



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

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

DAY: WEDNESDAY
DATE: MAY 31, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**
[SMJ-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-11-2023 [\[7\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

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

FACTS

Prior Case

The debtor has filed one Chapter 13 case which was dismissed during the past 12 months. The case 23-20858, E.D. Cal. Bankr. (2023), was filed on March 21, 2023, and dismissed by the court on April 10, 2023, for failure to file documents.

The following documents were not filed in the debtor's prior case: Chapter 13 Plan; Form 122C-1 Statement of Monthly Income; Schedules A/B-J inclusive; Statement of Financial Affairs; and Summary of Assets and Liabilities.

The debtor was not represented by counsel in the prior case.

EXTENTION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). 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).

Instant Case

The debtor is represented by counsel in this case.

The proposed plan in the instant case calls for monthly payments of \$3,340.00. This sum represents 60% of the debtor's gross monthly income.

The debtor's income consists of: Social Security \$1,765.00; Pension \$896.00; Rental or Business Income \$1,500.00; and Anticipated Gig Income \$1,500.00. See Schedule I, ECF No. 1. No attachment to Schedules I and J was filed indicating the debtor's business/rental income and expenses. The Statement of Financial Affairs shows no income in any year from rental or business income, nor does it indicate that any income has yet been received from the gig income projected by the debtor. Moreover, the Statement of Financial Affairs indicates that the debtor's previous sole proprietorship has not operated since 2020. Statement of Financial Affairs, No. 27, ECF No. 1. The combined income derived from rental/business and gig income totals \$3,000.00 per month. Without this income the plan is not feasible.

The declaration in support of this motion proffers only the following evidence regarding the debtor's income, "I can afford the proposed chapter 13 plan payment." Declaration, 2:17, ECF No. 9. The court is unable to conclude that the income from rent or business income, or gig income is anything but speculative.

The Chapter 13 Plan provides as follows:

On or before November 1, 2023, Debtor shall sell real property located at 9584 Horseless Carriage Lane, Sacramento, CA 95829 (the "Property"). *Debtor anticipates that after improvements/repair to property the Property will sell for approximately \$500,000.00,* Debtor estimates that the net proceeds from the sale will be approximately \$250,000.00.

. . .

If the Debtor is unable to sell the Property by the deadline above, Debtor will move to modify this plan

in order to provide for the payment of the creditors identified above.

Chapter 13 Plan, Section 7.01, ECF No. 3 (emphasis added).

While the debtor intends to sell the property to pay the Chapter 13 plan and all unsecured creditors in full it does not appear to be feasible. First, the plan calls for a sale in November 2023. However, as the court has discussed previously in this ruling the debtor's income is speculative so it is unclear how the debtor will make the plan payments until the sale is concluded. The court notes that the plan also proposes Class 1 mortgage payments in the amount of \$3,037.47.

Second, the plan indicates that repairs are required to accomplish the sale of the property. The nature and extent of the repairs is not discussed in the plan or the supporting declaration. Schedule J indicates repair and maintenance expenses of \$500.00 per month, but the debtor has not proven sufficient income to pay this amount as the court has previously discussed.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The 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.

2. [23-21103](#)-A-13 **IN RE: EUGENE NOH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-11-2023 [\[30\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Final Ruling

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

3. [22-21008](#)-A-13 **IN RE: CYNTHIA PAYSINGER**
[PGM-4](#)

MOTION TO CONFIRM PLAN
4-18-2023 [\[99\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, filed April 18, 2023

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 the Third Amended Chapter 13 Plan, ECF No. 101. The plan is supported by Schedules I and J filed, April 18, 2023, ECF No. 98. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 108.

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.

4. [23-20908](#)-A-13 **IN RE: TAMARA GEREN**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
4-26-2023 [\[19\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
CHERYL SKIGIN/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 in part; overruled in part; 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).

Creditor, Capital One Auto Finance objects to confirmation of the debtor's plan.

CHAPTER 13 PLAN CONFIRMATION

Failure to Provide for Obligation in Plan

The objecting creditor contends that the plan may not be confirmed because it fails to provide for payment of the creditor's secured claim, Claim No. 2. This objection will be overruled because the failure to provide for a secured creditor's claim (or arrearage claim) in the plan does not alter the creditor's rights. A proof of claim, not the plan, controls the amount of a claim. Ch. 13 Plan § 2.04. Under § 1325(a)(5), moreover, the plan does not have to provide for a secured claim, although if the plan does provide for a

secured claim, the plan's treatment of the secured claim must meet the requirements of § 1325(a)(5). See 11 U.S.C. § 1325(a)(5).

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).

Capital One Auto Finance has filed a secured claim, in the amount of \$27,467.42. The plan does not indicate how or if the obligation will be paid during the pendency of the plan. There is no expense listed on Schedule J providing for payment of this claim. How or if the claim will be paid during the pendency of the plan directly impacts the feasibility of the debtor's plan. Without this information the court is unable to determine the plan is feasible under 11 U.S.C. § 1325(a)(6). The court will sustain the feasibility objection as further discussed in the objection to confirmation raised by the Chapter 13 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.

Capital One Auto Finance'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 in part and overruled in part. The court denies confirmation of the chapter 13 plan.

5. [23-20908](#)-A-13 **IN RE: TAMARA GEREN**
[CRH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE REO GROUP, INC.
5-10-2023 [\[27\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
COBY HALAVAIS/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).

REO Group, Inc. objects to confirmation of the debtor's plan.

PLAN MISCLASSIFIES REO GROUP, INC. CLAIM

REO Group, Inc. has filed a claim. Claim No. 3. The claim indicates that \$348,267.62 with 18% interest is owed to the claimant and is secured by a deed of trust on the debtor's residence. Moreover, the note matured prior to the filing of the petition and therefore, the entire balance is due.

The proposed plan fails to provide for REO Group, Inc. It provides for creditor Select Portfolio Servicing in Class 1. It is unclear to the court if Select Portfolio Servicing refers to the REO Group, Inc. claim or if it is another creditor. If they are the same creditor then the claim of REO Group, Inc. has been misclassified and properly belongs in Class 2 of the plan. The objecting creditor contends that the plan is not feasible as the debtor lacks the ability to pay the entire balance with 18% interest during the 60-month plan.

If Select Portfolio Servicing and REO Group, Inc. are two different creditors then the plan is not feasible. How or if a secured obligation is to be paid during the pendency of the plan directly impacts the debtor's ability to fund the proposed plan.

The court finds that the proposed plan is not feasible. 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

REO Group, Inc.'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.

6. [23-20908](#)-A-13 **IN RE: TAMARA GEREN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK, CHAPTER
13 TRUSTEE
5-8-2023 [\[23\]](#)

PETER CIANCHETTA/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 \$3,336.01. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

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

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

Failure To Provide Financial/Business Documents

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

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

the following documents: Pay advices for the 60 day period prior to the filing of the petition.

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).

Plan Feasibility Not Supported by Schedules

The plan is not feasible. See 11 U.S.C. § 1325(a) (6). Schedules I and J show that the debtor will have monthly net income of approximately \$2,682.14, but the plan requires a monthly payment of \$3,336.01. Thus, the debtor's monthly net income is less than the proposed monthly plan payment.

Capital One Auto Finance Debt

Capital One Auto Finance has filed a secured claim, in the amount of \$27,467.42, Claim No. 2. This debt is not provided for in the plan or listed on Schedule D, and there is no expense listed on Schedule J to provide for payment of this claim. How or if the claim will be paid during the pendency of the plan directly impacts the feasibility of the debtor's plan. Without this information the court is unable to determine the plan is feasible under 11 U.S.C. § 1325(a) (6).

ATTORNEY FEES

LBR 2016-1(c) (1) allows a maximum of \$4,000.00 in attorney fees to be paid to debtor(s) counsel in a non-business case and \$6,000.00 in a business case. This case is a non-business case.

The proposed plan, ECF No. 3 states that Debtor's attorney has elected to be paid pursuant to Local Bankruptcy Rule 2016-1(c). The plan also states \$500.00 was paid prior to filing this case and \$3,500.00 will be paid through the Plan, for a total of \$4,000.00.

The amounts which have been paid and are to be paid to counsel are inconsistently stated in the various documents which have been filed in this case including the Rights and Responsibilities, the Disclosure of Compensation, and the Statement of Financial Affairs. As such the trustee cannot determine the amount which counsel is to be paid under the plan.

The court finds that the proposed plan is not feasible and will sustain each of the trustee's objections.

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. [22-21923](#)-A-13 **IN RE: ANDREW/SHAWNI MILLER**
[TLA-4](#)

MOTION TO MODIFY PLAN
4-25-2023 [\[45\]](#)

THOMAS AMBERG/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: Continued to June 27, 2023, at 9:00 a.m.

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).

PLAN NOT SERVED

If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, *the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it.* Notice of the motion shall comply with Fed. R. Bankr. P. 3015(h), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015 (h) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

LBR 3015-1(d)(2) (emphasis added).

The Certificate of Service in this case does not state that the plan was served with the motion to modify. Certificate of Service, Section 4, ECF No. 50. As such, service of the

motion to modify does not comply with LBR 3015-1(d)(2). Accordingly, the court will deny the motion without prejudice.

