY'S FEES

The amended plan indicates that the debtor's attorney is accepting a fee of \$4,066.67 and accepted \$66.67 prior to filing the case and that \$4,000.00 is to be paid through the plan at \$100.00 per month, Plan § 3.05, ECF No. 43. In contrast, the Statement of Rights and Responsibilities, ECF No. 3, and the Disclosure of Compensation of Attorney, ECF No. 1, indicate the attorney agreed to \$4,000.00 and that \$0.00 was accepted prior to filing. The debtor has not shown the plan as filed is accurate as to the attorney's fees.

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.

34. [16-27081](#)-A-13 **IN RE: MICHELLE SHAMBOURGER**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
12-18-2020 [\[38\]](#)

TAMIE CUMMINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

35. [16-27081](#)-A-13 **IN RE: MICHELLE SHAMBOURGER**
[JAD-1](#)

MOTION TO MODIFY PLAN
2-26-2021 [\[48\]](#)

TAMIE CUMMINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

11 U.S.C. § 1325(a) (6)

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

Amended Schedules

The debtor's updated Schedules I and J, ECF No. 52, are marked as amended filings rather than as supplemental. This indicates any changes in the schedules date back to the filing of the case. However, it appears the debtor has changed employers from her original Schedule I. Her original Schedule I states she was employed by Sacramento Ear Nose & Throat. Her current Schedule I states she is employed by IAERO Airways. It appears the information does not date back to the outset of the case. Also, her declaration states she most recently worked for Amazon, ECF No. 50. The debtor has not shown the schedules are accurate.

Changes in income and expenses

In the amended Schedules I and J, there are many unexplained adjustments to the debtor's income and expenses up and down. The debtor provides no explanation for the changes to expenses over her prior Schedule J, specifically rent and all other monthly expenses. While the adjustment in rent may be related to the debtor's change in address, ECF No. 59, the remaining changes remain unexplained. The debtor therefore has not sufficiently shown ability to pay under the proposed plan.

Inconsistent Schedules and Declaration

The amended Schedule I states the debtor's net income is \$1,716.67. However, the debtor's declaration states her net income is now \$1,988.95, ECF No. 50. Also, the amended Schedule J now reflects monthly expenses of \$1,416.00 while the declaration states her monthly expenses are now \$1,688.00. The debtor has not shown her amended schedules are accurate and therefore failed to show the proposed plan complies with § 1325(a) (6).

CIVIL MINUTE ORDER

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

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

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

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

36. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[CLH-4](#)

MOTION PURSUANT TO STIPULATION FOR RELIEF FROM AUTOMATIC STAY
3-12-2021 [[162](#)]

STEPHAN BROWN/ATTY. FOR DBT.

No Ruling

37. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[DPC-1](#)

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

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

38. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[SMJ-2](#)

MOTION TO MODIFY PLAN
3-1-2021 [[30](#)]

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

39. [18-20390](#)-A-13 **IN RE: THOMAS/SAMMY BOONE**
[PLC-4](#)

CONTINUED MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE
PARTY, AS TO BOTH DEBTORS
2-18-2021 [\[58\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Substitution of Representative, Continued Administration,
Waiver of Personal Financial Management and Waiver of Certifications

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed (ECF No.
80)

Disposition: Granted

Order: Civil minute order

Edith Chavez, niece of the now-deceased debtor Sammy Lou Boone,
prays appointment as the personal representative and continued
administration.

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a
Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been
closed, a **Notice of Death of the debtor [Fed. R. Civ. P.
25(a), Fed. R. Bankr. P. 7025]** shall be filed within
**sixty (60) days of the death of a debtor by the counsel
for the deceased debtor or the person who intends to be
appointed as the representative for or successor to a
deceased debtor.** The Notice of Death shall be served on
the trustee, U.S. Trustee, and all other parties in
interest. **A copy of the death certificate (redacted as
appropriate) shall be filed as an exhibit to the Notice
of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a),
incorporated by Fed. R. Bank. P. 7025, 9014(c).

Here, a supplemental Notice of Death was filed stating that the debtor Sammy Lou Boone became deceased as of October 21, 2020, ECF No. 78.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

The movant authenticated that that she is Sammy Lou Boone's successor according to their family trust, ECF No. 63; see also EF No. 75 (providing signature pages of the family trust). The movant has shown she is the proper party to substitute the deceased debtor.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. **If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may**

proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016 (emphasis added).

The debtor has shown that continued administration of this case is in the best interests of the parties, and the trustee does not oppose, ECF No. 80.

CIVIL MINUTE ORDER

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

Edith Chavez's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) Edith Chavez is the representative of this estate and is substituted in Sammy Lou Boone's place and stead; and (2) continued administration is appropriate.

40. [20-24890](#)-A-13 **IN RE: BARBARA PATTERSON**
[KLG-1](#)

MOTION TO CONFIRM PLAN
2-19-2021 [\[28\]](#)

ARETE KOSTOPOULOS/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).

11 U.S.C. § 1322(d)

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). Here creditor Educational Credit Management Corporation filed a claim (Claim No. 9-1) for the unsecured amount of \$65,136.34. This claim was not scheduled and more than doubles the unsecured from the estimated amount of 449,782.92 to be paid at least 21%. Accounting for the added creditor's unsecured claim will cause this plan to extend beyond 60 months in violation of § 1322(d). Therefore, the court will deny 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 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.

41. [21-20191](#)-A-13 **IN RE: KRISTA MICHIELS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-10-2021 [\[17\]](#)

RICHARD KWUN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling