

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

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

DAY: WEDNESDAY
DATE: APRIL 20, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [21-20100](#)-A-13 **IN RE: JORGE VASQUEZ**
[NSV-3](#)

MOTION TO MODIFY PLAN
3-17-2022 [\[53\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed at the inception of the case on January 13, 2021, nearly 15 months ago, ECF No. 1. Consequently, they are not recent enough to be probative of the debtor's ability to perform the plan. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

Debtor's Reply

On April 13, 2022, the debtor filed a reply to the trustee's opposition, ECF No. 64. The debtor argues his income and expenses are unchanged and that supplemental Schedules I and J are unnecessary to support the feasibility of the plan. The reply also argues that the declaration of the debtor which was filed in support of the motion is sufficient evidence for the court to assess the feasibility of the proposed plan. The declaration supports the feasibility of the plan as follows:

7. I have no problem making the regular \$3,514.92 plan payment going forward each month based on my current monthly net disposable income. However, I inadvertently missed two (2) plan payments last year in August and October 2021 due to a slowdown in my business as a truck driver. 8. Last year, my employment was negatively impacted by the COVID-19 pandemic (sic) and I had insufficient income to make the two (2) indicated plan payments for those months. 9. As I lack sufficient income to make all three (3) plan payments in this month of March 2022 to come current, this motion to modify to retroactively suspend two (2) plan payments is urgent and necessary.

Declaration, ECF No. 55, 2:15-26.

The statements in the debtor's declaration regarding his ability to make the plan payments are too conclusory to sustain the debtor's burden of proof regarding plan feasibility. Additionally, the declaration makes no reference to the amount of the debtor's current monthly income.

The court has reviewed the most recently filed Schedules I and J, ECF No. 1, the debtor's Amended Schedules A/B, ECF No. 34, and the proposed modified plan, ECF No 56. Schedules A/B show that the debtor owns the following 3 vehicles: Ford Mustang; GMC Yukon; and a Lexus IS 300.

Schedule I shows that the debtor is employed as a driver with a gross monthly income of \$5,600.00 and income of \$5,131.00 after deductions for taxes and social security. This is the debtor's sole source of income. There is no indication whether this sum represents a salary or how the monthly amount is calculated. The

declaration in support of the motion does not indicate how the debtor's income is calculated. There are no deductions for medical or dental insurance on Schedule I.

The expenses on Schedule J are meager and do not support the debtor's ability to make the payments due for the remaining 46 months of the plan. Schedule J shows \$0 in the following expense categories: medical insurance; medical or dental expenses; personal care; entertainment; vehicle insurance; transportation. Moreover, the debtor shows food expenses of only \$250.00 per month. Without explanation or analysis of the debtor's current financial circumstances the court finds that the modified plan is not feasible.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

2. [19-22810](#)-A-13 **IN RE: DENNIS/RANDI-MARIE MITCHELSON**
[PGM-3](#)

CONTINUED MOTION TO MODIFY PLAN
2-2-2022 [\[84\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: Continued from March 15, 2022
Disposition: Denied
Order: Civil minute order

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

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

The hearing on this motion was continued to allow the debtors to augment the record primarily regarding the following three issues: 1) the discrepancy between the debtors' income on the 2020 tax return and Schedule I; 2) the date of change and the reasons for the change to the business name; and 3) the loan payback by the debtors to their corporation.

DEBTORS' DECLARATION

On March 29, 2022, the debtors filed a declaration, ECF No. 107. No additional pleadings or supplemented schedules have been filed in support of the debtors' position since the last hearing on March 15, 2022. The declaration states:

1. I(we) have submitted the business Profit and Loss for the calendar year of 2021, and have not as yet obtained them back from the CPA.
2. I(we) are not obtaining any loan payback from the business at this time and will notify the Trustee before we do to get permission.
3. I(we) modified the name after the COVID-19 started to slow and have added the name Automotive Excellence to Mitchelson Motorsports, Inc.
4. I(we) will submit the returns to the Trustee as soon as they have been completed.

Declaration, ECF No. 107, 1:19-28, 2:1-2.

The declaration does not adequately address the court's concerns. First, the declaration does not indicate to whom the profit and loss statements have been submitted or why it is necessary to receive them back from the accountant prior to providing them to the chapter 13 trustee. Second, the debtors state that they will not repay the obligation owed to their corporation but do not offer to increase the plan payment to pay other creditors. Nor have the debtors filed supplemental schedules omitting the payment and correcting the evidentiary record to conform to their statement in the declaration. Third, the debtors have not yet explained the differences in their income from 2020 to the present. Finally, as the trustee notes in his response, ECF No. 109, the debtors have not indicated the date they changed the name of their business, nor have they indicated the business reasons for doing so.

Previously the court indicated that "this motion will be denied without further notice or hearing if the Court finds the augmented record to be insufficient after review." See Civil Minutes, ECF No. 104.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

3. [19-26916](#)-A-13 **IN RE: CAROLYN ARNOLD**
[DPC-1](#)

MOTION TO DISMISS CASE
3-14-2022 [[30](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under §

1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,195.00 with a further payment of \$1,440.00 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

4. [21-21721](#)-A-13 **IN RE: ROSA GONZALEZ-MUNOZ**
[DPC-2](#)

MOTION TO DISMISS CASE
3-14-2022 [\[51\]](#)

RONALD HOLLAND/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: April 5, 2022 - timely

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$3,497.43, with another payment of \$1,693.00 due March 25, 2022.

The debtor has filed a timely opposition, ECF No. 55. The opposition consists of an unsworn statement by the debtor's attorney contending that the plan payments have been brought current. See *Id.*

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

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

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

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

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

TRUSTEE REPLY – Fed. R. Civ. P. 41

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

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

5. [21-23923](#)-A-13 **IN RE: CHRISTOPHER HUGHES**
[DPC-2](#)

MOTION TO DISMISS CASE
3-29-2022 [\[22\]](#)

AUGUST BULLOCK/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$262.00.

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 initial meeting scheduled January 6, 2022, or the continued meeting of creditors on March 10, 2022. Thus, the trustee was unable to examine the debtor regarding the proposed plan. The court finds that the debtor's failure to attend the meetings is unreasonable delay which is prejudicial to

creditors and therefore cause to dismiss the case under 11 U.S.C. § 1307(c)(1).

Failure to Prosecute Chapter 13 Plan

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The petition was filed on November 18, 2021, 5 months ago, and a plan has not yet been confirmed. On February 1, 2022, the court sustained an objection to the debtor's plan and the debtor has failed to file an amended plan and motion to confirm the plan since that date. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, the debtor's failure to attend meetings of creditors and failure to file an amended plan. The court hereby dismisses this case.

6. [22-20331](#)-A-13 **IN RE: SAMSON GALLOWAY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-23-2022 [\[14\]](#)

MIKALAH LIVIAKIS/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).

DOMESTIC SUPPORT OBLIGATION

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

. . . .

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation;

. . . .

11 U.S.C. § 1325(a)(8).

The chapter 13 trustee objects to confirmation of the debtor's plan under 11 U.S.C. § 1325(a)(8) as the debtor testified at the meeting of creditors that he was delinquent on domestic support obligation payments due after the filing of the petition. Section 1325(a)(8) prohibits confirmation of a plan if the debtor is not current with domestic support obligation payments which have come due after the filing of the bankruptcy petition.

The debtor's Schedule I filed at the inception of the case shows that the debtor is recently employed at TMobile and that his support obligation is \$990.00 per month. See Schedule I, ECF No. 1. If the post-petition payments on this obligation are delinquent the plan may not be confirmed. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

7. [22-20338](#)-A-13 **IN RE: TRACEY FERNANDEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-30-2022 [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 chapter 13 trustee objects to confirmation as the debtor failed to provide the required social-security documentation at the meeting of creditors as required by Rule 4002. The debtor is required to provide this information and the court will sustain the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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

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

8. [21-20039](#)-A-13 **IN RE: MARI RAHME**
[DPC-1](#)

MOTION TO DISMISS CASE
3-14-2022 [\[23\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$822.00.00 with a further payment of \$408.00 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

9. [21-23042](#)-A-7 **IN RE: RICHARD LUCERO**
[DPC-1](#)

MOTION TO DISMISS CASE
3-14-2022 [\[18\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CASE CONVERTED TO CHAPTER 7 ON 3/18/2022

Final Ruling

This matter will be removed from the calendar as moot. This case was converted to a Chapter 7 on March 18, 2022. No appearances are necessary. The court will issue a civil minute order.

10. [22-20743](#)-A-13 **IN RE: SILVIA RAMIREZ**
[CRG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-31-2022 [\[8\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied as moot

Order: Civil minute order

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. 11 U.S.C. § 362(c)(3)(B) (emphasis added).

The debtor's previous chapter 13 case was filed on August 13, 2019, in the Northern District of California. See Case No. 2019-41836, N.D. Cal. Bankr. (2019). The plan was confirmed January 14, 2020, and the previous case was *dismissed on March 3, 2021*. The instant case was filed March 29, 2022.

Because the previous case was dismissed over one year prior to the filing of the instant case, the automatic stay will not terminate by operation of law in this case. Accordingly, the motion will be denied as moot.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied as moot because the automatic stay will not terminate by operation of law in this case.

11. [22-20046](#)-A-13 **IN RE: LARHONDA SAUNDERS**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRINITY
FINANCIAL SERVICES, LLC
2-17-2022 [\[17\]](#)

MARK SHMORGON/ATTY. FOR DBT.
S. YOO/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from March 15, 2022

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.

The hearing on the creditor's objection to confirmation was continued from March 15, 2022, to allow the debtor to augment the record with declarations and supplemented schedules. The debtor filed amended Schedules I and J on March 29, 2022, ECF No. 28. The debtor also filed a declaration and exhibits on March 29, 2022, ECF Nos. 29 and 30. The chapter 13 trustee and the objecting creditor were ordered to file any further response not later than April 5, 2022. The objecting creditor has not filed any further objection to the proposed plan. Thus, the court presumes the creditor no longer objects to the plan. The chapter 13 trustee has filed a response indicating his review of the schedules, exhibits, and declaration. The trustee further states that he does not oppose confirmation of the plan.

The court will overrule 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.

Trinity Financial 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.

12. [21-23547](#)-A-13 **IN RE: MISTY JACKSON**
[PSB-1](#)

MOTION TO CONFIRM PLAN
3-2-2022 [\[32\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, dated March 2, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of her First Amended Chapter 13 Plan, ECF No. 38. The debtor has filed an Amended Schedule J on March 2, 2022, ECF No. 37 in support of the motion. Schedule I, filed October 12, 2021, remains unchanged since its filing at the inception of the case, ECF No. 1. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 43.

CHAPTER 13 PLAN CONFIRMATION

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

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

13. [19-23948](#)-A-13 **IN RE: C/SANDRA SMITH**
[CYB-7](#)

MOTION FOR COMPENSATION FOR CANDACE BROOKS, DEBTORS
ATTORNEY(S)
3-26-2022 [[104](#)]

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

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Number of Requests for Additional Compensation: First

Compensation Requested: \$6,792.50

Reimbursement of Expenses: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Candace Brooks, attorney for the debtor(s), has applied for an allowance of additional compensation.

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

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

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

Because the debtors opted-in to the no-look fee the evidentiary record shows that the debtors anticipated and agreed to pay \$5,000.00 to the applicant for services rendered in this case. See *Rights and Responsibilities*, ECF No. 3.

The court will continue the matter to allow the debtor to file a declaration indicating her support of the payment of additional compensation. Alternatively, the applicant shall file a declaration indicating that the debtor refuses to file a declaration in support of the payment of additional compensation.

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 hearing on this motion is continued to May 24, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 10, 2022, the debtor shall file a declaration in support of the motion for additional compensation; or the applicant shall file a declaration stating that the debtor(s) refuse to do so.