DEBTOR REPLY

The debtor filed a reply on May 24, 2023. Reply, ECF No. 56. The debtor also filed an Amended Certificate of Service, ECF No. 55.

The Amended Certificate of Service indicates that the plan was properly served with the motion, resolving this issue.

However, the reply proposes revisions to the proposed plan which the trustee has not had the opportunity to review. The court will continue the hearing in this matter to allow the trustee to review the debtors' proposal and respond accordingly.

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 is continued to June 27, 2023, at 9:00 a.m. No later than June 13, 2023, the trustee shall file a status report indicating his position regarding the debtors' proposed resolution of the trustee's opposition to this motion.

8. [23-21323](#)-A-13 **IN RE: ESTATE OF LETICIA HERNANDEZ**
[FEC-1](#)

ORDER TO SHOW CAUSE
5-5-2023 [\[11\]](#)

Final Ruling

This case was dismissed on May 24, 2023. Accordingly, the Order to Show Cause will be removed from the calendar as moot. No appearances are required.

9. [22-22625](#)-A-7 **IN RE: JASON/CHRISTINE EATMON**
[DPC-2](#)

MOTION TO DISMISS CASE
4-21-2023 [\[54\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
CASE CONVERTED: 5/8/23

Final Ruling

This case was converted to Chapter 7 on May 8, 2023. Accordingly, the motion is removed from the calendar as moot. No appearances are required.

10. [20-24826](#)-A-13 **IN RE: GEORGE/MARJORIE IRVIN**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-28-2023 [\[25\]](#)

RICHARD STEFFAN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA LEASE TRUST VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Toyota Lease Trust seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Synchrony Bank c/o PRA Receivables Management. See ECF No. 10.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 30. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d) (3) (B) (iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Toyota Lease Trust's Motion for Relief From Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

11. [23-20730](#)-A-13 **IN RE: JEREMY BAILEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-25-2023 [\[14\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

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

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

12. [23-20831](#)-A-13 **IN RE: ELIZABETH RODAS BARRIOS**
[KAZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
5-11-2023 [\[14\]](#)

GARY FRALEY/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: Continued to July 10, 2023, at 11:00 a.m.
Order: Civil minute order

The Bank of New York Mellon objects to confirmation of the debtor's plan. The hearing will be continued to allow the debtor to file opposition to the objection.

OBJECTION IMPROPERLY NOTICED

Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The objection shall be set for hearing on the confirmation hearing date and time designated in the *Notice of Chapter 13 Bankruptcy Case*. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(1), including the requirement for a Docket Control Number on all documents relating to the objection. *The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary.* Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing.

LBR 3015-1(c)(4) (emphasis added).

The notice filed with the objection provides:

response to this Motion, if any, must be in writing, must be supported by written evidence and must be filed with the Clerk of the above-captioned Court and served upon Movant and/or its counsel and all other relevant parties entitled to receive notice thereof at least fourteen (14) calendar days preceding the hearing date or continued hearing date on this Motion pursuant to Local Bankruptcy Rule 9014-1(f)(1)(B).

Notice, 2:10-15, ECF No. 15.

The notice contravenes LBR 3015-1(c)(4). The court will continue the hearing on the objection to allow the debtor to file opposition.

FAILURE TO COMPLY WITH LOCAL RULES OF PRACTICE

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

Objecting creditor is reminded that failure to comply with the Eastern District Local Rules of Practice in the future may result in sanctions and/or denial of relief.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to July 10, 2023, at 11:00 a.m. No later than June 19, 2023, the debtor may file and serve opposition to the objection. If the debtor fails to oppose the objection the court may rule on the objection without further notice or hearing.

13. [23-20837](#)-A-13 **IN RE: KEVIN CANTWELL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-11-2023 [\[15\]](#)

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to July 10, 2023, at 11:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor's plan contending that the plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Given the nature of the objection the court will continue the hearing to allow the debtor to file written opposition to the objection.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to July 10, 2023, at 11:00 a.m. No later than June 19, 2023, the debtor may file and serve opposition to the objection. If the debtor fails to file and serve opposition the court may rule on the objection without further notice or hearing.

14. [23-20238](#)-A-13 **IN RE: DAVID KIM AND JAE YONG MOON**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
3-13-2023 [\[23\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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 trustee objected to confirmation contending that the proposed plan payment is not debtors' best efforts under 11 U.S.C. §1325(b).

On May 2, 2023, and as a courtesy to the court, the debtors filed a Notice of Intent, ECF No. 33. In the Notice of Intent the debtors indicate they will file an amended plan and do not oppose the trustee's objection to denial of confirmation regarding the plan to which the trustee has objected.

Accordingly, 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.

15. [22-23039](#)-A-13 **IN RE: KAREN GARLINGTON**
[DB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-3-2023 [\[74\]](#)

PETER MACALUSO/ATTY. FOR DBT.
BRIAN ATON/ATTY. FOR MV.
JOHN COSBY VS.
RESPONSIVE PLEADING

No Ruling

16. [22-22146](#)-A-13 **IN RE: JOSE ROMERO SOTO**
[DPC-3](#)

MOTION TO DISMISS CASE
4-21-2023 [\[56\]](#)

ARETE KOSTOPOULOS/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 17, 2023

Opposition Filed: Unopposed

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

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 chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$264.00 with a further payment of \$264.00 due April 25, 2023. Additionally, the trustee moves for dismissal because the debtor has failed to file an amended plan following the court's denial of a motion to confirm the most recently filed plan on February 8, 2023.

The court finds that each of the bases alleged by the trustee constitutes unreasonable delay which is prejudicial to creditors.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

17. [23-20846](#)-A-13 **IN RE: VANESSA FRANKLIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-10-2023 [\[19\]](#)

DAVID CUSICK/ATTY. FOR MV.

Final Ruling

This case was dismissed on May 17, 2023. Accordingly, this objection is removed from the calendar as moot. No appearances are required.

18. [23-20846](#)-A-13 **IN RE: VANESSA FRANKLIN**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA,
INC.

5-3-2023 [[15](#)]

SHERYL ITH/ATTY. FOR MV.

Final Ruling

This case was dismissed on May 17, 2023. Accordingly, this objection is removed from the calendar as moot. No appearances are required.

19. [15-22149](#)-A-13 **IN RE: MATTHEW MCKEE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE

3-10-2023 [[168](#)]

PETER MACALUSO/ATTY. FOR DBT.

DAVID CUSICK/ATTY. FOR MV.

No Ruling

20. [23-20651](#)-A-13 **IN RE: STEPHEN GLOVER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK

4-26-2023 [[20](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: LBR 3015-1(c)(4); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

21. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-4](#)

MOTION TO EMPLOY PETER G. MACALUSO AS ATTORNEY(S)
5-15-2023 [[124](#)]

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

22. [23-20656](#)-A-13 **IN RE: BARRY/CINDY TAYLOR**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
4-25-2023 [[15](#)]

SETH HANSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

SOCIAL SECURITY DOCUMENTATION

- (b) Individual debtor's duty to provide documentation
- (1) Personal identification

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

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

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

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

Debtor(s) Barry Taylor failed to provide the required social security information at the meeting of creditors. Unless Barry Taylor provides this information to the trustee prior to the hearing on this motion 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.

23. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[MET-2](#)

MOTION TO APPOINT A NEXT FRIEND UNDER FRBP 1004.1
4-25-2023 [\[24\]](#)

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

No Ruling

24. [23-20758](#)-A-13 **IN RE: WILLIAM/MARANDA KEENE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
4-26-2023 [\[15\]](#)

STEVEN ALPERT/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: 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).

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 51 months to fund as proposed. However, the plan provides for a term of 36 months. Pursuant to Section 2.03 of the plan the term may only be extended for an additional 6 months, absent a modification of the plan. See Chapter 13 Plan, Section 2.03, ECF No. 3.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1).

The court will deny confirmation of the debtor's plan.

DEBTOR REPLY

On May 24, 2023, the debtors filed a non-opposition to the trustee's objection indicating their intent to file an amended plan. Non-Opposition, ECF No. 19. Accordingly, 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.

25. [22-22860](#)-A-13 **IN RE: CHRISTOPHER SORENSON**
[MWB-1](#)

CONTINUED MOTION TO CONFIRM PLAN
3-9-2023 [\[25\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from May 2, 2023

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

The hearing on this motion was continued for the debtor to supply original signatures, as ordered by the court, in response to the trustee's opposition to the motion.

The court's prior ruling states as follows:

IT IS FURTHER ORDERED that not later than 4:00 p.m., May 2, 2023, counsel for the debtor shall scan and file as an exhibit to this motion copies of the

following documents which contain the original manual, wet signature of the debtor: 1) the Chapter 13 Plan; and 2) the Declaration of the Debtor in support of the motion to confirm plan. The exhibit shall contain the appropriate motion control number and otherwise comply with LBR 9004-1(d).

Order, ECF No. 36.

The debtor has failed to file the required documents as ordered. Instead, on May 1, 2023, the debtor filed a notice of withdrawal of the motion. Notice of Withdrawal, ECF No. 33.

WITHDRAWAL

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 opposed the motion. As such the debtor may not unilaterally withdraw the motion without leave of court. The court will not approve the withdrawal of the motion.

MOTION IS NOT SUPPORTED BY ADMISSIBLE EVIDENCE

Plan and Supporting Declaration

The proposed plan and the declaration in support of the motion are digitally signed by the debtor. See ECF Nos. 27, 28. Local rules for the Bankruptcy Court for the Eastern District require affidavits and pleadings to be signed. In the pertinent part, local rules provide:

(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).

The Eastern District of California has always required affiants to executed sworn testimony by a *manually-created*, wet signature. LBR 9004-1(c); *In re Mayfield*, 2016 WL 3958982 (Bankr. E.D. Cal. 2016).

In two instances, non-registered users of the court's electronic-

filing system may confirm the existence of an extant wet signature on the original of the filed document by a computer-generated signature that is filed with the Clerk of the Court. And when that is authorized, the original wet signature need not be filed with the Clerk of the Court, unless the court requires it to be so filed.

First, for a document signed by a non-registered user of the court's electronic filing system the signatory may use a computer-generated signature, i.e., "/s/ Name" or a "software-generated electronic signature," if and only if an original wet signature is in the possession of the registered user of the electronic filing system at the time the document is filed. LBR 9004-1(c)(1)(B)(iii). The use of the computer-generated signature is a representation to the court that "an original signed copy of the document exists and is in the registered user's possession at the time of filing." LBR 9004-1(c)(1)(C)-(D). The signatures in the declaration or the plan are neither an "/s/ Name" nor a software-generated electronic signature.

Second, an image of an extant wet signature, i.e., facsimile, scanned, or created in portable document format, may be offered to prove the existence of execution of the document.

Signature on Facsimile Documents and on Software-Generated Documents. *For the purposes of this Rule, the image of an original manual signature appearing on a facsimile (fax) copy, or appearing in a software-generated copy such as a document created in the "portable document format" (PDF), filed pursuant to this Rule shall constitute an original signature for all court purposes...*

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

Eastern District Case Law Construing LBR 9014-1(c) and Electronic Signatures

This issue has been litigated to conclusion against the debtor. *In re Mayfield*, 2016 WL 3958982 (Bankr. E.D. Cal. 2016) (Bardwil, J.). There, the U.S. Trustee brought a motion for sanctions against an attorney for violating LBR 9014-1(c) because the petition, schedules, statements, and verifications were "executed" by way of DocuSign, rather than manual wet signatures. Debtor's counsel opposed, contending that the electronic signatures were "original signatures" signatures within the meaning of the rule. In support of his argument, he submitted the manually executed declaration of the debtor:

[c]ounsel has had the debtor sign a declaration in which the debtor testifies he intended and expected the affixation he caused DocuSign to place on the documents by clicking the "Sign Here" button to be adopted and treated as his actual signature... The declaration bears the debtor's signature in cursive handwriting; it is dated a week after the UST requested Counsel produce copies of the debtor's original wet signatures.

The court phrased the issue, "whether the DocuSign affixation is a software-generated electronic signature for the purpose of Rule 9004-1(c)." The court granted the U.S. Trustee's motion and sanctioned debtor's counsel. In doing so, the court made several salient points. DocuSign type signatures are capable of manipulation or forgery and that manipulation is not readily discernable to opposing counsel or to the court.

This brings the court to another important problem with Counsel's arguments: they do not address the ease with which a DocuSign affixation can be manipulated or forged. The UST asks what happens when a debtor denies signing a document and claims his spouse, child, or roommate had access to his computer and could have clicked on the "Sign Here" button. Counsel's response is telling: "[The declaration] alleviates any possibility that the Debtor did not actually sign the document himself. He has signed under penalty of perjury a Declaration stating that it was in fact him that signed the documents." Again, had the debtor simply signed the documents in his own handwriting, the declaration would have been unnecessary. The essential point is that an individual's handwritten signature is less easily forged than any form of software-generated electronic signature, and the presence of forgery is more easily detected and proven.

p. 2 (internal citations omitted).

The court specifically found that the word "manual," LBR 9014-1(d) excludes wholly electronic signatures:

Counsel relies on the court's use of the term "manual" in Rule 9004-1(d) as demonstrating the court's intent that "the image of an original manual signature" on a fax copy or PDF document includes not just the image of a signature made with a pen but also the image of a DocuSign affixation. Citing three dictionary definitions, Counsel concludes "manual" means "done with the use of your own hands [and not] automatically"; he adds that the debtor used his own hand to click on the "Sign Here" button, as the debtor testified in his declaration. Counsel finds it important that DocuSign requires a separate "Sign Here" click for each signature rather than allowing one click to populate the signature lines on all the documents, which he claims would be an "automated process." This distinction is strained at best, and here again, the argument would apply equally to a name typed on a signature line by the debtor using his own hands, one key at a time, which Counsel does not suggest would comply with the local rule.

