



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

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

DAY: TUESDAY
DATE: JUNE 4, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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. [24-20501](#)-A-13 **IN RE: JUAN MARTINEZ**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-3-2024 [\[13\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 3 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. Both the debtor and the Chapter 13 trustee indicate that the debtor attended a continued meeting of creditors. The debtor's failure to attend the initial meeting of creditors was the sole basis for the trustee's objection to confirmation.

On May 21, 2024, the trustee filed a reply as ordered. Reply, ECF No. 23. The trustee indicates he no longer opposes confirmation and requests the court overrule the objection. *Id.*

No further objections to confirmation were filed.

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 proven the plan complies with all statutory requirements of confirmation and will overrule the trustee's objection. Debtor's counsel shall submit an order confirming the plan which has been approved 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.

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 overruled. The debtor shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

2. [24-20103](#)-A-13 **IN RE: JUAN/ASHLEY ZAMORA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-14-2024 [[32](#)]

THOMAS AMBERG/ATTY. FOR DBT.
5/14/2024 FINAL INSTALLMENT FEE PAID \$77

Final Ruling

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

3. [24-20114](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
3-12-2024 [[36](#)]

SCOTT JOHNSON/ATTY. FOR DBT.

No Ruling

4. [19-27815](#)-A-13 **IN RE: IYANAH FLETCHER**
[DPC-5](#)

CONTINUED MOTION TO DISMISS CASE
4-15-2024 [[92](#)]

RICHARD JARE/ATTY. FOR DBT.

No Ruling

5. [19-27815](#)-A-13 **IN RE: IYANAH FLETCHER**
[RJ-3](#)

MOTION FOR HARDSHIP DISCHARGE
5-7-2024 [\[98\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Hardship Discharge

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

Disposition: Denied

Order: Civil minute order

This is the debtor's motion for hardship discharge. The Chapter 13 trustee opposes the motion.

HARDSHIP DISCHARGE

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C. § 1328(b).

The debtor has the burden of persuading the court that each requirement for granting a hardship discharge has been satisfied. See *In re Schleppe* (BC SD OH 1989) 103 BR 901, 903.

Section 1328(b) requires that the debtor prove all three elements for hardship discharge. The trustee reports that the debtor has satisfied the second element as the liquidation value of the bankruptcy estate is \$0. The trustee disputes the remaining two elements which the debtor must prove.

Failure to Make Plan Payments

The Chapter 13 trustee contends that the debtor has failed to prove that her failure to complete plan payments is due to circumstances for which the debtor should not be held accountable as required under 11 U.S.C. § 1328(b)(1).

The declaration in support of the motion states:

At the end of January 2024, I was terminated from my job of 24 years. Then, due to allegations against me that I believe to be false, I was denied unemployment benefits. Then I worked for about 6 weeks at another job paying \$23 an hour. My husband still has no income due in large part to some disabilities. I am hoping to get food stamps and welfare (Cash Aid) in order to subsist.

Declaration of Iyanah Fashae Fletcher, 1:19-25, ECF No. 100.

The trustee argues that it is unclear from the statements in the debtor's declaration: (1) whether she is still employed; (2) why she was terminated from her job; and (3) whether the debtor continues to search for employment. The trustee argues that if the debtor's circumstances are temporary then she would not qualify for a hardship discharge. The debtor has not explained why she is not able to seek employment.

The court agrees with the trustee. Without knowing why the debtor's employment was terminated the court cannot determine if her loss of income is due to circumstances for which the debtor may not justly be held accountable. The declaration does not provide this information. Neither does the declaration explain whether the debtor's health permits her to seek further employment, or why she was denied unemployment benefits.

Plan Modification

The debtor argues that modification of the plan is impracticable. The trustee contends that the debtor has failed to prove this element. The debtor has failed to file Amended Schedules I and J in support of her motion. Thus, the court is unable to assess the debtor's current ability to make plan payments. The amended schedules are part of the debtor's prima facie case for a motion for hardship discharge and must be filed at the outset of the motion. The court notes that amended schedules have not yet been filed, even in response to the trustee's opposition.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's Motion for Hardship Discharge under 11 U.S.C. § 1328(b) has been presented to the court. Having considered the motion,

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

IT IS ORDERED that the motion is denied.

6. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[DPC-2](#)

MOTION TO DISMISS CASE
5-6-2024 [\[178\]](#)

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to July 2, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: May 21, 2024

Opposition Filed: May 19, 2024 - timely

Motion to Modify Plan Filed: May 7, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to confirm a plan. The court notes that this case was filed on May 28, 2023, and a plan has yet to be confirmed.

An amended plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 2, 2024, 2024, 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 intends to 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.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to

dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

7. [24-20025](#)-A-13 **IN RE: MATTHEW MAURICE**
[DPC-2](#)

MOTION TO DISMISS CASE
5-1-2024 [\[32\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Conditionally granted

Order: Civil minute order

Opposition Due: May 21, 2024

Opposition Filed: May 20, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$8,169.00, with one payment(s) of \$2,723.00 due prior to the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of Clancy Callahan, ECF No. 38, 39. The declaration of Clancy Callahan has no bearing on this matter as Clancy Callahan is the office manager in the office of Michael Hays, counsel for the debtor. The declaration, ECF No. 39, purports to explain the reasons the case was filed and the reasons which support conversion of the case to Chapter 7. The declaration will be given no weight as it is the debtor who must attest to these facts.

The opposition acknowledges the plan delinquency and states that the debtor wishes to convert the case to Chapter 7. Opposition, ECF No. 38. The debtor may convert this case to Chapter 7 at any time prior to the court's issuance of the order dismissing the case. 11 U.S.C. § 1307(a).

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

The trustee reports that there are no non-exempt assets for administration in the bankruptcy estate. Accordingly, 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 unless the debtor files a notice of conversion prior to the issuance of the order dismissing 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 conditionally granted. The case will be dismissed unless the debtor converts this case to Chapter 7 prior to the court's issuance of an order dismissing the case. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case.

11 U.S.C. § 1307(c) (1).

8. [24-20627](#)-A-13 **IN RE: MINH DINH**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-3-2024 [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Mohammad Mokarram is ordered to appear at the hearing on the motion on June 4, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from April 23, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

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).

On April 24, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED *that the debtor(s) shall do one of the following:*

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the

applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 18, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by May 7, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the trustee's timely compliance to file a reply. The debtor's failure to respond as ordered creates inconvenience and additional work for the court in this matter. Counsel for the debtor shall be prepared to explain his failure to respond to the order.

CONFIRMATION

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

Chapter 13 plan confirmation 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).

GOOD FAITH

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

Failure to File Accurate and Complete Schedules; Failure to Provide Information

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

The Chapter 13 trustee is charged with investigating the financial affairs of the debtor. 11 U.S.C. §§ 1302, 704(a)(4). Moreover, the debtor is required to cooperate with the Chapter 13 trustee in the performance of his duties. 11 U.S.C. § 521(a)(3).

The trustee contends that the plan is not proposed in good faith noting discrepancies, omissions, and inaccuracies in documents filed by the debtor:

1. Schedule A/B lists an interest in a 2016 Acura MDX as "Car loan in NFS name only." Schedule A/B, ECF No. 1. Yet, the debtor admitted at the meeting of creditors that only 7 months of payments remain on the auto loan. The proposed plan fails to include a commensurate increase in payments once the payments on the auto loan are complete. The proposed plan only calls for a 20% payment to unsecured creditors. Chapter 13 Plan, §§ 2.01, 3.14, ECF No. 3.
2. Schedule I fails to disclose a contribution to a 401K plan by the debtor's non filing spouse. Schedule I, ECF No. 1. The trustee discovered the 401K contribution when he reviewed pay advices provided by the non-filing spouse.
3. Schedule J fails to include an expense for the non-filing spouse's credit card payments, which the debtor acknowledged existed in testimony given at the meeting of creditors. Schedule J, ECF No. 1.
4. The trustee has requested documentation of the credit cards payments for the debtor's non-filing spouse. The debtor has failed to provide the information.

The court notes that as of May 23, 2024, the debtor has not filed any amendments to the documents the trustee has identified as containing discrepancies or inaccuracies.

Accordingly, the court finds that the plan has not been proposed in good faith under 11 U.S.C. § 1325(a)(3) and will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

9. [24-21230](#)-A-13 **IN RE: LETICIA BARRON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-8-2024 [[19](#)]

MICHAEL HAYS/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 16, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to July 16, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 18, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 18, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 2, 2024. The evidentiary record will close after July 2, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than June 18, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

10. [24-21230](#)-A-13 **IN RE: LETICIA BARRON**
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
5-21-2024 [\[23\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Value Collateral; Motor Vehicle

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Toyota Corolla

Value: \$7,911.00

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

The debtor seeks an order valuing the collateral of OneMain Financial Group, LLC.

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2016 Toyota Corolla. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$7,911.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2016 Toyota Corolla has a value of \$7,911.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7,911.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

11. [24-21133](#)-A-13 **IN RE: RODOLFO/ROZABETH EVANGELISTA**
[PGM-1](#)

MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC
5-3-2024 [\[18\]](#)

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

Final Ruling

Motion: Value Collateral; Motor Vehicle

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

Disposition: Granted

Order: Civil minute order

Subject Property: 2020 Ford Escape

Value: \$8,000

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order valuing the collateral of Ford Motor Credit Company, LLC.

VALUATION OF COLLATERAL

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

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2020 Ford Escape. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$8,000.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2020 Ford Escape has a value of \$8,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$8,000 equal to the

value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

12. [23-22835](#)-A-13 **IN RE: KUAJI HILL**
[DPC-3](#)

OBJECTION TO DEBTOR RECEIVING A SECOND DISCHARGE IN THIS
CASE UPON COMPLETION OF THE PLAN
4-17-2024 [[94](#)]

GORDON BONES/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
DEBTOR DISMISSED: 05/08/24

Final Ruling

This case was dismissed on May 8, 2024. Accordingly, this motion will be removed from the calendar. No appearances are required.

13. [23-23136](#)-A-13 **IN RE: ALEKSANDAR KRULJ**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-14-2024 [[19](#)]

CARL GUSTAFSON/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.
TRANSPORT FUNDING, LLC VS.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Kenworth T680 tractor truck

Cause: delinquent payments - 9 months/\$8,395.64

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

Transport Funding, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 13 trustee reports that the subject vehicle is provided for in Class 2 of the Confirmed Chapter 13 Plan and that plan payments are delinquent. Reply, ECF No. 26.

Moreover, the movant states that the vehicle has been voluntarily surrendered by the debtor.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 9 postpetition payments are past due. The total postpetition delinquency is approximately \$8,395.64.

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.

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.

Transport Funding, 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 a 2018 Kenworth T680 tractor truck, as to all parties in interest. 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.

14. [24-20037](#)-A-13 **IN RE: WILLIAM/LYNDA ANRIG**
[DPC-2](#)

MOTION TO DISMISS CASE
5-3-2024 [\[40\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to July 16, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: May 21, 2024

Opposition Filed: May 20, 2024 - timely

Motion to Modify Plan Filed: May 17, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed pay all payments due under the proposed Chapter 13 Plan.

An amended plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 16, 2024, 2024, 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.

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 July 16, 2024, at 9:00 a.m.

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

15. [17-27538](#)-A-13 **IN RE: RENE JARA**
[RJ-4](#)

CONTINUED MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTORS
ATTORNEY(S)
4-17-2024 [\[86\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Additional Compensation

Notice: Continued from May 7, 2024

Disposition: Denied without prejudice

Order: Civil minute order

The hearing on Richard Jare's application for allowance of additional compensation was continued to allow counsel to provide evidence of the debtor's agreement to payment of the compensation.

For the following reasons the motion will be denied without prejudice.

COMPENSATION AND EXPENSES

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

Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party in interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.

LBR 2016-1(a).

If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly

compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. *Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.*

...

LBR 2016-1(c) (3) (emphasis added).

In the Eastern District of California attorneys who represent Chapter 13 debtors may be compensated either on an hourly basis and apply for approval of compensation under 11 U.S.C. §§ 329, 330, and LBR 2016-1(a). Alternatively, the attorney may elect to be compensated on a flat fee basis under LBR 2016-1(c) (3).

In this case the debtor and the attorney executed a Rights and Responsibilities form, agreeing to flat fee compensation of \$4,000. Rights and Responsibilities, ECF No. 9. The confirmed plan in this case also ordered that compensation was to be paid in the amount of \$4,000.00. Order Confirming Plan, ECF No. 52.

The applicant requests that the court allow additional compensation in the amount of \$2,000.00.

DEBTOR'S FAILURE TO SUPPORT MOTION

The application fails to include a declaration by the debtor in support of the motion. The parties previously agreed that the compensation in this case would be paid pursuant to the Rights and Responsibilities executed by the parties and approved by the court upon confirmation of the plan. Without a declaration of the debtor in support of the motion the court will not presume his acquiescence to the payment of additional compensation.

Applicant's Supplemental Documents

On May 21, 2024, the applicant filed additional documents describing his conversations with the debtor and his efforts to obtain a declaration from the debtor in support of the motion for additional compensation.

A certificate of service was filed indicating that the documents filed by the applicant were served on the debtor. However, the certificate of service fails to include an attachment which shows who was served with the supplementary documents as required. Certificate of Service, ECF No. 99. As such the court is unable to determine that service of the applicant's additional evidence on the debtor was properly achieved.

Accordingly, 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:

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

Richard Jare's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

16. [24-21038](#)-A-13 **IN RE: PERFECTO GUADIANA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-8-2024 [\[19\]](#)

MICHAEL HAYS/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 16, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to July 16, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 18, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 18, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 2, 2024. The evidentiary record will close after July 2, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than June 18, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

17. [24-21440](#)-A-13 **IN RE: ERIKA NORMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-15-2024 [\[14\]](#)

MARY TERRANELLA/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 16, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to July 16, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 18, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 18, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve

a reply, if any, no later than July 2, 2024. The evidentiary record will close after July 2, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than June 18, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

18. [24-21440](#)-A-13 **IN RE: ERIKA NORMAN**
[RDW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SUTTER COMMERCIAL
CAPITAL INC., GAYLE ANSELL AND CURT A SUTTER, TRUSTEES OF
THE ARTHUR H. SUTTER IRREVOCABLE LIFE INSURANCE TRUST,
ARTHUR H. SUTTER, TRUSTEE OF THE ARTHUR H. SUTTER REVOCABLE
TRUST
5-15-2024 [\[18\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
REILLY WILKINSON/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 16, 2024, at 9:00 a.m.

Order: Civil minute order

Creditors, Sutter Commercial Capital Inc., as to an undivided 36.84211% interest and Gayle Ansell and Curt A Sutter, Trustees of The Arthur H. Sutter Irrevocable Life Insurance Trust dated 5/17/2005 as to an undivided 55.52632% interest and Arthur H. Sutter, Trustee of The Arthur H. Sutter Revocable Trust dated August 28, 2001 as to an undivided 7.63158% interest, its successors and/or assignees in interest, object to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to July 16, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 18, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than June 18, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than July 2, 2024. The evidentiary record will close after July 2, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than June 18, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

19. [24-20647](#)-A-13 **IN RE: STEVEN SINGH**
[DPC-2](#)

MOTION TO DISMISS CASE
4-30-2024 [\[54\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 21, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to attend meeting of creditors;

Best Interests of Creditors/Estate: Convert to Chapter 7

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: (1) delinquency in payments under the chapter 13 plan; (2) the debtor's failure to attend the meeting of creditors; and (3) the debtor's failure to provide documents, including required tax returns.

For the reasons stated in the motion, cause exists under § 1307(c)(1) to convert the case. Payments under the plan are delinquent in the amount of \$2,300.00 with one payment(s) of \$1,150.00 due prior to the hearing on this motion. The debtor has also failed to provide requested copies of business documents including required tax returns. 11 U.S.C. § 521.

