



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

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

DAY: TUESDAY
DATE: APRIL 18, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [23-20700](#)-A-13 **IN RE: CATHERINE ANN WEBBER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-20-2023 [\[12\]](#)

DEBTOR DISMISSED: 3/24/23

Final Ruling

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

2. [23-20104](#)-A-13 **IN RE: NICHOLE RED
[EAT-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2023 [\[23\]](#)

CASSANDRA RICHEY/ATTY. FOR MV.
DEBTOR DISMISSED: 1/31/23;
U.S. BANK TRUST NATIONAL ASSOCIATION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Motion for Annulment of the Automatic Stay

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).

STAY RELIEF

"[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the

creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

The court has considered the pertinent factors for deciding whether to grant retroactive relief from stay.

The court finds that the factors discussed are dispositive on the question whether to grant retroactive relief from stay. Upon review of the Motion, creditor had a Notice of Trustee's Sale recorded and scheduled for January 13, 2023. Debtor filed for bankruptcy on the day of the trustee's sale. Creditor was unaware of the bankruptcy filing until four (4) days after the foreclosure took place. The bankruptcy case was a skeletal filing and dismissed only a few weeks after its filing due to failure to timely file documents. It appears the filing of the bankruptcy case was a means to prejudice creditor, with the purpose of invalidating the foreclosure proceeding and no intent to prosecute the case.

Retroactive stay relief will be granted to the date of the petition.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to annul the automatic stay is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are annulled and vacated effective as of the commencement of this bankruptcy case.

3. [22-22110](#)-A-13 **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**
[DPC-2](#)

MOTION TO DISMISS CASE
3-13-2023 [\[125\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for 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 \$14,950.00.

Additionally, 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 because of the delinquency in Plan payments and failure to confirm a Plan in a reasonable time. The court hereby dismisses this case.

4. [20-24014](#)-A-13 **IN RE: TREVOR TAYLOR**
[DPC-1](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
13
2-16-2023 [\[30\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
WITHDRAWN BY M.P.

Final Ruling

The Objection was withdrawn by the moving party on March 28, 2023, ECF No. 35. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

5. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[CRG-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW,
LLP FOR CARL R. GUSTAFSON, DEBTORS ATTORNEY(S)
3-10-2023 [\[105\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Motion for Compensation

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

Disposition: Denied without prejudice

Order: Civil minute order

Debtors' counsel, Carl Gustafson of Lincoln Law, LLP, seeks an order approving additional fees. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 110. Service of the motion occurred on March 10, 2023. *Id.* The matrix is not dated and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Lincoln Law, LLP's Motion for additional fees 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.

6. [23-20418](#)-A-13 **IN RE: JOTI MULLINS**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL LENDING SERVICES
LLC
3-14-2023 [\[16\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
AUSTIN NAGEL/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 Global Lending Services LLC objects to confirmation of Plan on the grounds that debtor's Plan proposes to pay creditor 7.00% interest, when the *Till* rate should be 9.25%. Creditor argues this interest rate does not comply with the rate set out in *Till*. *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Additionally, Creditor states debtor will need to amend their plan and related schedules to provide for creditor's arrears in full and the increased interest rate.

Debtor filed a response on March 26, 2023. ECF No. 20. Debtor states they agree to increase the payment to creditor's claim to an interest rate of 9.25% and a payment of \$780.00 per month. Debtor states they have already submitted an order to creditor reflecting these changes that has been signed and delivered to Trustee.

CIVIL MINUTE ORDER

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

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

Global Lending Services 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.

7. [22-22723](#)-A-13 **IN RE: RANDY YASSINE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[29\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: April 4, 2023

Opposition Filed: April 4, 2023 - timely

Motion to Modify Plan Filed: April 4, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,680.00.

A modified plan has been filed in this case. The scheduled hearing on the modification is May 16, 2023, 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 16, 2023, at 9:00 a.m.

8. [23-20427](#)-A-13 **IN RE: NENITA ANTONIO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-22-2023 [\[13\]](#)

TIMOTHY WALSH/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).

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. 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.

9. [23-20427](#)-A-13 **IN RE: NENITA ANTONIO**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
3-23-2023 [\[17\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

Objection: HSBC Bank USA, National Association's Objection to Confirmation of Plan

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

Disposition: Overruled without prejudice

Order: Civil minute order

HSBC Bank USA, National Association seeks an order denying confirmation of Debtor's Chapter 13 Plan. For the following reasons the objection will be overruled without prejudice.

JPMorgan Chase Bank, N.A. Special Notice Creditors -LBR 9014-1(d)(3)(B)(iv) requires that creditors who file a request for special notice be served with all motions and supporting papers. On March 8, 2023, JPMorgan Chase Bank, N.A. filed a request for special notice, ECF No. 12. The notice was filed prior to the service of the documents in this proceeding. The creditor has failed to serve the special notice creditor as required.

CIVIL MINUTE ORDER

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

HSBC Bank USA, National Association's Objection to Confirmation has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

10. [18-24931](#)-A-13 **IN RE: CHRISTOPHER/NEVA FULLER**
[DPC-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[41\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,615.11. Additionally, the trustee states the plan runs 68 months, likely due to a miscalculation in the original plan and a mortgage increase.

UNTIMELY OPPOSITION – MOTION TO MODIFY

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).

On April 4, 2023, the debtor's counsel filed a declaration in response to the motion to dismiss, ECF No. 45. The debtor's counsel's declaration, which the court will construe as an opposition, states they are hopefully they will come current by the hearing date, but it does not seem realistic. If unable, they will file a modified plan. The debtor's counsel does not address the issue of overextension.

The declaration 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(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

Untimely Modified Plan and Motion

The court notes that on April 11, 2023, the debtor(s) filed a modified plan and a motion to modify the plan. See ECF Nos. 40, 47. The filing of a modified plan is offered as opposition to the motion to dismiss. *As such it must be filed prior to the opposition deadline under LBR 9014-1.* 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 10, 2023, giving the debtor only 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses.

First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days' notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here. The debtor may not unilaterally change the date opposition is due without leave of court.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1,615.11. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

11. [22-20532](#)-A-13 **IN RE: KELLI SIMPSON**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[40\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Motion to Dismiss Withdrawn
Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

12. [23-20434](#)-A-13 **IN RE: MARK/BARBARA REYNOLDS**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
3-23-2023 [\[17\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

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

On April 3, 2023, the court entered an order confirming the Plan, which incorporated amendments to the Plan which resolves Creditor JPMorgan Chase Bank, National Association's grounds for objection. The Order resolving Creditor's objection, and the Plan already being confirmed as of April 3, 2023, Order, ECF No. 23, the objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

13. [22-22740](#)-A-13 **IN RE: ROY/ELISABETH QUIRARTE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[21\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$7,661.40.

The debtor's opposition states that the debtor has paid \$5,560 after the trustee filed the present motion to dismiss. The debtor also states that \$4,016.75 will be paid prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$7,661.40.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$7,661.40. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

14. [23-20543](#)-A-13 **IN RE: KADEN KOFFLER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-30-2023 [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

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

15. [18-22944](#)-A-13 **IN RE: DARRIN/DEZIREE SUTLIFF**
[DPC-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[62\]](#)

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

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: April 4, 2023

Opposition Filed: April 2, 2023 - timely

Motion to Modify Plan Filed: April 2, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$4,421.00, with another payment of \$1,380.00 due March 25, 2023.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 16, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 16, 2023, 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. [20-21944](#)-A-13 **IN RE: HUGO THOMPSON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[55\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The case was converted to Chapter 7, the matter is dropped as moot.

17. [15-22149](#)-A-13 **IN RE: MATTHEW MCKEE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[168\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$251,981.03.

The debtor's opposition states that the debtor only has a remaining balance of \$3,420.00 after granting debtor's motion to approve loan modification. Debtor states they were under the impression that they have made all payments required under the Plan given the credits for loan modification. Additionally, debtor believes there were overpayments to Creditor Wells Fargo that would have account for the needed \$3,420.00.

Upon review of the court order approving the mortgage loan modification agreement, the court approved a loan modification between debtor and Creditor Wells Fargo Bank, NA. Order, ECF No. 180. Additionally, the court's order stated "[t]o the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified." *Id.*

The confirmed Plan states, "[d]ebtor to payoff Chapter 13 plan in full with a sale or refinance of real property on or before March 25, 2022." Plan, § 7, ECF No. 132. Debtor has refinanced the real property with Creditor Wells Fargo Bank, NA. Although the loan modification was nearly a year after the Plan proposed, it appears Debtor is in compliance with the Plan and the Motion to Dismiss can be denied without prejudice.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion to dismiss is denied.

18. [23-20449](#)-A-13 **IN RE: ROSALINDA RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-21-2023 [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
3/23/2023 INSTALLMENT FEE PAID \$79

Final Ruling

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

19. [20-21152](#)-A-13 **IN RE: LINDA WOOLEY**
[DPC-1](#)

MOTION TO DISMISS CASE
3-8-2023 [\[32\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to May 16, 2023, 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) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$4,983.87.

The debtor's opposition states that the debtor will pay \$3,000.00 on or before April 25, 2023 and will file a modified plan to bring debtor current. The court's docket reflects a modified plan has been filed and is set for hearing on May 16, 2023 at 9:00 a.m.

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 16, 2023, 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.

20. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[MET-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-4-2023 [8](#)

MARY TERRANELLA/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

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

EXTENSION OF THE STAY

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). Procedurally, the automatic stay may be extended only "after notice and a hearing completed before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the later case is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

Upon review of the filings of debtor, debtor had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case ("First Chapter 13 Case"). ECF Case No. 20-23454. The First Chapter 13 Case was filed on July 13, 2020. On February 7, 2023, the bankruptcy judge in the First Chapter 13 Case granted Creditor Ajax Mortgage Loan Trust's Motion for Relief from the Automatic Stay due to Debtor committing waste and failing to maintain their property. See Case No. 20-23454, Civil Minutes, ECF No. 77.

On February 8, 2023, the Chapter 13 Trustee filed a Motion to Dismiss the First Chapter 13 Case. See Case No. 20-23454, ECF No. 73. The Motion was heard on April 5, 2023, and on April 10, 2023, the court entered an order dismissing the First Chapter 13 Case on the grounds that debtor is delinquent in plan payments and debtor's plan exceeded sixty months.

This case, however, was filed on March 28, 2023, which was prior to the dismissal of the First Chapter 13 Case. Once a bankruptcy case is filed, a second case which affects the same debt cannot be maintained. *In re Jackson*, 108 B.R. 251, 252 (Bankr. E.D. Cal. 1989). There is no rule that allows debtors to have two cases pending at the same time. *Id.* (citing *In re Smith*, 85 B.R. 872, 874 (Bankr. W.D. Okla. 1988)). To have two cases pending at the same time, it would allow for abuse of the bankruptcy system if one case does not go to a debtor's liking. *Id.*

Additionally, the Motion to Extend the Automatic Stay was filed prior to the dismissal of the First Chapter 13 Case.

The pending Motion states debtor received notice of trustee's sale scheduled for March 30, 2023. It appears to the court that once Creditor Ajax Mortgage Loan Trust received relief from the automatic stay, debtor failed to further prosecute their case, hoping their case would get dismissed by the trustee. The court notes, if debtor voluntarily dismissed their case, they would not be able to refile for 180 days, pursuant to 11 U.S.C. § 109(g)(2). Therefore, having the trustee dismiss debtor's case would allow debtor to refile and reinstate the stay.

It appears to the court debtor's intent of filing the new petition while the First Chapter 13 Case was pending was for the purpose of reinstating the automatic stay, which Creditor Ajax Mortgage Loan Trust properly used bankruptcy tools to receive relief from. Debtor's filing raises unquestionable concerns regarding the good faith of debtor as to the creditors to be stayed.

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in not in good faith as to the creditors to be stayed. The motion will be denied.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

21. [22-20664](#)-A-13 **IN RE: LISA STANLEY**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[20\]](#)

JAMES KEENAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a 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 \$1,800.00.

CIVIL MINUTE ORDER

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

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

The 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.

22. [23-20865](#)-A-13 **IN RE: CHARLES LEOANRD**
[RPH-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-2-2023 [\[11\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no 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). 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).

EXTENSION OF THE STAY

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). Procedurally, the automatic stay may be extended only "after notice and a hearing completed before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the later case is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

23. [22-22866](#)-A-13 **IN RE: ANDREA/LELAND SMITH**
[BLG-3](#)

MOTION TO CONFIRM PLAN
3-7-2023 [\[35\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
WITHDRAWN BY M.P.

Final Ruling

The Motion was withdrawn by the moving party on April 4, 2023, ECF No. 54. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

24. [22-22867](#)-A-13 **IN RE: ANDREW/ELIZABETH XIMENEZ**
[JTN-2](#)

MOTION TO AVOID LIEN OF LAW OFFICES OF ROBERT M. MERRITT
2-23-2023 [\[45\]](#)

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

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$19,672.26 (Law Offices of Robert M. Merritt, APC)

All Other Liens:

-Caliber Home Loans, Inc. (First Mortgage) \$192,739.69

Exemption: \$393,250.00

Value of Property: \$587,600.00

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.

25. [22-22867](#)-A-13 **IN RE: ANDREW/ELIZABETH XIMENEZ**
[JTN-3](#)

MOTION TO CONFIRM PLAN
2-23-2023 [\[50\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

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

Trustee objects on the ground that debtors' Plan relies on the Motion to Avoid Lien. The Motion to Avoid Lien having been granted by the court, the court overrules the objection as moot.

CIVIL MINUTE ORDER

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

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

26. [21-21269](#)-A-13 **IN RE: WILLIAM AMUNDSON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[27\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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). Debtor has filed a response indicating no basis to oppose the motion. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a 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 \$615.00.

CIVIL MINUTE ORDER

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

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

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

the matter, and having considered the well-pleaded facts of the motion,

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

27. [23-20470](#)-A-13 **IN RE: LATASHA SAMUEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-23-2023 [\[19\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

This case was dismissed on April 11, 2023. This hearing is removed from the calendar as moot. No appearances are required.

28. [22-22775](#)-A-13 **IN RE: ORRIN MARKELL**
[DPC-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[35\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: April 4, 2023

Opposition Filed: April 4, 2023 - timely

Motion to Confirm Amended Plan Filed: March 28, 2023 - timely

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

An amended plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 2, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan confirmation. If the amended plan is disapproved, and the motion to dismiss has not

been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 2, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to amend, 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.

29. [23-20475](#)-A-13 **IN RE: FRANCIS/JENNIFER WHALEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-28-2023 [[19](#)]

BRUCE DWIGGINS/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).

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$510.00. The plan cannot be confirmed if the plan payments are not current.

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. Trustee's docket entry from March 23, 2023 indicates joint debtor did not appear at the meeting of creditors. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The meeting has been continued to May 11, 2023. 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.

30. [23-20475](#)-A-13 **IN RE: FRANCIS/JENNIFER WHALEY**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE, LLC
3-8-2023 [\[13\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Plan Confirmation
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Sustained
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).

TREATMENT OF CREDITOR'S CLAIM

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

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this

requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

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

Here, the plan provides for an interest rate of 4.75% on the objecting creditor's class 2 secured claim. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., May 12, 2023, http://online.wsj.com/mdc/public/page/mdc_bonds.html. Fed. R. Bankr. P. 201(b)(2).

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 9.00%.

CIVIL MINUTE ORDER

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

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

The creditor'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.

31. [23-20376](#)-A-13 **IN RE: MANUEL CHAVES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-28-2023 [\[20\]](#)

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).

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection.

PLAN FEASIBILITY

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

been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,014.90. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); Fed. R. Bankr. P. 4002(b)(2)(A). Also, Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A)(i); Fed. R. Bankr. P. 4002(b)(3).

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

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

Chapter 13 Documents Deficient

The debtor has supplied deficient documents. Debtor's Schedule A/B, D, E/F, and G are incomplete. Debtor's Schedule I may be incomplete as it does not indicate a non-filing spouse, where Schedule H indicates debtor may have a spouse. Debtor's Schedule J appears inaccurate and possibly duplicates a Class 1 claim and may underestimate expenses. Additionally, debtor's Statement of Financial Affairs and Form F122C-1 omits information and is incomplete. Without correctly completing debtor's Chapter 13 documents, the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

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.