Id. (internal citations omitted) (emphasis added).

Finally, the court engaged in a thoughtful dissection of the

statutory framework of Rule 9014-1(c).

Counsel's analysis fails for another important reason: *the rule makes a distinction between an "originally signed document" and a "software-generated electronic signature."* Under Rule 9004-1(c)(1)(C), if a registered user files a document with a software-generated electronic signature of someone else, the filer certifies an originally signed document exists and is in the filer's possession. Under the rule, the "software-generated signature" must be something different from the document bearing the "original signature." Otherwise, it would not be separately identified in the local rule, and there would be no reason for the requirement that the filer retain possession of the "original signature" if that same document had already been scanned and electronically filed. If Counsel's position were correct, the rule would make no sense.

p. 3. (emphasis added).

This district has always required the existence of a manual, wet signature. For documents electronically filed, the party may "/s/ Name" or a software-generated electronic signature, provided counsel already has in its possession a manually created wet signature.

Because the debtor has not provided the required signatures as ordered the court finds that the motion to confirm is not supported by evidence signed by the debtor under LBR 9014-1(d)(3)(D).

CIVIL MINUTE ORDER

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

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

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

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

IT IS FURTHER ORDERED that the withdrawal of the motion by the debtor is disallowed.

26. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2023 [\[223\]](#)

KIM BEATON/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
FIFTH THIRD BANK, N.A. VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Fifth Third Bank, N.A. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Deutsche Bank National Trust Company; and Franklin Credit Management. See ECF Nos. 9, 19.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, No. 5, ECF No. 228. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written

motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or

within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Fifth Third Bank, N.A.'s Motion for Relief From Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

27. [22-22866](#)-A-13 **IN RE: ANDREA/LELAND SMITH**
[BLG-4](#)

MOTION TO CONFIRM PLAN
3-29-2023 [\[46\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, filed March 29, 2023

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 the Third Amended Chapter 13 Plan, ECF No. 51. The plan is supported by Schedules I and J filed, March 7, 2023, ECF No. 42. The Chapter 13 trustee has filed a non-opposition to the motion, 64.

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.

28. [19-26277](#)-A-13 **IN RE: JUAN MONGALO AND MILAGROS MONGALO**
ROBLETO
[MMN-10](#)

MOTION TO MODIFY PLAN
4-4-2023 [\[217\]](#)

MICHAEL NOBLE/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: Withdrawn by moving party

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.

On May 21, 2023, the debtor filed an additional modified plan, and motion to modify the plan which is currently set for hearing July 10, 2023, at 11:00 a.m. The debtor also filed a notice of withdrawal of the instant motion to modify. Notice of Withdrawal, ECF No. 229.

WITHDRAWAL OF MOTION

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 opposed the motion so the debtor may not unilaterally withdraw the motion. Withdrawal requires leave of court.

Neither the trustee, nor any creditor, has expressed opposition to the withdrawal of the trustee's objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the debtor'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.

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,

IT IS ORDERED that the motion is withdrawn.

29. [23-20777](#)-A-7 **IN RE: TIMOTHY WILLIAMS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-9-2023 [\[38\]](#)

PETER MACALUSO/ATTY. FOR DBT.
CASE CONVERTED: 5/12/23

Final Ruling

This case was converted to Chapter 7 on May 12, 2023. Accordingly, the motion is removed from the calendar as moot. No appearances are required.

30. [23-20178](#)-A-13 **IN RE: TAMMY RAJAH-ALLEN**
[EJV-1](#)

MOTION TO CONFIRM PLAN
4-23-2023 [\[26\]](#)

ERIC GRAVEL/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Plan
Disposition: Denied without prejudice
Order: Civil minute order

The debtor seeks confirmation of the Chapter 13 plan. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary

sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. Therefore, the motion fails to comply with LBR 7005-1. See Certificate of Service, ECF No. 30. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

31. [18-20686](#)-A-13 **IN RE: MARCUS ZARRA**
[DPC-1](#)

AMENDED MOTION TO DISMISS CASE
4-28-2023 [\[80\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 17, 2023

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 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 \$6,762.00 with a further payment of \$3,381.00 due May 25, 2023.

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.

32. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[WSS-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2023 [[277](#)]

PETER MACALUSO/ATTY. FOR DBT.
W. SHUMWAY/ATTY. FOR MV.
CHARLEY SMITH VS.

No Ruling

33. [23-20287](#)-A-13 **IN RE: GREGORY JACKSON**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-28-2023 [[36](#)]

ERIC SCHWAB/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
PENNYMAC LOAN SERVICES, LLC VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil Minute Order

Subject: 1857 Springvale Road, Placerville, California

Delinquency: Prepetition - \$4,387.98; Post-Petition - \$6,313.38

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).