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 Chapter 13 trustee reports that there are significant non-exempt assets in this case.

According to the Trustee's records, there is \$100,561.00 in non-exempt equity in the assets listed on Schedules A/ B. The non-exempt assets include equity in a 2018 Escalade \$2829; 2020 Escape \$8682; 1968 Camaro \$24,200; 1969 Chevelle \$600; 1968 Chevy C10 \$700; 2008 Motorhome \$62,650; Firearms \$800; and Cash \$100.

Declaration of Trina Hayek, 2:4-8, ECF No. 56.

A review of Schedules A/B, C and D in this case supports the trustee's assertion, ECF No. 17. Nonetheless the trustee requests dismissal of this case. The Chapter 13 trustee shall be prepared to support his request for dismissal at the hearing on this matter.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case. The court hereby converts this case to Chapter 7.

20. [23-22451](#)-A-13 **IN RE: MANUEL NIPPS**
[CRG-3](#)

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 3
4-17-2024 [\[50\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

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 Merrick Bank, Claim No. 3.

CLAIM OBJECTION

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'unenforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a 'claim.'" The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

The applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The claimant has filed a proof of claim based on a credit account that is stale. The objection's well-pleaded facts show that the debtor has made no payments or other transactions on this credit account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant's claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

21. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[GB-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GAVRILOV &
BROOKS FOR VALERY LOUMBER, SPECIAL COUNSEL(S)
5-7-2024 [\[223\]](#)

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

Final Ruling

Application: Allowance of First and Final Compensation and Expense
Reimbursement of Special Counsel

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

Disposition: Approved

Order: Civil minute order

Compensation allowed: \$76,000

Reimbursement of expenses: \$770.44

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Gavrilov & Brooks, special counsel for the debtor, has applied for an allowance of final compensation and reimbursement of expenses. The compensation and expenses requested are based on a contingent fee approved pursuant to § 328(a) of the Bankruptcy Code. The applicant requests that the court allow

compensation in the amount of \$76,000 and reimbursement of expenses in the amount of \$760.44.

The applicant represented the debtor in a legal malpractice case, filing the complaint prior to the expiration of the statute of limitations and settling the case for the maximum amount under the defendant's malpractice insurance policy.

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$76,000 and reimbursement of expenses in the amount of \$760.44.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

22. [24-21153](#)-A-13 **IN RE: PATRICIA MELMS**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
4-19-2024 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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: Resolved by stipulation, confirmation denied

Order: Civil minute order

Creditor, Bank of New York Mellon, objects to confirmation of the
debtor(s) plan.

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 parties have filed a stipulation resolving the objection.
Stipulation, ECF No. 40.

The court has approved the stipulation of the parties in resolving
this objection. Order, ECF No. 41. The stipulation provides that
should the court not approve the interlineation in the plan, of the
amount owed in mortgage arrears to the creditor, then the debtor
will file and confirm an amended plan. Stipulation, ECF No. 40.

While the court approved the stipulation it does not approve
confirmation of the proposed plan.

The court requires that the debtor file an amended plan as the
Chapter 13 trustee is not a party to the stipulation and therefore,
he has not indicated that the plan is feasible with the increase of
\$4,802.99 in mortgage arrears. The debtor shall file an amended
plan and a motion to confirm the amended plan.

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 resolved by stipulation of the
objecting creditor and the debtor.

IT IS FURTHER ORDERED that the debtor(s) shall file an amended plan and motion to confirm the amended plan. The court denies confirmation of the Chapter 13 Plan despite its approval of the stipulation resolving the objection between the parties.

23. [24-21153](#)-A-13 **IN RE: PATRICIA MELMS**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
5-16-2024 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

Creditor, U.S. Bank, National Association, objects to confirmation of the debtor(s) plan.

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).

In resolving an objection to confirmation by creditor Bank of New York Mellon (KMM-1), the court ordered that the debtor is required to file an amended plan and a motion to confirm the amended plan. The court has denied confirmation of the plan to which U.S. Bank National Association objects. Accordingly, the court will overrule this objection as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot. The court has previously ordered the debtor to file an amended plan and a motion to confirm the amended plan.

24. [20-20956](#)-A-13 **IN RE: DARREN/HILLARY WHITE**
[CK-3](#)

MOTION TO MODIFY PLAN
4-29-2024 [\[74\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

NO LEGAL AUTHORITY CITED FOR RELIEF REQUESTED

"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." Fed. R. Bankr. P. 9013.

- A) Motion or Other Request for Relief. The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. *Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.*

LBR 9014-1(D)(3)(A) (emphasis added).

Debtors' Motion to Modify

The trustee opposes the motion contending that the motion fails to state a legal basis for modification of the plan.

The court agrees. The motion fails to reference the legal grounds which authorize *modification* of a chapter 13 plan after confirmation. Motion, ECF No. 74. The court believes that 11 U.S.C. § 1329 is intended but will not make this presumption. The debtors are required to support their motion by citing the appropriate legal basis for relief.

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).

Failure to Provide Updated Schedules I/J

The Chapter 13 trustee opposes the motion contending that he cannot assess the feasibility of the proposed plan as the most recently filed Schedules I and J were filed at the inception of the case on February 21, 2020, over 3 years ago.

Accurate budget schedules are essential for the court's determination of plan feasibility under 11 U.S.C. § 1325(a)(6). Current, accurate Schedules I and J are part of a debtor's prima facie case for plan confirmation or modification and must be filed at the outset of the debtor's motion, and not in response to opposition by the trustee. Accordingly, the debtor has not met the burden of proof required for plan modification. The court will deny the motion.

DEBTOR REPLY

On May 28, 2024, the debtors filed a reply, ECF No. 86. The reply acknowledges that the debtors failed to cite appropriate authority for the motion, and that the debtors had filed amended Schedules I and J in support of the motion. *Id.*

Amended Schedules Not Filed With Motion

The motion will be denied for two reasons. First, as the court has stated previously in this ruling the amended Schedules are part of the debtors' prima facie case for plan modification and are due at the outset of the motion and not in response to opposition raised by the trustee. This is because parties impacted by the modification are entitled to this information in time to determine whether to oppose the motion. Opposition to this motion was due May 21, 2024.

Amended Schedules Are Unsigned

Second, the amended Schedules are unsigned and are of no evidentiary value. The court will not consider schedules which do not comply with Fed. R. Bankr. P. 1008.

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

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 debtors have filed two amendments to Schedules I and J. ECF No. 84, 85. Both amendments lack the required amendment cover sheet, EDC 2-015 and therefore are not signed or dated by either the debtors or their attorney. Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court and may not be considered.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

25. [24-20663](#)-A-13 **IN RE: BRANDON/SHINYA GARLOFF**
[CAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF
NORTH AMERICA

4-4-2024 [[19](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Timothy Walsh is ordered to appear at the hearing on the motion on June 4, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on creditor BMW Bank of North America's objection to confirmation was continued from April 23, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

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).

On April 24, 2024, the court ordered:

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 25.

The court's ruling required the debtors to file a pleading in this matter by May 7, 2024. The debtor(s) failed to file any document. The debtor's failure to respond as ordered prevents the trustee's timely compliance to file a reply. The debtor's failure to respond as ordered creates inconvenience and additional work for the court in this matter. Counsel for the debtor shall be prepared to explain his failure to respond to the order.

CONFIRMATION

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation 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 Calls for Valuation of Vehicle

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

The objecting creditor holds a purchase money security interest in a 2016 BMW M3. The proposed Chapter 13 Plan provides for the obligation in Class 2 calling for valuation of the vehicle and payment to the creditor in the amount of \$9,700 at 6% interest. Chapter 13 Plan, § 3.08, ECF No. 3.

The vehicle was purchased on August 28, 2021. Exhibits A, B, ECF No. 21. The case was filed on February 22, 2024. The difference between the two dates is 909 days. The vehicle was purchased for the debtor's personal use. *Id.*

Accordingly, the court will sustain the creditor's objection to confirmation and deny confirmation of the plan.

CIVIL MINUTE ORDER

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

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

BMW Bank of North America'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.

26. [24-20663](#)-A-13 **IN RE: BRANDON/SHINYA GARLOFF**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
4-3-2024 [\[15\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Timothy Walsh is ordered to appear at the hearing on the motion on June 4, 2024, at 9:00 a.m. Appearance may be made via Zoom or telephone.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from April 23, 2024, to allow the debtor(s) to either: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTOR(S) FAILED TO RESPOND AS ORDERED

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).

On April 24, 2024, the court ordered:

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 7, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 7, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than May 21, 2024. The evidentiary record will close after May 21, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 7, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 26.

The court's ruling required the debtors to file a pleading in this matter by May 7, 2024. The debtor(s) failed to file any document. The debtors' failure to respond as ordered prevents the trustee's timely compliance to file a reply. The debtors' failure to respond as ordered creates inconvenience and additional work for the court in this matter. Counsel for the debtor shall be prepared to explain his failure to respond to the order.

CONFIRMATION

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

Chapter 13 plan confirmation 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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce the following Class 2 secured claims based on the value of the collateral securing such claims: (1) BMW Financial; (2) Lentegrity; and (3) Sierra Central Credit Union. But the debtors have not yet obtained a favorable order on a motion to determine the value of such collateral.

Moreover, as the court has discussed in BMW Financials' objection to confirmation (CAS-1), a motion to value is not possible under the law and therefore the debtors must propose an amended plan. Accordingly, the court must deny confirmation of the plan.

The court need not address the remaining issues raised in 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.

27. [23-24064](#)-A-13 **IN RE: RICARDO CORTEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
5-6-2024 [\[27\]](#)

TIMOTHY WALSH/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 21, 2024

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 \$1,467.00 with one payment(s) of \$1,720.00 due prior to the hearing on this motion.

Additionally, the trustee argues for dismissal because the debtor failed to file an amended plan after the court denied confirmation of the most recently filed Chapter 13 Plan. The court sustained an objection to confirmation on February 27, 2024, and the debtor has failed to file any amended plan.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

28. [24-21871](#)-A-13 **IN RE: RAUL REYNOSO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-15-2024 [\[12\]](#)

DEBTOR DISMISSED: 05/20/24

Final Ruling

The case was dismissed May 20, 2024, the order to show cause is discharged as moot.

