

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

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

DAY: TUESDAY
DATE: MAY 17, 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. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[DPC-2](#)

MOTION TO DISMISS CASE
4-13-2022 [\[39\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: May 3, 2022

Opposition Filed: April 14, 2022 - timely

Motion to Modify Plan Filed: April 27, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of 1,962.00, with another payment of \$1,351.00 due prior to the hearing.

The trustee also moves for dismissal as the debtor has failed to confirm a plan.

A modified plan has been timely filed and set for hearing as opposition to this motion. The scheduled hearing on the modification is June 9, 2022, at 9:00 a.m.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On May 10, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 56.

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. Although the debtor has filed opposition to the motion, 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.

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

MOTION TO DISMISS CASE
4-12-2022 [\[129\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 3, 2022, 2022

Opposition Filed: May 3, 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 plan payments are delinquent in the amount of \$13,013.18, with another payment of \$4,430.15 due prior to the hearing.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtors, ECF Nos. 133-134. The debtors' declaration states as follows.

4. We will be meeting with our attorney to prepare a new plan so that we can continue to pay my creditors to the best of our ability. (sic) this matter. 5. We are asking the Court to not dismiss my case *because we have filed a modified plan* to cure the arrears and complete our plan as confirmed.

Declaration, ECF No. 134, 2:5-10(emphasis added).

The debtors' opposition does not resolve the grounds for dismissal. First, a delinquency still exists as of the date of the opposition. Second the declaration contains conflicting and false testimony.

The debtors stated that they plan to meet with their attorney to prepare a new plan. The declaration also states that the debtors have filed a modified plan. See, *id.* The court notes that a modified plan has not been filed as of the date the declaration was filed with the court or by the date opposition to the motion to dismiss was due.

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). The modified plan and motion to modify offered as opposition are late. Since the opposition is late the court gives it no weight.

The court notes that the debtor filed a Modified Chapter 13 plan, ECF No. 139, and a motion to confirm the modified plan, ECF No. 136, on May 11, 2022, which is 6 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on June 22, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed April 12, 2022, giving the debtors only 35 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.

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 debtors have 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.

3. [18-22405](#)-A-13 **IN RE: GEORGE/TRISHA VAUGHN**
[RJ-5](#)

MOTION TO MODIFY PLAN
3-25-2022 [\[131\]](#)

RICHARD JARE/ATTY. FOR DBT.
DEBTORS DISMISSED: 3/30/2022

Final Ruling

The case was dismissed on March 30, 2022. This matter is removed from the calendar as moot. No appearances are required.

4. [22-20107](#)-A-13 **IN RE: TEDDIE/SHARION BROWN**
[MRL-1](#)

MOTION TO CONFIRM PLAN
4-12-2022 [\[35\]](#)

MIKALAH LIVIAKIS/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: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 41.

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

SCHEDULES I AND J

Rule 1008

On April 12, 2022, the debtor(s) filed supplemental Schedules I and J in support of the motion and plan, ECF No. 39.

The schedules were filed without the required amendment cover sheet, EDC 2-015 and are thus unsigned by the debtors. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

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

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

EDC 2-015.

LBR 9004-1(c)

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

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

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

CIVIL MINUTE ORDER

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

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

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and good cause appearing,

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

5. [22-21008](#)-A-13 **IN RE: CYNTHIA PAYSINGER**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-3-2022 [\[10\]](#)

PETER MACALUSO/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

Case Filed: April 22, 2022

Gross Monthly Income: \$4241.79

Plan Payment: \$2,570.00

Plan Term: 60 months

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

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

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

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current

case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption as follows.

Plan Feasibility

The court notes that the debtor receives \$830.00 per month from her son. The contribution represents 20% of the debtor's gross monthly income and the proposed plan payment is not feasible without this continued support. There is no evidence in the form of a declaration from the debtor's son regarding his ability and willingness to make such a significant contribution for the duration of the proposed 60-month plan.

Change in Circumstances

The court notes that the debtor has filed the following chapter 13 cases since 2014.

Case Number	Date Filed	Confirmed	Attorney	Dismissed
2014-28235	August 13, 2014	No	Pro Se	August 27, 2014
2014-32109	December 15, 2014	No	Peter Macaluso	February 18, 2015
2016-20016	January 5, 2016	Yes, Order Extending Stay	Peter Macaluso	December 8, 2017
2018-23464	June 1, 2018	Yes, Order Extending Stay	Peter Macaluso	March 10, 2022

Each of the previous chapter 13 cases was dismissed. The debtor sought and received extensions of the automatic stay in the two most recently filed cases.

In the debtor's most recently filed case (Case No. 2018-23464) the plan payment was \$2,500.00 per month, See Amended Plan, *Id.*, ECF No. 170. The case was dismissed for plan delinquency on March 10, 2022, approximately 6 weeks prior to the filing of the instant case.

The current proposed plan payment is \$2,570.00 per month. Schedule I filed at the inception of the current case shows that the debtor is employed at the National Asian Pacific Center on Aging and has been employed there for 1.5 years. See Schedule I, ECF No. 1. This conflicts with the information provided in the debtor's declaration in support of this motion.

Since my previous case was dismissed, my circumstances have changed as I now have a steady position with the Church, my social security has always been steady, and my son's contribution is also steady.

Declaration, ECF No. 13, 2:1-4.

As the information is inconsistent, the court is unable to find that the debtor's financial circumstances have changed since the dismissal of her last case. 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.

6. [22-20612](#)-A-13 **IN RE: BRITTANY/STEVEN UREN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-2022 [\[14\]](#)

ASHLEY AMERIO/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 Overextension

The trustee calculates that the plan will take 477 months to complete based upon claims filed. This exceeds the maximum length of 60 months allowed under 11 U.S.C. § 1322(d).

Therefore, the plan is not mathematically feasible under 11 U.S.C. § 1325(a)(1), (6).

GOOD FAITH

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

Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements does not evidence that the plan is proposed in good faith.

The debtors filed Schedule F at the inception of the case listing Vincent Sterling and Brittany Sterling as creditors. The debtors listed the amount owed to these creditors as \$100.00 in the schedule. See ECF No. 1. Vincent Sterling has filed Claim No. 14 in the amount of \$450,000.00. Brittany Sterling has filed Claim No. 15 in the amount of \$300,000.00. It is unclear why the amount listed in the debtors' schedule is significantly less than the amounts stated in the claims.

UNSECURED DEBT LIMITATION

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$465,275 [originally "\$250,000", adjusted effective April, 1, 2022] and noncontingent, liquidated, secured debts of less than \$1,395,875 [originally "\$750,000", adjusted effective April 1, 2022], or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$465,275 [originally "\$250,000", adjusted effective April, 1, 2022] and noncontingent, liquidated, secured debts of less than \$1,395,875 [originally "\$750,000", adjusted effective April 1, 2022] may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e).

The differences between the schedules and the claims filed in this case give rise to a question of eligibility under Chapter 13. The debtors appear to owe unsecured debt in excess of \$419,275.00. The court notes that the debt limits under 11 U.S.C. 109(e) were most recently adjusted to this amount April 1, 2022. However, the instant petition was filed March 15, 2022, thus the previous unsecured debt limitation of \$419,275.00, as argued by the chapter 13 trustee, is applicable in this 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 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. [22-20415](#)-A-13 **IN RE: STEVEN BUSHER**
[DBL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DANIELLE WILLIAM AND
ARTHOFFER & TONKIN LAW OFFICES P.C.
4-21-2022 [\[30\]](#)

MARK BRIDEN/ATTY. FOR DBT.
BRUCE DWIGGINS/ATTY. FOR MV.

Final 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

An objection to confirmation of a chapter 13 plan must be "served on the debtor" and other parties pursuant to Rule 3015 of the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 3015(f); *see also* LBR 3015-1(c)(4).

A confirmation objection initiates a contested matter, so Rule 9014 applies to it. Fed. R. Bankr. P. 9014(a)-(b). This means the objection must be served as required by Rule 7004. Fed. R. Bankr. P. 7004(a)-(b). Rule 7004 further requires that the debtor's attorney be served whenever the debtor is represented, and service is made upon the debtor. Fed. R. Bankr. P. 7004(g).

SERVICE OF OBJECTION

(e) Service and Proof of Service.

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 2) *A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*
- 3) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LR 9014-1(e) (emphasis added).

A certificate of service has not been filed as required by LBR 9014-1. Thus, the court cannot determine if the debtor has been served under Rules 9014 and 7004.

Because service was insufficient, the objection will be overruled.

CIVIL MINUTE ORDER

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

Danielle William and Arthofer & Tonkin Law Offices P.C'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.

8. [22-20415](#)-A-13 **IN RE: STEVEN BUSER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-20-2022 [\[26\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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

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 \$1,000.00. The trustee also indicates that an additional plan payment will come due in the amount of \$1,000.00 prior to the hearing on this objection. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

The debtor is required to cooperate with the trustee to enable the trustee to fulfil his obligations under the Bankruptcy Code. Thus, the debtor is required to supply the trustee with written information regarding his financial affairs. See 11 U.S.C. § 521(a)(3). The debtor's duty to cooperate is particularly important when, as here, the debtor operates a business.

The debtor owns and operates Klondike, which is a bar and restaurant. In connection with this business, the trustee requested that the debtor provide: 1) a completed business examination checklist; 2) individual profit and loss statements for the six month period prior to filing the petition; 3) income tax returns for the two year period prior to filing the petition; 4) financial statements, for all personal and business accounts including, credit unions, bank accounts, retirement accounts, or any other financial account(s), for the six month period prior to filing the petition; 5) proof of required insurance; and 6) proof of required licenses and/or permits.

The trustee received the following documents in response to his request: 2020 Internal Revenue Service and Franchise Tax Board returns; and a Plumas Bank Statement, for Steve Busher dba Klub Klondike, with a statement date of January 31, 2022.

Without the remaining requested information, the trustee cannot represent whether, in his estimation, the plan is feasible.

Failure to Provide Pay Advices

The trustee is further unable to fully assess the feasibility of the proposed plan as the debtor failed to provide the trustee with any copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The debtor is required to provide this information to the trustee prior to the meeting of creditors. See 11 U.S.C. §521(a)(1)(B)(iv).

Unsigned Plan

The proposed plan does not contain the signature of debtor's counsel. Therefore, it does not comply with LBR 9004-1(c)(1)(B).

For each of the foregoing reasons the court finds that the plan is not feasible and will sustain the trustee's objection.

LIQUIDATION

(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 holds an interest in the following real properties: 21375 Main Street, Lakehead, California; and 10990 Garden Lane, Rough and Ready, California. The trustee has requested that the debtor provide third party documentary evidence supporting the claimed values of the real properties. Without this information the trustee cannot determine if the proposed plan passes the liquidation test or is proposed in good faith. See 11 U.S.C. § 1325(a)(3), (4).

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection,

oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

9. [21-23819](#)-A-13 **IN RE: GEORGIA/MILTON MERCER**
[SLE-8](#)

MOTION TO CONFIRM PLAN
3-24-2022 [\[115\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [21-22121](#)-A-13 **IN RE: JEFFREY/CHERYL VANORNUM**
[DPC-2](#)

MOTION TO DISMISS CASE
4-13-2022 [\[33\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

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: May 3, 2022

Opposition Filed: May 2, 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 \$1,700.00, with another payment of \$850.00 due April 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 37-38. The debtor's cursory declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 38.

The debtor's opposition does not fully resolve the grounds for dismissal. First, 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. Second, the opposition is cursory and provides no facts indicating how the debtor will cure the delinquent payments or the circumstances which caused the plan default. The court is unable to deny the motion given the outstanding delinquency.

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.

11. [21-20025](#)-A-13 **IN RE: HAROLD DEAN**
[LBG-201](#)

MOTION TO MODIFY PLAN
3-23-2022 [\[32\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that payments under the proposed plan are delinquent in the amount of \$1,665.00. The plan cannot be confirmed if the plan payments are not current.

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 on January 19, 2021, approximately 15 months ago, ECF No. 13. 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).

The court notes that the debtor filed an Exhibit, ECF No. 36, which includes a Supplemental Schedule J, but not a Schedule I. The court requires all schedules to be filed with an amendment cover sheet, verifying the contents. See Amendment Cover Sheet, EDC 2-015 found on the court's website. Additionally, the documents must be filed as a separate item on the court's docket and not as an exhibit to the motion, so that they can be easily found by the court and all present and future parties to litigation in this case.

Unexplained Secured Obligation

The trustee also objects to the plan's feasibility as an obligation appears on the Supplemental Schedule J submitted as an Exhibit, ECF No. 36. An expense in the amount of \$350.00 appears as a vehicle payment. The trustee requires additional information regarding the debt, such as when the debt was incurred and the circumstances necessitating the debt. The debtor's declaration states as follows:

The Chapter 13 Plan was modified because (sic) increased costs of living and a secured creditor for spouse was not a creditor of myself and so is being paid directly.

Declaration, ECF No. 35, 2:22-23.

This explanation is unclear and insufficient. The court is unable to determine from the evidence the circumstances surrounding the new vehicle debt and thus cannot determine the feasibility of the plan or whether the plan is proposed in good faith as required under 11 U.S.C. § 1325(a)(3).

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.

12. [22-20426](#)-A-13 **IN RE: JOHN NYSTROM**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-20-2022 [[17](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

13. [20-25127](#)-A-13 **IN RE: RYAN/KANDA HOTZE**
[DBL-1](#)

MOTION TO MODIFY PLAN
3-23-2022 [[31](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the payments are delinquent under the proposed plan in the amount of \$1,500.00. The plan cannot be confirmed if the plan payments are not current.

Debtor Reply

The debtors have filed a reply to the trustee's opposition. The debtors' attorney explains that a drafting error in the total amount paid into the plan was included in the additional provisions of the plan at Section 7.01. The total included a sum paid in the month of March 2022, which was to be credited to payments made post modification. In support of their reply the debtors have also filed an Exhibit, ECF No. 45, which is a copy of the payment tendered March 10, 2022. While the debtors have made the payment, the error is in the drafting of the proposed plan.

The error must be corrected by the filing of a further modified plan. The proposed plan states that \$32,770.64 was paid into the plan during months 1-15. See Plan, Section 7.01, ECF No. 33. The debtors are delinquent pursuant to the terms of the proposed plan.

CIVIL MINUTE ORDER

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

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

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

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

14. [20-25127](#)-A-13 **IN RE: RYAN/KANDA HOTZE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-1-2022 [\[23\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from March 29, 2022

Disposition: Granted

Order: Civil minute order

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 \$6,780.52.

In opposition to the trustee's motion the debtors filed a motion to modify their chapter 13 plan, (DBL-1). The motion to modify was denied as the debtors are delinquent in the amount of \$1,500.00 under the proposed modified plan. Because the delinquency appears to be due to a drafting error in the proposed modified plan the court will consider a further continuance of the trustee's motion to dismiss at the hearing. Absent a stipulated continuance the court will grant the motion as follows.

The debtor's opposition has not resolved the grounds for dismissal. Payments are delinquent under the confirmed plan and the proposed modified plan. The court is unable to deny the motion given the outstanding delinquency.

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.

15. [22-20527](#)-A-13 **IN RE: CHARLES LEONARD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-2022 [\[22\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that

the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

11 U.S.C. § 1325(b)

We hold that a chapter 13 debtor engaged in business may not deduct ordinary and necessary business expenses from gross receipts *for the purpose of calculating current monthly income* as defined under § 101(10A). Rather, such deductions are authorized under § 1325(b)(2)(B) and, therefore, are to be subtracted from current monthly income when calculating disposable income pursuant to § 1325(b)(2).

In re Wiegand, 386 B.R. 238, 239 (B.A.P. 9th Cir. 2008) (emphasis added).

The trustee objects to the calculation of the debtor's current monthly income. The debtor is self-employed and has subtracted business expenses in the amount of \$6,346.33 from his gross receipts for the purposes of calculating current monthly income. See Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, ECF No. 12. This is not an appropriate deduction under the Section 1325(b)(1)(B) calculation. It is to be included only in the calculation of *disposable* monthly income under 11 U.S.C. § 1325(b)(2).

Accordingly, the debtor has not completed the balance of Forms 122C-1 and C-2. To determine if the plan complies with 11 U.S.C. § 1325(b)(1)(B), the debtor must complete Forms 122C-1 and C-2 in their entirety using the correct figures as stated on the United States Trustee's website.

The court will sustain the objection.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

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

MATHEMATICAL FEASIBILITY

The plan may not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. §§ 1322(a)(1), 1325(a)(1), (6). The debtor has provided for the payment of mortgage arrears in the amount of \$75,000.00. See Plan,

Section 3.07, ECF No. 10. The secured creditor, Wilmington Savings Fund Society, FSB has filed a claim wherein mortgage arrears are indicated in the amount of \$83,935.69, see Claim No. 3. The difference between the plan arrears and the claimed amount is significant and it does not appear from the debtor's Schedules I and J that the debtor has the ability to increase his plan payment in an amount sufficient to pay the additional \$8,935.69 in mortgage arrears.

The court will sustain the trustee's objections and deny confirmation of the debtor's plan.

CIVIL MINUTE ORDER

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

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

The 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.

16. [22-20527](#)-A-13 **IN RE: CHARLES LEONARD**
[KAZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
4-28-2022 [\[26\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

Final 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

An objection to confirmation of a chapter 13 plan must be "served on the debtor" and other parties pursuant to Rule 3015 of the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 3015(f); see also LBR 3015-1(c)(4).

A confirmation objection initiates a contested matter, so Rule 9014 applies to it. Fed. R. Bankr. P. 9014(a)-(b). This means the objection must be served as required by Rule 7004. Fed. R. Bankr.

P. 7004(a)-(b). Rule 7004 further requires that the debtor's attorney be served whenever the debtor is represented, and service is made upon the debtor. Fed. R. Bankr. P. 7004(g).

SERVICE OF OBJECTION

(e) Service and Proof of Service.

- 4) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 5) *A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*
- 6) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LR 9014-1(e) (emphasis added).

A certificate of service has not been filed as required by LBR 9014-1. Thus, the court cannot determine if the debtor has been served under Rules 9014 and 7004.

Because service was insufficient, the objection will be overruled.

CIVIL MINUTE ORDER

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

Wilmington Savings Fund Society, FSB'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.

17. [17-20031](#)-A-13 **IN RE: JAMES MURRAY**
[RS-6](#)

MOTION FOR COMPENSATION FOR RICHARD STURDEVANT, DEBTORS
ATTORNEY(S)
4-15-2022 [[135](#)]

RICHARD STURDEVANT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Additional Compensation

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

Disposition: Denied without prejudice

Order: Civil minute order

COMPENSATION AND EXPENSES

In this chapter 13 case, Richard Sturdevant, 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).

Trustee Opposition

The chapter 13 trustee opposes the application, ECF Nos. 144-145, as follows.

The trustee contends that the amount requested of \$1,280.00 conflicts with the outline of the unforeseen work. The court agrees. The application states that additional work was performed commencing December 4, 2020. Conversely, Exhibit A, ECF No. 138, contains a detail of work performed commencing January 3, 2017. This is confusing and the court cannot determine from the documents submitted the amount requested, or the dates of services performed.

The trustee objects contending the applicant seeks fees totaling \$600.00 for a previous motion, RS-5, for supplemental fees, that was denied by the Court on March 29, 2022. See ECF No. 133.

Finally, the trustee reports that he is holding funds in the total amount of \$991.39, which is \$288.61 less than the total fees requested. As the plan is completed the trustee does not anticipate receipt of any additional funds by the debtor.

Debtor Reply

The applicant has filed a reply, ECF No. 147. In the reply the applicant concedes that some of the information is inaccurate. Applicant further requests that the debtor be allowed to pay fees directly to the applicant to the extent the trustee is not holding sufficient funds.

The court will deny the application without prejudice for the following reasons.

First, the dates of service in the application conflict with the service detail provided in Exhibit A and the court is unable to determine from the face of the documents provided the amounts requested and dates of covered services. The court will not presume the conclusions reached by any party served with the motion and supporting exhibits. Second, while the debtor has filed a declaration in support of the additional fees requested the declaration does not indicate that the debtor understands that the trustee is not holding sufficient funds to pay the fees in full, nor has the debtor stated he is willing to pay the difference of \$288.61, outside the plan.

CIVIL MINUTE ORDER

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

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

Richard Sturdevant's Application for Additional Compensation has been presented to the court. Having considered the application, oppositions, responses and replies, if any, and good cause appearing;

IT IS ORDERED that the application is denied without prejudice.

18. [22-20635](#)-A-13 **IN RE: MARIA LUPERCIO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-2022 [\[14\]](#)

CANDACE BROOKS/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 \$899.00 with a payment due May 25, 2022, in the amount of \$899.00. The plan cannot be confirmed if the plan payments are not current.

Insufficient Supporting Evidence

Debtor's Schedule I, filed at the inception of the case, shows that the debtor receives contributions from family members in the amount of \$1,236.00. See Schedule I, ECF No. 1. This is a significant sum and there is no evidence on the record that the contributing family members are willing and able to contribute such a sum. Without this evidence the court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The court sustains the feasibility objections.

SECURED DEBT CLASSIFICATION

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

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper. The plan provides for Wells Fargo Bank in Class 4.

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

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the

amount of \$5,039.65. Compare Claim No. 3 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

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

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

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

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

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

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

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

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

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

...

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

Chapter 13 Plan § 3.07, EDC 3-080.

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

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

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

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

Improper Classification of Vehicle Claim

The trustee objects to the classification of Ford Motor Credit in Class 4 of the plan contending that as the loan matures during the proposed plan term that instead it must be provided for in Class 2 of the Plan.

The mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses the classification of secured claims. It provides:

Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed.

Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan.

Chapter 13 Plan, §§ 3.08, 3.10, EDC 03-080.

The trustee contends that the obligation to Ford Motor Credit matures June 10, 2026, which is during the contemplated term of the proposed plan. See Claim No. 2. The debtor's classification of this claim in Class 4 is improper.

The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

19. [20-22040](#)-A-13 **IN RE: YVETTE LERMA**
[DPC-1](#)

MOTION TO DISMISS CASE
4-12-2022 [\[60\]](#)

MARK SHMORGON/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

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 \$594.00, with another payment of \$253.00 due April 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 64-65. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 65.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On May 9, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 67.

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. Although the debtor has filed opposition to the 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.

20. [19-20544](#)-A-13 **IN RE: JOSE/MAUREEN MARIANO**
[WW-4](#)

MOTION TO MODIFY PLAN
4-5-2022 [\[62\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written response filed by creditor

Disposition: Granted

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).

DEFAULT OF RESPONDENT

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

Chapter 13 plan modification 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).

On April 7, 2022, the debtors filed a notice indicating that the interest rate to be paid on the claim of TD Auto Finance had been incorrectly indicated in the proposed modified plan and that the debtors intended to provide for interest at 7.5% as ordered upon confirmation, see Order Confirming Plan, ECF No. 31. The notice was served upon the affected creditor and the chapter 13 trustee.

On April 12, 2022, creditor TD Auto Finance, LLC filed a response indicating that it did not oppose the plan modification with the

7.5% interest rate provision. On May 6, 2022, the chapter 13 trustee indicated his support of the motion with the agreed upon interest rate of 7.5%, see ECF No. 71.

The court will grant the motion. The order granting the motion to modify shall provide for interest at 7.5% to creditor TD Auto Finance, LLC.

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 granted. The court approves modification of the chapter 13 plan.

21. [22-20545](#)-A-13 **IN RE: KEITH LARSEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-2022 [\[17\]](#)

ELIZABETH CARLSEN/ATTY. FOR DBT.

No Ruling

22. [21-23146](#)-A-13 **IN RE: STEVE BAKER**
[DPC-1](#)

MOTION TO DISMISS CASE
4-12-2022 [\[32\]](#)

GEORGE BURKE/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: May 3, 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 \$4,700.00 with a further payment of \$2,350.00 due April 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. [21-23848](#)-A-13 **IN RE: GERMAN/MARIANA GARCIA**
[MRL-2](#)

MOTION TO CONFIRM PLAN
4-8-2022 [\[47\]](#)

MIKALAH LIVIAKIS/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: Chapter 13 Plan, filed April 8, 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).

Debtors seek an order confirming their chapter 13 plan. On April 14, 2022, the debtors filed properly executed Supplemental Schedules I and J in support of the motion, ECF No. 53. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 54.

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.

24. [20-25150](#)-A-13 **IN RE: SCHONZE DEL POZO**
[DPC-1](#)

MOTION TO DISMISS CASE
4-12-2022 [\[28\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

The trustee filed a timely request to dismiss this motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. No parties have filed a response to the motion to dismiss or otherwise appeared in this matter. The court will remove the matter from the calendar and allow the withdrawal of the motion. No appearances are necessary.

25. [21-23852](#)-A-13 **IN RE: SHANNON BUTLER**
[BMV-2](#)

MOTION TO CONFIRM PLAN
3-29-2022 [\[32\]](#)

BERT VEGA/ATTY. FOR DBT.
DEBTOR DISMISSED: 4/5/2022

Final Ruling

As the case was dismissed on April 5, 2022, the hearing on the motion to confirm will be removed from the calendar as moot. No appearances are necessary.

26. [21-23759](#)-A-13 **IN RE: MARY BUAN-IGNACIO**
[RJ-1](#)

MOTION TO CONFIRM PLAN
3-29-2022 [[39](#)]

RICHARD JARE/ATTY. FOR DBT.
DEBTOR DISMISSED: 4/5/2022

Final Ruling

As the case was dismissed on April 5, 2022, the hearing on the motion to confirm will be removed from the calendar as moot. No appearances are necessary.

27. [22-20670](#)-A-13 **IN RE: ELENA GONZALEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
4-27-2022 [[29](#)]

PETER MACALUSO/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) - unreasonable delay

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, as follows,

PLAN DELINQUENCY

The trustee asserts that cause exists under § 1307(c)(1) 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 \$1,200.00.

FAILURE TO PROVIDE REQUESTED INFORMATION

The trustee contends that the debtor's failure to provide requested information constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C § 1307(c)(1). The debtor(s) failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors.

The debtor has failed to produce the following requested information: 1) Profit/Loss statements from October 2021 through, and including, March 2022; 2) proof of business license and insurance 3) 6 months of bank statements; or 4) written statements that no such documentation exists. The debtor has filed multiple chapter 13 cases in the past 4 years. Given that the debtor has filed multiple chapter 13 cases in the past 4 years the court would expect the debtor to have this information readily available to provide to the trustee.

DEBTOR OPPOSITION

On May 11, 2022, the debtor filed an opposition to the trustee's motion to dismiss. The opposition is accompanied by a declaration of the debtor. See ECF Nos. 35-36.

The opposition states that the debtor has met with Counsel and has signed an Amended Plan that will be filed and set for hearing on June 22, 2022.

The debtor's declaration stated that the debtor has paid the April 25, 2022, plan payment to the trustee and that consequently plan payments are current. The debtor also states that she has provided the following business documents to the trustee: Profit and Loss statements for October 2021 through, and including, March 2022; proof of driver's license, business license, and insurance; along with the other required documents. See ECF No. 36, 1:20-22, 2:8-11, 24-25, 3:1-3.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

28. [22-20670](#)-A-13 **IN RE: ELENA GONZALEZ**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-2022 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 \$1,200.00. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors.

The debtor has failed to produce the following requested information: 1) Profit/Loss statements from October 2021 through, and including, March 2022; 2) proof of business license and insurance 3) 6 months of bank statements; or 4) written statements that no such documentation exists.

The failure to provide the requested information 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).

Business Attachment to Schedules I and J

The debtor has not supported the plan by filing the Business Income and Expenses attachment to Schedules I and J despite reporting income from self-employment. Without complete 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).

The trustee conducted the meeting of creditors on April 21, 2022. The court notes that the debtor filed the attachment on April 28, 2022, ECF No. 33. However, this does not resolve the objection as the trustee did not have the information he required prior to the filing of his objection to confirmation. This is information which should have been filed in advance of the meeting of creditors so that the trustee could conduct a thorough and productive examination of the debtor. Given the debtor's multiple chapter 13 cases the court views the debtor's failure to file the required attachment to schedules as a failure to cooperate with the trustee in his

examination of the debtor's financial affairs. See 11 U.S.C. § 521(a) (3).

Rule 1008

On April 28, 2022, the debtor filed the Business Attachment to Schedules I and J, ECF No. 33. The document was filed without any authentication or verification as required under Rule 1008.

The attachment to schedules was filed without the required amendment cover sheet, EDC 2-015 and are thus unsigned by the debtor. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

In the Eastern District Form EDC 2-015 is required for use in filing both amended and supplemental documents. The form provides the following instructions:

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

EDC 002-015.

LBR 9004-1(c)

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

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

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

The court will sustain each of the trustee's previous objections.

VIOLATION OF PLAN PROVISIONS

Section 7 of the debtor's plan provides in part:

Class 1: (1) Claim of US Bank/Fay Servicing is disputed and an Objection to Claim will be filed as Adversarial, within (15 days of the filing of the Petition. (2) Plan proposes no payment towards arrears until the Objection is resolved.

Plan, Section 7 - Non Standard Provisions, ECF No. 3.

The instant case was filed on March 21, 2022. The debtor's plan requires her to file an adversary proceeding contesting the obligation to US Bank/Fay Servicing. It appears that resolution of this obligation is a prerequisite to confirmation of a feasible plan. The court notes that the creditor has not yet filed a claim.

However, the debtor concedes that the claim of Fay Servicing is delinquent as she has listed the obligation in Class 1 of the proposed plan. The debtor has failed to project the amount of arrears owed or to provide for a cure of the arrears. Thus, the plan is not feasible under 11 U.S.C. § 1325(a)(6) and fails to satisfy 11 U.S.C. § 1322(b)(2) and (5).

The court will sustain the objection under 11 U.S.C. § 1322(b)(2), (5).

Because the court has sustained this objection it need not reach the remaining objections raised by the 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.

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.

29. [22-20372](#)-A-13 **IN RE: REBECCA GATES-SHORTZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-29-2022 [\[20\]](#)

DAVID FOYIL/ATTY. FOR DBT.
4/20/22 FINAL INSTALLMENT PAYMENT \$313

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

30. [22-20372](#)-A-13 **IN RE: REBECCA GATES-SHORTZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-18-2022 [\[31\]](#)

DAVID FOYIL/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 \$560.00. 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. 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 notes that the debtor did not attend the continued meeting of creditors on May 5, 2022, and that the meeting has been continued once again by the trustee. The court will sustain the objection.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

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

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.

31. [22-20372](#)-A-13 **IN RE: REBECCA GATES-SHORTZ**
[VVF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICAN HONDA FINANCE
CORPORATION
3-29-2022 [\[21\]](#)

DAVID FOYIL/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

No Ruling

32. [21-22775](#)-A-13 **IN RE: ELIZABETH GONZALEZ**
[DPC-3](#)

MOTION TO DISMISS CASE
4-13-2022 [\[52\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 3, 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 \$960.00 with a further payment of \$480.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

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. [21-23676](#)-A-13 **IN RE: GRACEMARIE MAC DULA-DALISAY**
[DPC-1](#)

MOTION TO DISMISS CASE
4-12-2022 [\[29\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 3, 2022

Opposition Filed: May 3, 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 \$4,658.44, with another payment of \$2,329.22 due April 25, 2022.

The debtor has filed a timely opposition, ECF No. 33. The opposition consists of an unsworn statement by the debtor's attorney. The opposition states that the debtor will bring the plan payment current by the date of the hearing on this motion.

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 by the debtor is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating why the delinquency occurred or the debtor's ability to make the payment as promised.

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.

The court gives no weight to an opposition which fails to provide sworn testimony by the debtor opposing the motion. Unsworn statements by counsel are not evidence and 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.

34. [21-23781](#)-A-13 **IN RE: LEILA MONDARES**
[DPC-2](#)

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

TIMOTHY WALSH/ATTY. FOR DBT.

Final Ruling

Motion: Trustee's Motion to Dismiss Case

Notice: Continued from April 5, 2022

Disposition: Denied

Order: Civil minute order

The hearing on the chapter 13 trustee's motion to dismiss was continued to coincide with the hearing on the debtor's motion to confirm her chapter 13 plan. The motion to confirm the chapter 13 plan (TJW-1) was granted.

The court previously ruled that "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." See Civil Minutes, ECF No. 39.

The chapter 13 trustee has filed a Status Report indicating that he no longer wishes to pursue his motion to dismiss, ECF No. 41.

As the motion to confirm has been granted the court will deny the trustee's motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

35. [21-23781](#)-A-13 **IN RE: LEILA MONDARES**
[TJW-1](#)

MOTION TO CONFIRM PLAN
3-17-2022 [\[35\]](#)

TIMOTHY WALSH/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, filed March 17, 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. 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.

36. [20-20483](#)-A-13 **IN RE: NORMA MATTINGLY**
[GEL-3](#)

MOTION TO SELL
4-26-2022 [\[33\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

37. [19-26789](#)-A-13 **IN RE: ADAM/JESSICA CHAPPELL**
[DPC-1](#)

CONTINUED MOTION TO ALLOW DEBTOR'S EX PARTE MOTION TO AMEND
CLAIM #24
2-15-2022 [\[27\]](#)

AUGUST BULLOCK/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Allow Amendment of Claim #24 by Debtor

Notice: Continued from March 29, 2022

Disposition: Denied as Moot

Order: Civil minute order

The chapter 13 trustee seeks an order allowing the debtors to amend Claim No. 24. The purpose of the amended claim was to authorize payment to U. S. Department of Education, c/o FedLoan Servicing.

On April 20, 2022, FedLoan Servicing amended the claim which had previously been filed and which authorizes payment as requested by the trustee. See Claim No. 24.

The court will deny this motion 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 motion is denied as moot.