Movant, Pennymac Loan Services, LLC seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301.

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as – both prepetition and postpetition payments are past due. Section

362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

CO-DEBTOR STAY OF § 1301

The scope of the automatic stay is broader in chapter 13 cases than it is in chapters 7 and 11 cases. Section 1301(a) creates a co-debtor stay applicable in chapter 13 cases. 11 U.S.C. §§ 1301(a).

"After a Chapter 12 or 13 petition is filed, the stay extends to individuals who are "codebtors" with the debtor on a consumer debt—e.g., relatives, friends and others who cosigned or guaranteed a note (or other obligation) with the debtor." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:145 (rev. 2018). "The codebtor stay only applies where the codebtor is liable on the consumer debt and liable with the debtor to a third party. Stated otherwise, both the debtor and the codebtor must be liable to a third party and liable on the particular debt the third party is trying to collect." *Id.* ¶ 8:147.

RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c)

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c)(2), 1201(c)(2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

Here the plan provides for the movant's claim in Class 4 and indicates that the debtor will make the monthly payment directly to the movant. Chapter 13 Plan, ECF No. 11. The court sustained an objection to confirmation of the plan and no amended plan has been filed by the debtor.

Therefore, cause exists to grant relief under § 362(d)(1) and § 1301(c). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the movant – an objection to confirmation filed on February 24, 2023, ECF No. 15.

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.

Pennymac Loan Services, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1857 Springvale Road, Placerville, California, as to all parties in interest.

IT IS FURTHER ORDERED that the co-debtor stay is vacated as to the co-debtor identified in the motion.

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

34. [22-21388](#)-A-13 **IN RE: KATHY ADAMS-BERRY**
[DPC-5](#)

CONTINUED MOTION TO DISMISS CASE
4-3-2023 [\[72\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

Motion: Dismiss Case

Notice: Continued from May 2, 2023

Disposition: Granted

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

Petition Filed: May 31, 2022

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to file an amended plan after the court denied the debtor's most recently filed motion to confirm a Chapter 13 plan on January 26, 2023.

The debtor opposed the trustee's motion and filed an amended plan and motion to confirm (PLC-3). The debtor's motion to confirm plan has been denied.

The court notes that this case was filed on May 31, 2022, and that the debtor has proposed three plans and not achieved confirmation.

At the prior hearing on this matter the court stated:

Not later than 7 days prior to the continued hearing, the trustee will file a status report. *The Court noted that this matter will not be continued again even if there is a further modified plan on file. The debtor will achieve confirmation on the May 31, 2023 or the case will be dismissed.*

Civil Minutes, ECF No. 85 (emphasis added).

Accordingly, the court will grant the motion. The failure to confirm a plan constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

TRUSTEE REQUEST TO DISMISS MOTION

On May 25, 2023, the trustee filed an ex parte request to dismiss his dismissal motion. The trustee's request states:

Debtor has a pending plan, last paid on May 3, 2023, and while opposing confirmation the Trustee believes a viable plan may exist.

ExParte Motion to Dismiss, 1:24-25, ECF NO. 91.

Rule 41

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 debtor has opposed the motion. Thus, the Chapter 13 trustee may not unilaterally withdraw his motion to dismiss.

The court will deny the trustee's request for the reasons stated above in this ruling: 1) the court has denied the debtor's most recent motion to confirm plan (PLC-3); 2) the case has been pending since May 31, 2022; 3) the debtor has failed to achieve confirmation despite proposing 3 Chapter 13 plans; and 4) the court indicated in its prior ruling on this matter that if the plan was not confirmed the case would be dismissed.

Accordingly, the court will deny the trustee's request to dismiss his motion to dismiss.

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 confirm a chapter 13 plan in this case. This constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

IT IS FURTHER ORDERED that the trustee's request to dismiss this motion to dismiss is denied.

35. [22-21388](#)-A-13 **IN RE: KATHY ADAMS-BERRY**
[PLC-3](#)

MOTION TO CONFIRM PLAN
4-24-2023 [\[79\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

PLAN FAILS TO COMPLY WITH APPLICABLE LAW

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

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;

11 U.S.C. § 1325(a)(1).

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

Chapter 13 Plan - Amended, Section 3.07, ECF No. 80.

The Internal Revenue Service filed a secured claim in the amount of \$149,045.12 for tax periods: 2012; 2013; 2014; 2017; 2018; and 2019. Claim No. 7.

The debtor's plan provides for the secured claim of the IRS in Class 1 of the plan and calls for payments of \$1,200.00 per month with 0% interest to the IRS. Chapter 13 Plan - Amended, Section 3.07, ECF No. 80.

The trustee contends that the IRS claim is improperly categorized in Class 1 as the claim has fully matured, and therefore the claim is properly provided for in Class 2. The court agrees. Absent an agreement with the IRS the claim is not properly provided for in Class 1 of the plan. Moreover, payment of the obligation in the monthly amount of \$1,200.00 will not pay the amount owed to the IRS in a period of 60 months as only \$72,000.00 will be paid on the \$149,045.12 claim. Unless the claim is a long-term debt excepted from discharge under the plan, or the creditor has agreed in writing to other treatment, secured claims must normally be paid in full. 11 U.S.C. §1325(a)(5), 11 U.S.C. §1328(a)(1).

DISPOSABLE INCOME 11 U.S.C. 1325(b)

The plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b).

The debtor is over the median income, and has projected disposable income of \$1,852,74. Form 122C, p. 52, ECF No. 11. The debtor's proposed plan payment is \$1,777.85 and the plan only proposes to pay the unsecured creditors 91%.

Additionally, the trustee points the debtor has sufficient funds in her budget to comply with § 1325(b) as there is a significant discretionary expense for college expenses for the debtor's adult children which appears in the most recently filed Schedule J.

In the debtor's previously filed Schedule J, she listed a monthly expense for college for her two adult children in the amount of \$300.00. Schedule J, ECF No. 11. Conversely, in the Amended Schedule J filed in support of the instant motion, that expense is increased to \$1,405.00 per month without explanation, or legal argument. Schedule J, ECF No. 78. The debtor's declaration in support of the motion to confirm plan offers no explanation for the \$1,105.00 monthly increase in college expenses. Declaration, ECF No. 82.

The debtor has failed to file a reply to the trustee's opposition.

The court will deny the motion, as the debtor has failed to properly provide for the secured claim of the IRS in the plan; and because the debtor has failed to propose a plan which complies with 11 U.S.C. § 1325(b).

CIVIL MINUTE ORDER

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

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

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

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

36. [22-23296](#)-A-13 **IN RE: PAVEL BARDOSH**
[MS-2](#)

MOTION TO CONFIRM PLAN
4-11-2023 [[51](#)]

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

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed April 11, 2023

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 the First Amended Chapter 13 Plan, ECF No. 53. The plan is supported by Schedules I and J filed, February 23, 2023, ECF No. 39. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 71.

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.

37. [23-21497](#)-A-13 **IN RE: CHRISTOPHER HIGGINBOTHAM**
[DWL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-8-2023 [\[9\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Motion: Extend Stay

Disposition: Denied without prejudice

Order: Civil minute order

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

NO CERTIFICATE OF SERVICE

There is no evidence that any creditor in this case has received notice of the motion or the hearing. Because creditors do not have notice of the hearing, due process has not been satisfied given that creditors have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Creditors will be unable to present their objections at a hearing of which they have no notice.

Here, service of the motion was insufficient because a certificate of service evidencing service of the notice and the motion was never filed.

The court will deny the motion without prejudice on grounds of insufficient service of process.

CIVIL MINUTE ORDER

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

The debtor's motion to extend the automatic stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

38. [22-22698](#)-A-13 **IN RE: NICKOLAS GARCIA AND JACK TYLER**
[DPC-2](#)

MOTION TO DISMISS CASE
4-26-2023 [\[52\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to June 27, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: May 17, 2023

Opposition Filed: May 16, 2023 - timely

Motion to Modify Plan Filed: May 16, 2023 - timely

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

An amended plan has been timely filed and set for hearing in this case. The scheduled hearing on plan confirmation is June 27, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to June 27, 2023, at 9:00 a.m.

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

39. [22-23198](#)-A-13 **IN RE: TRACY THIBODEAU**
[JBA-1](#)

CONTINUED OBJECTION TO CLAIM OF CHERYL THIBODEAU, CLAIM
NUMBER 9
3-8-2023 [\[27\]](#)

JOSEPH ANGELO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Objection to Claim

Notice: Continued from May 2, 2023

Disposition: Sustained

Order: Civil minute order

Claims Bar Date: February 17, 2023

Claim Filed: February 24, 2023 - untimely

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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 objects to the claim of Cheryl Thibodeau, Claim No. 9. The debtor contends the claim was untimely filed and should be disallowed in its entirety.

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. *See id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. *See id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. *See id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal

Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189, 1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. *Id.* at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. Accordingly, the claim will be disallowed.

The court makes no ruling whether sufficient notice of the bankruptcy filing was provided to the claimant in this case. Whether the claimant was adequately noticed, and the claim discharged upon completion of the Chapter 13 plan must be determined by an adversary proceeding under Fed. R. Bankr. P. 7001.

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

IT IS ORDERED that the objection is sustained. Claim no. 9 will be disallowed.