29. [24-21272](#)-A-13 **IN RE: KRISTINA WOYICKI**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-15-2024 [\[18\]](#)

MATTHEW GRECH/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 \$567.00 with one additional payment of \$567.00 due on May 25, 2024. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

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

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

30. [24-20973](#)-A-13 **IN RE: PROSPERO DITO**
[DPC-1](#)

MOTION TO DISMISS CASE
5-3-2024 [\[20\]](#)

STACIE POWER/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 21, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file plan, provide documents, failure to appear at meeting of creditors

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 because the debtor: (1) failed to file a plan; (2) failed to attend the meeting of creditors; (3) failed to provide documents including tax returns; and (4) failed to provide Special Security documentation. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

FAILURE TO FILE PLAN

"The debtor shall file a plan." 11 U.S.C § 1321. The plan must be filed within 14 days of the filing of the petition. Fed. R. Bankr. P. 3015.

The petition was filed on March 12, 2024, and the debtor did not file a Chapter 13 Plan with the petition. Neither has the debtor subsequently filed a plan.

MEETING OF CREDITORS

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting on April 18, 2024. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion.

SOCIAL SECURITY DOCUMENTATION

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

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

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

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

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

The debtor(s) failed to provide the required social security information to the trustee.

FAILURE TO PROVIDE TAX RETURNS

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).

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e) (2) (A).

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform A Chapter 13 plan.

Each of these bases constitutes unreasonable delay under 11 U.S.C. § 1307(c) (1).

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 the debtor has failed to file a plan; failed to provide tax returns and social security information to the trustee and failed to attend the meeting of creditors. The court hereby dismisses this case.

31. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-3-2024 [\[29\]](#)

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow for appearance and augmentation of the evidentiary record by the debtor. The debtor has not filed any opposition to the trustee's objection.

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).

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).

Eastern District Form Plan is Required

All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form *Chapter 13 Plan*.

LBR 3015-1(a).

The Chapter 13 trustee has objected to the proposed plan on multiple bases. One of the contentions is that the proposed plan does not comply with LBR 3015-1(a) which requires that the plan be proposed using the Eastern District's form plan, EDC 3-080. The debtor has failed to use Form EDC 3-080 in proposing a plan. Chapter 13 Plan, ECF No. 15. Accordingly, the plan may not be confirmed, and the

court need not address the remaining objections raised by the trustee.

The court will sustain the objection and deny confirmation of the plan.

CIVIL MINUTE ORDER

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

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

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

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

32. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
4-12-2024 [\[40\]](#)

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from May 21, 2024

Disposition: Granted

Order: Civil minute order

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

The hearing on the Chapter 13 trustee's motion to dismiss was continued by the court at the request of the debtor who has experienced a medical emergency. The debtor is not represented by

counsel. Accordingly, the court will allow opposition at the hearing on this motion.

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 \$1,125.00 with two payment(s) of \$1,125.00 due prior to the hearing on this motion.

In addition to plan delinquency the trustee contends that the debtor has: (1) failed to attend the meeting of creditors; (2) failed to provide copies of tax returns and pay advices required under 11 U.S.C § 521; (3) failed to provide required social security documentation as required under Fed. R. Bankr. P. 4002; and (4) failed to propose a Chapter 13 Plan on the required Form EDC 3-080.

The court has already sustained the trustee's objection to confirmation based upon the filing of the plan on the incorrect form.

Each of these bases constitutes unreasonable delay and cause to dismiss the case under 11 U.S.C. § 1307(c)(1).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

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

33. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DPC-3](#)

CONTINUED OBJECTION TO DISCHARGE BY DAVID P. CUSICK
4-19-2024 [\[47\]](#)

Final Ruling

Motion: Objection to Discharge

Notice: Continued from May 21, 2024

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: February 15, 2024

Previous Chapter: 7 (converted from Chapter 13)

Previous Petition Filed: December 30, 2022

Previous Discharge: August 22, 2023

The hearing on the trustee's motion objecting to entry of discharge was continued by the court to this date. The debtor has failed to oppose the motion.

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

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE - 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on December 30, 2022, the debtor is not eligible for a discharge in this chapter 13 case. The court notes that the previous case was initially filed under Chapter 13 but later converted to a Chapter 7 wherein the debtor received a Chapter 7 discharge. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Objection to Discharge has been presented to the court. Having entered the default of the debtor 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; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

34. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DVW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
3-28-2024 [\[26\]](#)

DIANE WEIFENBACH/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Overruled as moot

Order: Civil minute order

The hearing on Creditor, U.S. Bank, National Association's objection to confirmation of the proposed Chapter 13 Plan was continued to allow the debtor to file opposition and to augment the evidentiary record.

The debtor has failed to oppose the objection.

VIOLATION OF LBR 9014-1

The movant has used the wrong docket control number. LBR 9014-1(c) provides:

(c) Docket Control Number.

1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all

pleadings and other documents, including proofs of service, filed in support of or opposition to motions.

2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.

3) **The Docket Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.**

Example: The first Docket Control Number assigned to attorney John D. Doe would be DCN JDD-1, the second DCN JDD-2, the third DCN JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.

4) Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.

LBR 9014-1(c) (emphasis added).

Because this unique docket control number is the method by which the court locates items on its docket, the re-use of a docket control number makes it difficult for the court to locate documents associated with the motion. Here, "DVW-1" has been used for both the motion for stay relief and the objection to confirmation.

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).

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 has sustained the objection to confirmation filed by the Chapter 13 trustee (DPC-1). The court has denied confirmation of the plan to which U.S. Bank National Association objects, and the debtor is required to file an amended plan. Accordingly, the court will overrule this objection as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot. The court has previously sustained the Chapter 13 trustee's objection to confirmation.

35. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-10-2024 [[60](#)]

DIANE WEIFENBACH/ATTY. FOR MV.
U.S. BANK TRUST NATIONAL ASSOCIATION VS.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 620-620A Maple Street, West Sacramento, California

Cause: 2 delinquent post-petition payments; \$2,288.64

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

U.S. Bank Trust National Association 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(a). The motion also seeks in rem relief under 11 U.S.C. § 362(d)(4).

VIOLATION OF LBR 9014-1

The movant has used the wrong docket control number. LBR 9014-1(c) provides:

(c) Docket Control Number.

1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions.

2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.

3) **The Docket Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.**

Example: The first Docket Control Number assigned to attorney John D. Doe would be DCN JDD-1, the second DCN JDD-2, the third DCN JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.

4) Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.

LBR 9014-1(c) (emphasis added).

Because this unique docket control number is the method by which the court locates items on its docket, the re-use of a docket control number makes it difficult for the court to locate documents associated with the motion. Here, "DVW-1" has been used for both the motion for stay relief and the objection to confirmation.

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).

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,

except relief from the co-debtor stay as provided below in this ruling, will be awarded.

The Chapter 13 trustee reports that plan payments are delinquent and that no payments have been tendered. Trustee Non-opposition, ECF No. 68, thus payments through a Chapter 13 plan have not been tendered to the movant.

RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c) (2)

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.

The co-debtor has defaulted in payments to the movant.

As a result, the movant is entitled to relief from the co-debtor stay in this case.

SECTION 362(d) (4)

Section 362(d) (4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d) (4).

APPLICATION

The instant case is the debtor's second bankruptcy case since December 30, 2022. The previous case was filed under Chapter 13 on December 30, 2022, but converted to Chapter 7. A Chapter 7 discharge was entered on August 22, 2023. *In re Abdul Munif*, Case No. 22-23379, E.D. Cal. Bankr. (2023).

This case was filed on February 15, 2024.

Movant argues that in rem relief is appropriate as follows:

In rem relief from stay is both necessary and appropriate in this case. As indicated above, the Debtor filed his first Chapter 13 case on December 30 2022 and then converted it to one under Chapter 7. No post-petition mortgage payments were made in that case, despite the fact that they are required to be paid in a Chapter 13 case. The Property which is the subject of the Motion is not the Debtor's principal residence, but is an income/rental property. Despite this, Debtor has not tendered mortgage payments to Movant. The Chapter 7 Trustee found that the Property

was of no value to the Bankruptcy Estate and absandoned (sic) the Estate's interest in this rental property. The Chapter 7 Trustee further found tht (sic) the value the Debtor had assigned the property was far too high and that "the condition of the Property is very poor". (See Chapter 7 Trustee's Motion to Abandon Property filed in Debtor's Chapter 7 Case on 10/2/2023, Dckt #82 a true and correct copy of which is attached to the Exxhibit (sic) List as Exhibit '5".)

Motion, 4:14-26, ECF No. 60.

The previous case was converted to Chapter 13 on April 10, 2023. Order, ECF No. 36. The order abandoning the property was entered November 26, 2023, ECF No. 89.

The court finds that one previous filing is not sufficient to justify granting in rem relief in this case. The court notes that the movant had previously recorded a notice of default but that no sale was set regarding the property after the order abandoning the estate's interest was granted on November 26, 2023. See Relief From Stay Information Sheet, ECF No. 63. The debtor's discharge had been granted prior to that date.

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.

U.S. Bank Trust National Association'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 620-620A Maple Street, West Sacramento, California, as to all parties in interest. 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 ORDERED that the co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

IT IS FURTHER ORDERED that no other relief is awarded and in rem relief under 11 U.S.C. § 362(d)(4) is denied. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

36. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY US BANK TRUST
NATIONAL ASSOCIATION
4-4-2024 [\[33\]](#)

JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from April 23, 2024

Disposition: Overruled as moot

Order: Civil minute order

The hearing on Creditor, U.S. Bank Trust National Association's objection to confirmation of the proposed Chapter 13 Plan was continued to allow the debtor to file opposition and to augment the evidentiary record.

The debtor has failed to oppose the objection.

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).

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 has sustained the objection to confirmation filed by the Chapter 13 trustee (DPC-1). The court has denied confirmation of the plan to which U.S. Bank Trust National Association objects, and the debtor is required to file an amended plan. Accordingly, the court will overrule this objection as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot. The court has previously sustained the Chapter 13 trustee's objection to confirmation.

37. [23-23181](#)-A-13 **IN RE: JACOB BAIRD AND JAMIE SCHULLY BAIRD**
[BPN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-30-2024 [\[28\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
BRUCE NEEDLEMAN/ATTY. FOR MV.
PREMIER AMERICA CREDIT UNION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject: 2017 Nissan Titan King Cab

Chapter 13 Plan Confirmed: November 1, 2023

Debt Classified in Plan: Class 3

Premier America Credit Union seeks an order for relief from the automatic stay.

MOOTNESS OF REQUEST FOR STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." Section 3.11(a) of the plan provides: "Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no

longer exists because the stay no longer affects its collateral.
The motion will be denied as moot.

CIVIL MINUTE ORDER

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

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

Premier America Credit Union's motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

38. [24-20883](#)-A-13 **IN RE: DARON/CHANTEL YOUNG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-2024 [\[35\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

Final Ruling

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

39. [24-20484](#)-A-13 **IN RE: MICHAEL/ANGELIQUE VALERA**
[DPC-1](#)

MOTION TO DISMISS CASE
5-3-2024 [\[21\]](#)

ERIC SCHWAB/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 21, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

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 \$7,518.00 with one payment(s) of \$7,518.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

40. [24-21087](#)-A-13 **IN RE: MAN CHENG**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-3-2024 [\[20\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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).