38. [21-21493](#)-A-13 **IN RE: STEVEN BROWN**
[DPC-1](#)

MOTION TO DISMISS CASE
4-13-2022 [\[22\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on May 11, 2022. See ECF No. 29. The Motion to Dismiss will be removed from the calendar as moot. No appearances are required.

39. [21-22994](#)-A-13 **IN RE: JUSTIN/CHRISTINA BORGES**
[MRL-2](#)

MOTION TO MODIFY PLAN
3-28-2022 [\[56\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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, filed March 28, 2022

DEFAULT OF RESPONDENT

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

The debtors seek an order approving the modified Chapter 13 Plan. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 62. The debtors filed properly amended Schedules I and J in support of the motion on May 5, 2022, ECF No. 64.

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.

40. [22-20496](#)-A-13 **IN RE: LAMBERT DAVIS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-27-2022 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 \$190.00. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Financial/Business Documents

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor(s) failed to produce the following documents: 6 months of profit and loss statements relating to the debtor's business operation; business license and insurance or a written statement that no such documents exist.

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).

Attorney Fees

The proposed plan, ECF No. 12, provides for payment of \$6,000.00 in attorney fees to debtor's counsel. However, it is unclear how much money was paid prior to the filing of the case and how much is to be paid through the plan as the debtor has failed to file the Rights and Responsibilities, Form EDC 3-096. Without this information the trustee cannot pay any attorney fees, nor can he determine if the plan is mathematically feasible. See 11 U.S.C. § 1325(a)(1), (6).

The court will sustain each of the feasibility objections raised by the trustee.

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 has failed to provide the trustee with the require social security information. The court will sustain the objection.

GOOD FAITH

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

Failure to File Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing incomplete schedules does not evidence that the plan is proposed in good faith.

The trustee objects because the debtor, although self-employed, failed to file the Business Income and Expense attachment to Schedules I and J.

The court notes that on April 28, 2022, the debtor filed the Business Income and Expense attachment with the court, ECF No. 28. This does not cure the trustee's objection. First, the trustee required this document to prepare and complete his analysis prior to the meeting of creditors. Second, the trustee did not have an opportunity to review the information prior to the filing of his objection to confirmation.

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

REVERSE MORTGAGE

The debtor testified at the meeting of creditors that he is the sole administrator of his deceased mother's estate, and thereby has an interest in the property located at 3809 Belden Street, Sacramento, California.

The property is secured by a deed of trust. The amount owed is \$25,456.77. The secured creditor has indicated that the debt is secured by a reverse mortgage which is in the name of the debtor's deceased mother. Given his mother's death the entire amount owed under the note is matured and due. The obligation is provided for in the plan in Class 1. See Plan, Section 3.07, ECF No. 12.

The proposed plan calls for payments of \$50.00 per month which is not sufficient to pay the \$25,456.77 due to the creditor during the projected 60-month plan term. Thus, the plan does not satisfy 11 U.S.C. § 1325(a)(1), (5).

Moreover, the secured obligation is improperly provided for in Class 1 of the proposed plan. It properly belongs in Class 2. Class 1 obligations are defined as "all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence." See Eastern District Plan, EDC 3-080, Section 3.07.

Conversely, "Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." See *Id.*, Section 3.08.

The court sustains 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.

41. [22-20496](#)-A-13 **IN RE: LAMBERT DAVIS**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.
4-20-2022 [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

REVERSE MORTGAGE

The objecting creditor holds a note secured by a deed of trust in the in the property located at 3809 Belden Street, Sacramento, California. The obligation is secured by a deed of trust. The amount owed is \$25,456.77. The secured creditor has indicated that the debt is secured by a reverse mortgage which is in the name of the debtor's deceased mother. Given his mother's death the entire amount owed under the note is matured and due. The obligation is provided for in the plan in Class 1. See Plan, Section 3.07, ECF No. 12.

The creditor contends that the plan as proposed is not feasible. The proposed plan calls for payments of \$50.00 per month which is not sufficient to pay the \$25,456.77 due to the creditor during the projected 60-month plan. Thus, the plan does not satisfy 11 U.S.C. § 1325(a)(1), (5). The plan is not mathematically feasible.

Moreover, the secured obligation is improperly provided for in Class 1 of the proposed plan. It properly belongs in Class 2. Class 1 obligations are defined as "all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence." See Eastern District Plan, EDC 3-080, Section 3.07.

Conversely, "Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." See *Id.*, Section 3.08.

LOAN MODIFICATION

Sections 7.02.1, and 7.02.3 of the proposed plan, ECF NO. 12, appear to suggest that the debtor will apply for a loan modification of the existing reverse mortgage. The objecting creditor argues that this result is highly unlikely given that the debtor is not a party to the original loan.

The Debtor was and is not a borrower on the Note and Deed of Trust, there is no guarantee that a loan modification could and would be offered to a non-borrower.

Objection, ECF No. 19, 3:1-3.

The court agrees, the debtor has the burden of proof regarding the feasibility of the plan and has provided no evidence regarding the likelihood of obtaining financing sufficient to pay the objecting creditor during the plan. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

The court sustains 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.

Bank of New York Mellon'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.