Deficient Plan

Upon review of the proposed plan, debtor has (1) not indicated the length of the Plan, (2) failed to provide an arrearage dividend to Class 1 Creditor PHH Mortgage, and (3) failed to provide for unsecured claims. The court cannot approve an incomplete Plan. 11 U.S.C. § 1325.

Liquidation Analysis

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

. . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . .

11 U.S.C. § 1325(a)(4).

The debtor has no provision regarding payment to unsecured creditors. Capitol One Bank has filed an unsecured claim for \$476.93. The trustee calculates that the debtor's nonexempt assets are valued at \$233,300.00. Thus, the plan fails the liquidation test.

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.

32. [19-27281](#)-A-13 **IN RE: ROBIN JACOBS**
[DPC-2](#)

MOTION TO DISMISS CASE
3-8-2023 [\[39\]](#)

GABRIEL LIBERMAN/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 chapter 13 trustee moves to dismiss this chapter 13 case for a 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 \$3,025.78

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.

33. [22-21885](#)-A-13 **IN RE: RODERICK FRAZIER**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[22\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: April 4, 2023

Opposition Filed: April 4, 2023 - timely

Motion to Modify Plan Filed: April 4, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$5,355.00, with another payment of \$1,190.00 coming due prior to the hearing.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 16, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 16, 2023, at 9:00 a.m.

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

34. [18-20686](#)-A-13 **IN RE: MARCUS ZARRA**
[MMP-2](#)

MOTION FOR HARDSHIP DISCHARGE AND/OR MOTION TO MODIFY PLAN
3-17-2023 [\[51\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.

No Ruling.

35. [18-20686](#)-A-13 **IN RE: MARCUS ZARRA**
[MMP-3](#)

MOTION FOR COMPENSATION FOR MICHELE M. POTERACKE, DEBTORS
ATTORNEY(S)
3-24-2023 [\[58\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.

No Ruling.

36. [18-20687](#)-A-13 **IN RE: ROBERT WILSON AND PATRICIA KING**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
1-9-2023 [\[40\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Continued from March 7, 2023

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

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from March 7, 2023, to allow debtor to complete their final plan payment. Trustee filed a status report indicating debtor has made their final payment, completing their plan. Trustee requests the court deny the motion.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is denied.

37. [23-20287](#)-A-13 **IN RE: GREGORY JACKSON**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES,
LLC
2-24-2023 [\[15\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

Final Ruling

Objection: PennyMac Loan Services, LLC

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

Disposition: Overruled without prejudice

Order: Civil minute order

PennyMac Loan Services, LLC seeks an order denying confirmation of Debtor's Chapter 13 Plan. For the following reasons the objection will be overruled without prejudice.

AIS Portfolio Services, LLC Special Notice Creditors -LBR 9014-1(d)(3)(B)(iv) requires that creditors who file a request for special notice be served with all motions and supporting papers. On February 6, 2023, AIS Portfolio Services, LLC filed a request for special notice, ECF No. 9. The notice was filed prior to the service of the documents in this proceeding. The creditor has failed to serve the special notice creditor as required.

CIVIL MINUTE ORDER

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

PennyMac Loan Services, LLC's Objection to Confirmation has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

38. [23-20287](#)-A-13 **IN RE: GREGORY JACKSON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-22-2023 [\[20\]](#)

ERIC SCHWAB/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).

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Fed. R. Bankr. P. 4002 (emphasis added).

The debtor(s) failed to provide the required social security information at the meeting of creditors. The court will sustain the trustee's objection.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997).

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,762.00. The plan cannot be confirmed if the plan payments are not current.

Plan Overextension

The trustee calculates that the plan will take 84 months to complete. This is due to debtor under-valuing their priority claims, including the Internal Revenue Service's Proof of Claim. This exceeds the maximum length of 60 months allowed under 11 U.S.C. § 1322(d).

Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

Schedule I/J Inaccurate

Debtor admitted at their First Meeting of Creditors that the non-filing spouse now has reliable employment and debtor now has additional community income. Debtor needs to amend or supplement their Schedule I and J reflect these changes and give an accurate picture of debtor's financial reality. See 11 U.S.C. § 1325(a)(3), (6).

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).

Debtor admitted at the first meeting of creditors that they have not filed all tax returns for the four years prior to filing. If the debtor has not filed tax returns, and was required to do so, the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

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.

39. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[26\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,900.00.

The debtor's response states that the debtor has paid \$700 after the trustee filed the present motion to dismiss. The debtor also states that they will pay the remaining delinquency prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$1,900.00.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1,900.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

40. [22-20591](#)-A-7 **IN RE: MICHAEL/KINDRA DICKERMAN**
[DPC-1](#)

MOTION TO DISMISS CASE
3-10-2023 [\[31\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
CASE CONVERTED: 3/13/23

Final Ruling

The case was converted to Chapter 7, the matter is dropped as moot.

41. [22-20093](#)-A-13 **IN RE: AISHA HAMILTON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[25\]](#)

MOHAMMAD MOKARRAM/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 chapter 13 trustee moves to dismiss this chapter 13 case for a 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 \$11,541.50.

CIVIL MINUTE ORDER

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

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

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.

42. [23-20295](#)-A-13 **IN RE: WARREN/AMBER COOK**
[PSB-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
3-8-2023 [\[14\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

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

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2002 Chevy Tahoe (VIN ending in #4170). The debt owed to the respondent is not secured by a purchase money

security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$4,846.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2002 Chevy Tahoe (VIN ending in #4170) has a value of \$4,846.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,846.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

43. [23-20295](#)-A-13 **IN RE: WARREN/AMBER COOK**
[PSB-2](#)

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC
3-8-2023 [\[17\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$7,681.85 (Asset Acceptance, LLC)

All Other Liens:

- Deed of Trust held by Guild Mortgage, \$176,469

Exemption: \$400,000

Value of Property: \$304,372.00

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.

44. [18-26096](#)-A-13 **IN RE: NEIL/CATHERINE POLLARD**
[DPC-1](#)

OBJECTION TO CLAIM OF PROSPER MARKETPLACE, INC., CLAIM
NUMBER 27
2-16-2023 [\[23\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Objection: Objection to Claim [Based on Improper Withdrawal of Claim]

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If properly executed and filed under the rules along with all supporting documentation that may be required, see, e.g., Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

Federal Rule of Bankruptcy Procedure 3006 permits a creditor to withdraw a proof of claim as of right with some exceptions. This rule provides in pertinent part: "A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code." Fed. R. Bankr. P. 3006.

APPLICATION

Claimant has participated significantly in this case by accepting distributions on its claim. The claimant improperly withdrew the claim without a court order (rather than filing a satisfaction of claim). See *Young v. Condor Sys. (In re Condor Sys.)*, 296 B.R. 5, 11 (B.A.P. 9th Cir. 2003) (amending a claim to \$0.00 for the purpose of mootng a claim objection is tantamount to withdrawing claim). This resulted in an overpayment to the claimant in the amount of the trustee's distributions to the claimant.

As a result, the court will allow the claim in the amount of the distributions made by the trustee to the claimant. The claim will be allowed as an unsecured claim in the amount of \$31,293.39.

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 claim has been presented to the court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to Claim No. 27 is sustained. The court liquidates the amount of the claim at the amount paid by the

trustee on the claim. The claim is allowed as an unsecured claim in the amount of \$31,293.39.

45. [22-23196](#)-A-13 **IN RE: MARCEL LONGMIRE AND BRANDI WASHINGTON**
[BLG-1](#)

MOTION FOR COMPENSATION FOR CHAD M JOHNSON, DEBTORS
ATTORNEY(S)
3-7-2023 [\[17\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Chad M. Johnson has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,280.00 and reimbursement of expenses in the amount of \$51.20.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Chad M. Johnson's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,280.00. and reimbursement of expenses in the amount of \$51.20. The aggregate allowed amount equals \$3,331.20. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$3,331.20 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

46. [23-21049](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[CK-1](#)

MOTION TO EXTEND AUTOMATIC STAY O.S.T.
4-6-2023 [\[10\]](#)

CATHERINE KING/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(3); no 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). 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).

EXTENSION OF THE STAY

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). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.