EXEMPTIONS

Under California law the debtor may exempt:

(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

- (1) Eight thousand seven hundred twenty-five dollars (\$8,725), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

Cal. Civ. Proc. Code § 704.060(a)(1) (emphasis added).

The Chapter 13 trustee objects to the debtor's claim of exemption in a 2020 Toyota Corolla in the amount of \$6,191.00 under Cal. Civ. Proc. Code § 704.060.

On April 18, 2024, the debtor filed Amended Schedules I and J, ECF No. 13. While Schedule I indicates that the debtor is a realtor, there is no income listed from self-employment, or employment as a realtor, or in any capacity. Therefore, the court is unable to conclude that the debtor earns a livelihood as a realtor. Thus, the debtor may not exempt the equity in the vehicle in any amount under C.C.P. § 704.060. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

The Chapter 13 trustee's Objection to the Debtor's Claim of Exemption 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 and the exemption in the Toyota Corolla under C.C.P. § 704.060 is disallowed in its entirety.

41. [24-21087](#)-A-13 **IN RE: MAN CHENG**
[PLC-1](#)

MOTION TO CONFIRM PLAN
4-18-2024 [\[14\]](#)

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).

LIQUIDATION

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

The debtor has proposed a 0% payment to unsecured creditors. Absent any opposition by the debtor the court has sustained the trustee's objection to the debtor's claimed exemption in a vehicle (DPC-1). Therefore, at least \$6,121.00 is available for distribution to unsecured creditors. Thus, the plan fails the liquidation test. The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

42. [24-21088](#)-A-13 **IN RE: JEANNA TOWNER**
[DKF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
4-12-2024 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DANIEL FUJIMOTO/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: Withdrawn by objecting creditor

Order: Civil minute order

Creditor, Nationstar Mortgage, LLC, objects to confirmation of the debtor(s) plan.

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).

Fed. R. Civ. P. 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).

On May 29, 2024, the objecting creditor filed a notice of withdrawal of its objection. Notice of Withdrawal, ECF No. 51. However, the debtor has already responded to the objection, ECF No. 49. As such the objection may not be unilaterally withdrawn by the objecting creditor. Fed. R. Civ. P. 41. In the future a stipulation resolving the objection which has been signed by the Chapter 13 trustee should be filed with the court.

Here, the creditor has signaled its abandonment of the objection to confirmation. Neither the debtor(s), the trustee, nor any creditor, has expressed opposition to the withdrawal of the objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the creditor’s request.

The court notes that the withdrawal of the objection does not impact 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.

IT IS ORDERED that the objection to confirmation is withdrawn.

43. [24-21088](#)-A-13 **IN RE: JEANNA TOWNER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-6-2024 [\[27\]](#)

PETER MACALUSO/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 16, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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 will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to July 16, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than June 18, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than June 18, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support

of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 2, 2024. The evidentiary record will close after July 2, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than June 18, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

IT IS FURTHER ORDERED that if the parties resolve this matter by stipulation that the stipulation must be filed by July 2, 2024.

44. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[FEC-1](#)

ORDER TO APPEAR RE: VOLUNTARY PETITION
5-13-2024 [\[221\]](#)

RICHARD JARE/ATTY. FOR DBT.

No Ruling

45. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[RJ-7](#)

MOTION BY RICHARD L. JARE TO WITHDRAW AS ATTORNEY
5-14-2024 [\[222\]](#)

RICHARD JARE/ATTY. FOR DBT.

No Ruling

46. [23-23390](#)-A-13 **IN RE: AARON/REBECCA ULDALL**
[KLG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KOSTOPOULOS LAW
GROUP, PC FOR A RITA KOSTOPOULOS, DEBTORS ATTORNEY(S)
5-8-2024 [\[55\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Denied without prejudice

Order: Civil minute order

In this Chapter 13 case, Kostopoulos Law Group, PC, has applied for
an allowance of interim compensation and reimbursement of expenses.

The motion will be denied without prejudice.

NOTICE

Unless a different amount of time is required by the
Federal Rules of Bankruptcy Procedure, these Local
Rules, or by order of the Court, or the moving party
elects to give the notice permitted by LBR 9014-
1(f)(2), the moving party shall file and serve the
motion at least twenty-eight (28) days prior to the
hearing date.

LBR 9014-1(f)(1).

The motion was noticed under LBR 9014-1(f)(1), Notice, ECF No. 56.
The certificate of service memorializing service in this matter
states that service was effected on May 8, 2024. Certificate of
Service, ECF No. 60. Thus, only 27 days' notice of the hearing was
provided. Notice under LBR 9014-1(f)(1) was insufficient.

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.

Kostopoulos Law Group, PC's application for allowance of interim
compensation and reimbursement of expenses has been presented to the
court. Because of the procedural deficiencies discussed by the
court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

47. [24-20596](#)-A-13 **IN RE: BRANDON/ERMA FLORES**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
4-3-2024 [[16](#)]

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

On May 29, 2024, the court, at the request of the Chapter 13 trustee, dismissed the trustee's objection to confirmation. Order, ECF No. 26. Accordingly, this matter will be removed from the calendar. No appearances are required.