14. [19-22357](#)-A-13 **IN RE: DARASY/JOHNSY ESIO**
[PSB-3](#)

MOTION FOR COMPENSATION FOR PAULDEEP BAINS, DEBTORS
ATTORNEY(S)
3-16-2022 [\[60\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Number of Requests for Additional Compensation: First

Compensation Requested: \$2,005.00

Reimbursement of Expenses: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Pauldeep Bains, attorney for the debtor(s), has applied for an allowance of additional compensation.

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

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting-in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The

applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

Because the debtors opted-in to the no-look fee the evidentiary record shows that the debtors anticipated and agreed to pay \$4,000.00 to the applicant for services rendered in this case. See Rights and Responsibilities, ECF No. 3.

The court will continue the matter to allow the debtor(s) to file a declaration indicating their support of the payment of additional compensation. Alternatively, the applicant shall file a declaration indicating that the debtors refuse to file a declaration in support of the payment of additional compensation.

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 hearing on this motion is continued to May 24, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 10, 2022, the debtor shall file a declaration in support of the motion for additional compensation; or the applicant shall file a declaration stating that the debtor(s) refuse to do so.

15. [20-21658](#)-A-13 **IN RE: ADAM/KRISTIN STERIO**
[DPC-1](#)

MOTION TO DISMISS CASE
3-14-2022 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$780.00.00 with a further payment of \$390.00 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

16. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-5](#)

MOTION TO DISMISS CASE
3-14-2022 [[158](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: April 6, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$5,682.00, with another payment of \$5,682.00 due March 25, 2022.

The debtor has filed a timely opposition, ECF No. 162. The opposition is accompanied by a declaration of debtor's counsel attesting to the debtor's intent to make plan payments at a future date.

On April 7, 2022, the debtor filed his own declaration stating that as an independent contractor his income is irregular, but that sufficient funds are anticipated by April 8, 2022, and will be paid

to the chapter 13 trustee by April 12, 2022, in an amount sufficient to bring the plan payments current. See Declaration, ECF NO. 164. The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). By implication the opposition must be complete. Henceforth, declarations submitted after the opposition due date will not be considered.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c) .

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

CIVIL MINUTE ORDER

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

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

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

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

17. [21-20167](#)-A-13 **IN RE: HARLAN/CHARLOTTE CONFER**
[DPC-2](#)

MOTION TO DISMISS CASE
3-14-2022 [[126](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: Response filed April 6, 2022

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,024.00 with a further payment of \$1,512.00 due March 25, 2022.

As a courtesy to the court, counsel for the debtors has filed a response to the motion, ECF No. 135. The response indicates that the debtors will not attempt to bring the plan payments current, nor do they intend to file a modified plan. Accordingly, the court will grant the motion for cause under 11 U.S.C. § 130(c)(6).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

18. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-17-2022 [\[39\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
3/25/22 FINAL INSTALLMENT FEE PD. \$78

Final Ruling

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

19. [22-20276](#)-A-13 **IN RE: JOSEPH NOVAK**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
3-30-2022 [\[21\]](#)

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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

UNCLEAR AND UNCERTAIN PLAN TERMS

Plan Payment

The chapter 13 plan does not propose a specific monthly payment. See Chapter 13 Plan, ECF No. 15. There is no provision in Section 2 or Section 7 of the plan for any monthly plan payment. As such the plan cannot as a practical matter be administered by the trustee. The plan is facially defective and does not comply with 11 U.S.C. § 1325(a)(1).

Plan Term

Neither Section 2.03 nor Section 7 of the proposed chapter 13 plan provide a plan term. As such the plan cannot as a practical matter be administered by the trustee. The plan is facially defective and does not comply with 11 U.S.C. § 1325(a)(1).

The court sustains the trustee's objections.

FAILURE TO FILE TAX RETURNS

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

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

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

11 U.S.C. § 1308(a).

The Franchise Tax Board has filed a claim, Claim No. 4. The claim reflects that no tax returns were filed for the following tax years: 2018; 2019; 2020; and 2021. Each of these tax years are applicable tax years under 11 U.S.C. §1308.

If the debtor has not filed 2018-2021 tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

The court sustains the trustee's objections.

FAILURE TO PROVIDE FINANCIAL DOCUMENTS

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

The trustee reports that the debtor failed to provide him with a tax transcript or a copy of his/her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.

The tax return is required pursuant to 11 U.S.C. § 521(e)(2)(A), FRBP 4002(b)(3) and must be provided seven days before the date first set for the meeting of creditors, 11 U.S.C. §521(e)(2)(A)(1).

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

The court will sustain the trustee's objection.

Given the facial deficiencies in the proposed plan, and the failure to provide tax information the court need not reach the remaining issues raised in the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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

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

20. [19-23578](#)-A-13 **IN RE: CATHERINE BYRD**
[PGM-7](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
3-13-2022 [[132](#)]

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

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Number of Requests for Additional Compensation: First

Compensation Requested: \$7,685.00

Reimbursement of Expenses: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Peter Macaluso, attorney for the debtor(s), has applied for an allowance of additional compensation.

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

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting-in to the no-look fee approved through plan confirmation. The plan also shows the

attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

Because the debtor opted-in to the no-look fee the evidentiary record shows that the debtor anticipated and agreed to pay \$4,000.00 to the applicant for services rendered in this case. See Rights and Responsibilities, ECF No. 3.

The court will continue the matter to allow the debtor(s) to file a declaration indicating her support of the payment of additional compensation. Alternatively, the applicant shall file a declaration indicating that the debtor refuses to file a declaration in support of the payment of additional compensation.

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 hearing on this motion is continued to May 24, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 10, 2022, the debtor shall file a declaration in support of the motion for additional compensation; or the applicant shall file a declaration stating that the debtor refuses to do so.

21. [22-20678](#)-A-13 **IN RE: OMAR BERMUDEZ URCUYO**
[MLF-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-23-2022 [\[8\]](#)

MATTHEW MELLEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

22. [20-20188](#)-A-13 **IN RE: CHRISTOPHER MEEKS**
[DPC-1](#)

MOTION TO DISMISS CASE
3-14-2022 [\[25\]](#)

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

Opposition Due: April 6, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$600.00 with a further payment of \$300.00 due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

23. [19-27092](#)-A-13 **IN RE: ABDULMALIK ABDULRAHMAN AND AISHA WELLS**
[MMM-3](#)

MOTION TO MODIFY PLAN
3-5-2022 [\[57\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, dated March 5, 2022

DEFAULT OF RESPONDENT

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

The debtors seek modification of their chapter 13 plan. On March 5, 2022, the debtors filed amended Schedules I and J in support of the plan, ECF No. 56. The chapter 13 trustee has filed a non-opposition to the proposed plan, ECF NO. 70.

CHAPTER 13 PLAN MODIFICATION

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

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

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

24. [19-27092](#)-A-13 **IN RE: ABDULMALIK ABDULRAHMAN AND AISHA**
WELLS
[MMM-4](#)

MOTION TO BORROW
3-7-2022 [\[62\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve New Debt [Mortgage Loan to Finance Home Purchase]

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

Disposition: Granted

Order: Prepared by moving party

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

The debtor seeks to incur new debt to finance the purchase of a new home in the amount of \$550,000.00. Amended Schedules I and J have been filed indicating that the debtor can afford both the plan payment and the proposed monthly loan payment of principal and interest that would result from obtaining this financing. The court

will grant the motion, and the trustee will approve the order as to form and content.

25. [20-21497](#)-A-13 **IN RE: SUE VUE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-14-2022 [\[26\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 6, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,780.00 with a further payment of \$1,890.00. due March 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

26. [19-24407](#)-A-13 **IN RE: MARIA TERESA MERCADO**
[WW-4](#)

MOTION TO INCUR DEBT
4-6-2022 [\[44\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling