

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

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

DAY: THURSDAY
DATE: JUNE 9, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [18-26800](#)-A-13 **IN RE: MICHAEL/EMMA POST**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
4-5-2022 [\[55\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from May 3, 2022

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from May 3, 2022, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify (PLG-4) has been granted.

At the prior hearing on this motion the trustee consented to the court denying the dismissal motion without further notice or hearing if the motion to modify was granted. See Civil Minutes, ECF No. 73.

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 good cause appearing,

IT IS ORDERED that the motion is denied.

2. [18-26800](#)-A-13 **IN RE: MICHAEL/EMMA POST**
[PLG-4](#)

MOTION TO MODIFY PLAN
4-27-2022 [\[67\]](#)

STEVEN ALPERT/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed April 27, 2022

DEFAULT OF RESPONDENT

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

The debtors seek an order approving their First Amended Chapter 13 Plan, dated April 27, 2022, ECF No. 70. The debtors filed amended Schedules I and J in support of the plan on May 3, 2022, ECF No. 76-77. No timely opposition to the motion has been filed.

CHAPTER 13 PLAN MODIFICATION

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

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

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

3. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[JNV-2](#)

MOTION TO CONFIRM PLAN
4-27-2022 [\[45\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Third Amended Chapter 13 Plan, filed April 27, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Third Amended Chapter 13 Plan, ECF No. 50. The debtor has filed Schedules I and J in support of the plan on January 5, 2022, ECF No. 22. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 54.

CHAPTER 13 PLAN CONFIRMATION

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

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

4. [21-24307](#)-A-13 **IN RE: TERESA CRUZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-2022 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.
5/24/22 FINAL INSTALLMENT PAID \$77

Final Ruling

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

5. [22-21012](#)-A-13 **IN RE: SUZIE SZIJARTO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-2022 [\[11\]](#)

DEBTOR DISMISSED: 5/13/22

Final Ruling

The case was dismissed on May 13, 2022, the matter is removed from the calendar as moot. No appearances are required.

6. [22-20813](#)-A-13 **IN RE: JAMES JONES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-19-2022 [\[19\]](#)

Final Ruling

This case has been transferred to Department E. The hearing on this matter has been rescheduled and will be heard before Chief Judge Ronald H. Sargis on June 14, 2022, at 2:00 p.m. in the United States Courthouse, 501 I Street, Sixth Floor, Department E, Courtroom 33, Sacramento, California.

7. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-6](#)

CONTINUED MOTION TO MODIFY PLAN
3-14-2022 [\[117\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: continued from May 3, 2022

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The hearing on this motion was continued from May 3, 2022, to allow the debtors to properly file amended Schedules I and J in support of the motion.

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).

IMPROPERLY AMENDED SCHEDULES

On May 3, 2022, the debtors filed Amended Schedules I and J, ECF No. 130.

The amended schedules are unsigned as there is no amendment cover sheet *affixed* to either document as required.

Amendment Cover Sheet

On May 3, 2022, the debtors filed a separate Amendment Cover Sheet, ECF No. 131. No schedules were attached to the amendment cover sheet as required. The court notes that counsel appears to be using an outdated Amendment Cover Sheet form and refers counsel to EDC 2-015, Rev. 12/1/20 which is located on the court's website. Additionally, the cover sheet is so faint it is illegible.

The Amendment Cover Sheet contains clear instructions regarding its use. The Instructions provide that a party is to "[a]ttach each amended document to this form." See Form EDC 2-015, Rev. 12/1/20.

The separate filing of the Amendment Cover Sheet from the amended documents is not sufficient. The amended schedules and the cover sheet should be filed as one document on the court's docket. First, filing amended documents separately from the cover sheet which authenticates and verifies them does not serve the effective use of the court's electronic docket. Reference to the documents as a

whole is difficult and easily leads to errors in reviewing documents by the court and other parties to the current or subsequent litigation. Second, parties in interest who are served, as required, with the documents piecemeal will not be able to easily determine to which schedules a separately served separate cover sheet refers.

Rule 1008

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

In the Eastern District Form EDC 2-015, available on the court's website, is required for use in filing both amended and supplemental documents. The form provides the following instructions:

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

EDC 002-015 (emphasis added).

LBR 9004-1(c)

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

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

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

The court finds that the evidentiary record is insufficient to grant the motion.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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.

8. [19-24217](#)-A-13 **IN RE: BRETT BAILEY**
[SMJ-5](#)

MOTION TO SELL O.S.T.
5-25-2022 [\[96\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

No Ruling

9. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-11-2022 [\[28\]](#)

CARL GUSTAFSON/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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

The chapter 13 trustee objects to confirmation as the debtor has not obtained an order valuing the collateral of OneMain. The debtors’ motion to value collateral of OneMain was denied without prejudice on May 24, 2022, ECF Nos. 32-33.

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

CIVIL MINUTE ORDER

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

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

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

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

10. [20-21920](#)-A-13 **IN RE: LAMONT LEWIS AND DEEPANJALI SHANKAR**
LEWIS
[CYB-3](#)

MOTION TO INCUR DEBT
5-19-2022 [\[51\]](#)

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

No Ruling

11. [22-20820](#)-A-13 **IN RE: MARK JENSEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-2022 [\[17\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

12. [22-20820](#)-A-13 **IN RE: MARK JENSEN**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEDALLION BANK
5-9-2022 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Objecting creditor, Medallion Bank is a secured creditor and filed its proof of claim in the amount of \$41,219.69 (secured: \$23,050.00; unsecured: \$18,169.69), including arrearages in the amount of \$24,032.60, at a fixed annual interest rate of 17.950%. The objecting creditor's claim is secured by personal property collateral, a 2016 Shadow Cruiser S240BH5.

The proposed chapter 13 plan, ECF No. 3 does not provide for the payment or the surrender of the objecting creditor's claim. Neither

does Schedule J, filed at the inception of the case, provide any direct payment for installment contracts, ECF No. 1.

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).

The objecting creditor contends that the failure to provide for payment under the plan (or surrender of the collateral) coupled with the failure of the debtor to provide for payment of the vehicle outside the plan is evidence that the plan is not feasible. The debtor's schedules show that the debtor does not have the ability to increase the plan payment to include payment to the secured creditor to satisfy the secured claim of \$23,050.00 plus interest as stated in the claim.

The court will sustain the objection, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

Medallion Bank'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.

13. [22-20820](#)-A-13 **IN RE: MARK JENSEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-19-2022 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 Prosecution

The debtor has contacted the trustee's office indicating that he does not desire to continue with the plan and that he cannot afford the plan payment.

Failure To Provide Financial/Business Documents

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor failed to produce the following documents: 2019 Tax Returns; 4 months of statements from the debtor's Bank of America bank account; 6 months of bank statements from all other bank accounts; 6 months of profit and loss statements for the debtor's business operations; completed Business Questionnaire provided by the trustee.

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

Failure to Properly Provide for Secured Claim

The proposed plan fails to properly provide for the claim of secured creditor Medallion Bank. Creditor's secured claim in the amount of \$23,050.00 is not provided for in the debtor's plan. ECF No. 3. How the obligation will be paid, or if it will be paid, impacts the feasibility of the proposed plan. The court notes that there are no installment payments listed in the debtor's Schedule J, ECF No. 1.

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

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 May 12, 2022. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection

CIVIL MINUTE ORDER

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

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

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

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

14. [22-20721](#)-A-13 **IN RE: KEITH/LAURA FARLEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-12-2022 [\[21\]](#)

CATHERINE KING/ATTY. FOR DBT.

Final Ruling

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

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot. See Plan, ECF No. 15.

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.

15. [18-26025](#)-A-13 **IN RE: SUSANA RAMIREZ**
[DPC-1](#)

MOTION TO DISMISS CASE
5-11-2022 [\[30\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 23, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$880.00, with another payment of \$440.00 due May 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 34-35. The debtor's declaration states that the debtor will bring the plan payment current by May 25, 2022, and complete the plan with that payment. See Declaration, ECF No. 35. On May 31, 2022, the debtor filed a subsequent Exhibit which is a printout from TFS. The exhibit shows that on May 25, 2022, the debtor initiated a payment of \$1,320.00 to trustee David Cusick. See Exhibit A, ECF No. 37.

The debtor has refuted the trustee's contentions and the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

16. [19-27025](#)-A-13 **IN RE: JOSEPH BENEFIELD**
[JLZ-3](#)

MOTION BY JON L. ZITOMER TO WITHDRAW AS ATTORNEY
5-9-2022 [\[34\]](#)

JON ZITOMER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

17. [20-23827](#)-A-13 **IN RE: STERLING OWENS**
[DPC-1](#)

MOTION TO DISMISS CASE
5-11-2022 [\[35\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,120.00 with a further payment of \$2,560.00 due May 25, 2022.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may

convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

18. [18-20829](#)-A-13 **IN RE: CHRISTOPHER RETTER**
[DPC-1](#)

MOTION TO DISMISS CASE
5-11-2022 [\[45\]](#)

RICK MORIN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 24, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,750.00, with another payment of \$875.00 due May 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 49-50. The debtor's declaration states that the debtor has made two payments of \$875.00 via TFS prior to filing the opposition and that he will bring the remainder of the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 50.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

19. [22-20730](#)-A-13 **IN RE: ALICE RANSOM**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-10-2022 [\[16\]](#)

ANH NGUYEN/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).

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 chapter 13 trustee contends the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). The debtor testified at the 341 meeting that she received 2021 tax refunds totaling \$7,238.00 which were not listed in Schedules A/B. The debtor also testified that she had a Robinhood investment account with a balance of approximately \$700.00 which was not scheduled. After the trustee adds the value of these assets into his liquidation analysis the plan, which calls for payment of 2% to unsecured creditors, fails the liquidation test of 11 U.S.C. § 1325(a)(4).

The court sustains this objection.

ATTORNEY FEES

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

The proposed plan, ECF No. 3, states that the debtor's attorney has elected to be paid pursuant to Local Bankruptcy Rule 2016-1(c). The plan also states the attorney was paid \$1,500.00 prior to filing this case and \$0 will be paid through the Plan.

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

The court sustains this objection as the plan is not feasible under 11 U.S.C. § 1325(a)(6) absent clarification of the attorney fees.

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).

Multiple Bankruptcy Filings

The instant case is the debtor's eighth chapter 13 case filed in the Eastern District since February 2011. The debtor failed to obtain a discharge in any of the previous cases. The trustee questions the likelihood of the debtor's success in prosecuting the instant plan as she has provided no evidence that the instant plan will succeed when the previous plans have been unsuccessful.

Case Number	Filed	Attorney	Confirmed	Dismissed
2011-24019	02-17-2011	Gohari	No	04-15-2011
2011-41960	09-12-2011	Gohari	No	09-26-2011
2014-30071	10-08-2014	Liviakis	No	08-28-2015
2015-27009	09-03-15	Liviakis	11-16-2015	04-21-2016
2017-25307	08-10-2017	Liviakis	10-08-2017	07-12-2018
2018-24870	08-01-2018	Liviakis	11-14-2018	01-23-2020
2021-20686	02-26-2021	Nguyen	No	09-23-2021

The court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6) as the debtor has provided no such evidence of feasibility and it is her burden to do so. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

20. [22-20730](#)-A-13 **IN RE: ALICE RANSOM**
[KAZ-01](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
5-12-2022 [\[20\]](#)

ANH NGUYEN/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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).

Current Plan Provisions

The plan provides for the repayment of the mortgage arrears on the debtor's residence located at 33 Spring Brooks Circle, Sacramento, California. The obligation to the objecting creditor is provided for in Class 1 of the plan with arrears totaling \$39,000.00, ECF No. 3. The objecting creditor has filed a proof of claim which provides for mortgage arrears in the amount of \$68,788.70. See Claim No. 5. The debtor's Schedules I and J show a net income of \$3,619.00 each month to fund the plan. The proposed plan calls for payments in the amount of \$3,619.00

The objecting creditor contends that because the schedules do not show that the debtor has the ability to pay the mortgage arrears pursuant to the claim filed, the plan is not feasible under 11 U.S.C. § 1325(a)(6). The creditor also contends that the feasibility of the current plan should be viewed in the context of the debtor's prior, unsuccessful chapter 13 cases.

In addition to the instant case, the debtor has filed the following chapter 13 cases in the Eastern District. The debtor has filed 7 previous Chapter 13 cases spanning a period of 10.5 years. The debtor has only confirmed a plan in three of the previous cases and has never obtained a Chapter 13 discharge.

Case Number	Filed	Attorney	Confirmed	Dismissed
2011-24019	02-17-2011	Gohari	No	04-15-2011
2011-41960	09-12-2011	Gohari	No	09-26-2011
2014-30071	10-08-2014	Liviakis	No	08-28-2015
2015-27009	09-03-15	Liviakis	11-16-2015	04-21-2016
2017-25307	08-10-2017	Liviakis	10-08-2017	07-12-2018
2018-24870	08-01-2018	Liviakis	11-14-2018	01-23-2020
2021-20686	02-26-2021	Nguyen	No	09-23-2021

The court sustains the objection, the plan as proposed is not feasible under 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

The Bank of New York Mellon's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

21. [20-22331](#)-A-13 **IN RE: BRANDON/JOVINA LIMOSNERO**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[80\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 26, 2022 - timely

Modified Plan: not filed - untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$3,304.00, with another payment of \$1,314.00 due May 25, 2022.

MODIFIED PLAN NOT FILED BY OPPOSITION DATE

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Any modified plan must be filed by the opposition date to be considered as opposition to the motion to dismiss.

On May 26, 2022, the debtors filed an opposition to the motion to dismiss, ECF No. 84. The opposition includes a declaration by the debtor(s) stating their intention to file a modified plan by the hearing date on this motion, ECF No. 85. The opposition does not

resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

The court is aware that the motion to dismiss was filed May 11, 2022, giving the debtor only 29 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:
Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

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

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

22. [20-21032](#)-A-13 **IN RE: MARJORIE ALCANTARA**
[DPC-3](#)

MOTION TO DISMISS CASE
5-11-2022 [\[58\]](#)

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 2, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 26, 2022 - timely

Motion to Modify Plan Filed: May 26, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,800.00, with another payment of 900.00 due May 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 2, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 2, 2022, 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.

23. [20-25033](#)-A-13 **IN RE: SANDY DENIO**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[22\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by trustee

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 24, 2022 - timely

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$580.00, with another payment of \$290.00 due May 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 26-27. The debtor's declaration states that the debtor has paid \$580.00 with money given to her by her son, and that the plan payments are current. See Declaration, ECF No. 27. The opposition does not address the plan payment due on

May 25, 2022, nor does it state the method of payment to the trustee.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On June 2, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 29. The trustee states that the plan payments are current.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

24. [19-22034](#)-A-13 **IN RE: ERNEST/SAIFON BOND**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-1-2022 [\[25\]](#)

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

Final Ruling

Motion: Dismiss Case

Notice: Continued from May 3, 2022

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from May 3, 2022, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify (MET-1) has been granted.

At the prior hearing on this motion the court stated its intention to deny the dismissal motion without further notice or hearing if the motion to modify was granted. See Civil Minutes, ECF No. 49.

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 good cause appearing,

IT IS ORDERED that the motion is denied.

25. [19-22034](#)-A-13 **IN RE: ERNEST/SAIFON BOND**
[MET-1](#)

CONTINUED MOTION TO MODIFY PLAN
3-22-2022 [\[31\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: continued from May 3, 2022

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Modified Chapter 13 Plan, filed March 22, 2022

DEFAULT OF RESPONDENT

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

The debtors seek an order approving their modified chapter 13 plan. The hearing on this motion was continued to allow the debtors to file Schedules I and J in support of the motion. On May 12, 2022, the debtors properly filed Supplemental Schedules I and J, ECF No. 54. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 43.

CHAPTER 13 PLAN MODIFICATION

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

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

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

26. [20-25336](#)-A-13 **IN RE: ROGELIO DE LEON**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[34\]](#)

ANH NGUYEN/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 26, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,030.00 with a further payment of \$525.00 due May 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

27. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[64\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 25, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$840.00, with another payment of \$420.00 due May 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 68-69. The debtor's declaration states that the debtor has paid \$840.00 via TFS and that the May 2022 payment will be made by the date of the hearing on this motion. See Declaration, ECF No. 69. The debtor also states that the delinquency occurred because her mother suffered a stroke and that the debtor had to manage her mother's hospitalization and rehabilitation.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

28. [22-20537](#)-A-13 **IN RE: LATASHA SAMUEL**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
4-26-2022 [[20](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: March 8, 2022

Previous Chapter: 7

Previous Petition Filed: July 17, 2019

Previous Discharge: October 21, 2019

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, Case No. 2019-24510, E.D. Cal. Bankr. (2019), on July 17, 2019, the debtor is not eligible for a discharge in this chapter 13 case. 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.

29. [19-27239](#)-A-13 **IN RE: ERICA FLORES**
[DPC-1](#)

MOTION TO DISMISS CASE
5-11-2022 [[18](#)]

BARRY SPITZER/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 26, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$7,025.54 with a further payment of \$2,521.05 due May 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

30. [22-20743](#)-A-13 **IN RE: SILVIA RAMIREZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
5-12-2022 [\[24\]](#)

CARL GUSTAFSON/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 \$2,450.00. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income pay advices under 11 U.S.C. § 521 (a) (1) (B) (iv). The pay advices for the period of January 27, 2022 through March 29, 2022, are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

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

Plan Overextension

The trustee calculates that the plan will take 69 months to complete. This exceeds the maximum length of 60 months allowed under 11 U.S.C. § 1322(d).

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

CIVIL MINUTE ORDER

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

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

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

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

31. [22-20544](#)-A-13 **IN RE: MARK KELLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-13-2022 [\[24\]](#)

MICHAEL REID/ATTY. FOR DBT.
5/23/22 INSTALLMENT FEED PAID \$78

Final Ruling

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

32. [18-25046](#)-A-13 **IN RE: LORENZO/CORRINA AGUILAR**
[DPC-4](#)

MOTION TO DISMISS CASE
5-11-2022 [\[84\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 25, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,840.00, with another payment of \$920.00 due May 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 88-89. The debtor's declaration states that the debtors will bring the plan payment current by June 6, 2022, via Moneygram. The declaration further states that the delinquency is due to costs related to the payment of insurance deductibles following an automobile accident and further car repairs unrelated to the accident. See Declaration, ECF No. 89.

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

The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

33. [19-26149](#)-A-13 **IN RE: SALLY DAVIDSON**
[DPC-4](#)

MOTION TO DISMISS CASE
5-11-2022 [\[97\]](#)

JEFFREY MEISNER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the trustee

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: Unopposed

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

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$750.00 with a further payment of \$375.00 due May 25, 2022.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On June 2, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 101. The trustee stated that the plan payments are now current.

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss.

The debtor has not filed opposition to the trustee's motion. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

34. [22-20661](#)-A-13 **IN RE: ROBERT BLANKENSHIP**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-12-2022 [\[21\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the

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

Failure To Provide Financial/Business Documents

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor failed to produce the following documents: 1) 2 years of tax returns; 2) 6 months of profit and loss statements; 3) 6 months of bank statements; 4) proof of license and insurance or written statements that no such documentation exists; 5) completed business questionnaire.

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

Failure to Provide Attachment to Schedules I and J

The debtor, who is self-employed has failed to provide the Attachment for Business Income and Expenses to Schedules I and J. The trustee cannot determine the feasibility of the debtor's plan without complete fiscal information detailing the operation of the debtor's business.

Failure to Provide Complete Information in Statements and Schedules

The debtor has failed to provide the following information in his filed schedules and statements:

1) The debtor has failed to identify any corporate interest on Schedule A/B for Blankenship Pools, Inc., as identified in the Voluntary Petition and the Statement of Financial Affairs; 2) the debtor has failed to identify his employer's name, or any income for his non-filing spouse; 3) the debtor has failed to completely answer Question 4 in the Statement of Financial Affairs regarding all sources of income; 4) the debtor has failed to indicate the status

of the pending lawsuits identified in the Statement of Financial Affairs, item 9. Without complete information the trustee cannot determine if the case has been filed in good faith or if the proposed plan satisfies all the requirements of 11 U.S.C. § 1325(a)(1), (3), (4), or (6).

The court will sustain the trustee's objection.

ATTORNEY FEES

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

The proposed plan, ECF No. 14 states that Debtors' attorney has elected to be paid pursuant to Local Bankruptcy Rule 2016-1(c). The plan also states \$3,750.00 was paid prior to filing this case and \$2,250.00 will be paid through the Plan, for a total of \$6,000.00.

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

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce the following secured claims based on the value of the collateral securing each claim: 1) Internal Revenue Service; 2) Josh Mason; 3) Tyler Garret; 4) Washington International Insurance. See Plan, ECF No. 14, Section 7.01.

But the debtor has not yet obtained a favorable order on any motions to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

CIVIL MINUTE ORDER

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

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

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

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

35. [22-20961](#)-A-13 **IN RE: DAVID WILLIAMS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-23-2022 [\[16\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
5/25/22 FINAL INSTALLMENT FEE PAID \$313

Final Ruling

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

36. [21-24162](#)-A-7 **IN RE: CASEY WOODBURY**
[MS-1](#)

OBJECTION TO CLAIM OF CW NEXUS CREDIT CARD HOLDINGS I, LLC,
CLAIM NUMBER 1
4-25-2022 [\[70\]](#)

MARK SHMORGON/ATTY. FOR DBT.
SARAH SHAPERO/ATTY. FOR MV.
CASE CONVERTED TO CHAPTER 7 ON 4/25/2022

Final Ruling

This matter will be removed from the calendar as moot. On May 2, 2022, the creditor filed a withdrawal of Claim No. 1. No appearances are required.

37. [22-21264](#)-A-13 **IN RE: JEREMY WYGAL**
[MS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-19-2022 [\[9\]](#)

MARK SHMORGON/ATTY. FOR DBT

Final Ruling

This case has been transferred to Department E. The hearing on this matter has been rescheduled and will be heard before Chief Judge Ronald H. Sargis on June 14, 2022, at 2:00 p.m. in the United States Courthouse, 501 I Street, Sixth Floor, Department E, Courtroom 33, Sacramento, California.

38. [22-21264](#)-A-13 **IN RE: JEREMY WYGAL**
[MS-2](#)

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES
5-19-2022 [\[13\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

This case has been transferred to Department E. The hearing on this matter has been rescheduled and will be heard before Chief Judge Ronald H. Sargis on June 14, 2022, at 2:00 p.m. in the United States Courthouse, 501 I Street, Sixth Floor, Department E, Courtroom 33, Sacramento, California.

39. [19-21366](#)-A-13 **IN RE: ANTHONY/BARBARA WATSON**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[39\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 25, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$6,152.17, with another payment of \$3,340.47 due May 25, 2022.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtors, ECF Nos. 43-44. The declaration states that the debtors tendered \$9,500.00 to the chapter 13 trustee on May 25, 2022, which brings the plan payments current. The declaration does not indicate how the payments were made to the trustee nor is there any documentary evidence of payments.

The debtor's opposition does not fully resolve the grounds for dismissal. It is unclear how the payments were tendered to, or if

they have been received by, the trustee. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

40. [22-20372](#)-A-7 **IN RE: REBECCA GATES-SHORTZ**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[35\]](#)

DAVID FOYIL/ATTY. FOR DBT.
CASE CONVERTED TO CHAPTER 7 ON 5/18/22

Final Ruling

The case was converted to Chapter 7 on May 18, 2022. This motion is removed from the calendar as moot. No appearances are required.

41. [22-20678](#)-A-13 **IN RE: OMAR BERMUDEZ URCUYO**

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
5-11-2022 [[41](#)]

MATTHEW MELLEN/ATTY. FOR DBT.
DAVID COATS/ATTY. FOR MV.
DEBTOR DISMISSED: 5/25/2022

Final Ruling

The case was dismissed on May 25, 2022. This matter is removed from the calendar as moot. No appearances are required.

42. [22-20678](#)-A-13 **IN RE: OMAR BERMUDEZ URCUYO**
[DPC-1](#)

MOTION TO DISMISS CASE
5-10-2022 [[37](#)]

MATTHEW MELLEN/ATTY. FOR DBT.
DEBTOR DISMISSED: 5/25/2022

Final Ruling

The case was dismissed on May 25, 2022. This matter is removed from the calendar as moot. No appearances are required.

43. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[DPC-4](#)

MOTION TO DISMISS CASE
5-11-2022 [[108](#)]

RICHARD JARE/ATTY. FOR DBT.
NEIL ENMARK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 2, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 26, 2022 - timely

Motion to Modify Plan Filed: May 26, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to

make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,615.00, with another payment of \$785.00 due May 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 2, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 2, 2022, 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.

44. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[DPC-5](#)

MOTION TO DISMISS CASE
5-11-2022 [\[123\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the trustee

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 25, 2022 - timely

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$2,830.00, with another payment of \$2,315.00 due May 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 127, 128, 129. The debtor's declaration states that the debtor has made payments to the trustee sufficient to bring the plan payments current but that one payment has inexplicably not posted to the trustee's account. The debtor filed a further opposition, declaration and exhibit to the motion on June 2, 2022, evidencing the posting of the previously missing payment to the trustee's account. See Exhibit B, ECF No. 133.

TRUSTEE REPLY - Fed. R. Civ. P. 41

On June 2, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 135. The trustee acknowledges that the plan payments are current as indicated in the debtor's opposition to the motion.

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Despite the debtor's opposition to the motion,

neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

45. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[DPC-5](#)

MOTION TO DISMISS CASE
5-11-2022 [[100](#)]

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the trustee

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: May 26, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$700.00, with another payment of \$350.00 due May 25, 2022.

The debtor has filed opposition to the motion. The opposition consists of an unsworn statement filed by the debtor's attorney, and a declaration by the debtor has not been submitted. The opposition states that the debtor will bring the payments current by May 31, 2022.

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

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in

opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

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

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtor intends to bring the plan payments current or why the plan payments are delinquent.

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

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

TRUSTEE REPLY – Fed. R. Civ. P. 41

On June 2, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 106. The trustee states that the plan payments are current.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

46. [20-22886](#)-A-7 **IN RE: BENVINDA GOMES**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[28\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

The case was converted to Chapter 7 on May 25, 2022. This matter is removed from the calendar as moot. No appearances are required.

47. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-3](#)

OBJECTION TO CLAIM OF CHARLEY SMITH, CLAIM NUMBER 12
4-15-2022 [\[140\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The hearing on this matter will be continued to June 22, 2022, at 9:00 a.m. to coincide with the Debtor's Motion to Sell (PGM-5). No appearances are required.

48. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-4](#)

MOTION TO CONFIRM PLAN
4-20-2022 [\[145\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Motion to Confirm Amended Plan

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

Disposition: Withdrawn by the moving party and confirmation denied

Order: Civil minute order

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

The chapter 13 trustee and creditor Charley Smith have filed opposition to the debtor's motion to confirm amended plan. At the hearing on the motion to sell real property (PGM-5) the parties agreed to continue the hearing on this matter until June 22, 2022, at 9:00 a.m. See Order Continuing Hearing, ECF No. 186.

During the intervening period the court held an evidentiary hearing on the trustee's and objecting creditor's objection to the debtor's claim of exemptions (DPC-2, WSS-2) and issued its rulings sustaining the objections. See Orders, ECF Nos. 182, 183.

On June 1, 2022, the debtor filed a further Reply regarding this motion to confirm amended plan, ECF No. 192. In her Reply the debtor concedes that the First Amended Chapter 13 Plan, ECF No. 147, is not suitable for confirmation and that her motion to confirm should be denied as follows.

Debtor responds and states that the Objection to Claim of Exemptions by the Trustee and Creditor, were sustained on May 18, 2022 (sic) and therefor the current proposed plan is not feasible. WHEREFORE, confirmation of the First Amended Plan should be denied.

Reply, ECF No. 192, 1:21-25.

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). Here, the debtor has signaled her abandonment of her motion to confirm the First Amended Chapter 13 Plan, ECF No. 147. Neither the trustee, nor any creditor, has expressed opposition to the withdrawal of the debtor's motion to confirm. No unfair prejudice will result from withdrawal of the motion and the court will construe the debtor's request that the motion be denied as a request to withdraw the motion to confirm the First Amended Chapter 13 Plan. Accordingly, the court will allow the motion to confirm the amended plan to be withdrawn.

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 amended plan 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 motion is withdrawn by the moving party. The court denies confirmation of the chapter 13 plan.

49. [21-23494](#)-A-13 **IN RE: TODD WHICHARD AND WHITNEY KOROPP**
[DPC-1](#)

MOTION TO DISMISS CASE
5-11-2022 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$11,556.50 with a further payment of \$5,735.75 May 25, 2022.

As a courtesy to the court the debtors' attorney filed a response to this motion on May 24, 2022, ECF No. 33. In the document counsel explains that he has no basis to oppose the trustee's motion.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under

chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

50. [22-20694](#)-A-13 **IN RE: AMICUS SALDITOS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-11-2022 [\[14\]](#)

SETH HANSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,650.00. 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.

51. [19-20995](#)-A-13 **IN RE: RUDY GONZALEZ, AND ROBERTA GONZALEZ**
[DPC-3](#)

MOTION TO DISMISS CASE
5-11-2022 [\[159\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
DEBTOR NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$9,972.41 with a further payment of \$5,271.49 May 25, 2022.

As a courtesy to the court the debtor filed a notice of non-opposition to this motion on May 23, 2022, ECF No. 163.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

52. [22-20597](#)-A-13 **IN RE: PATRICIA BOLOGNA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-17-2022 [\[31\]](#)

JOSHUA STERNBERG/ATTY. FOR DBT.
DEBTOR DISMISSED: 5/20/2022

Final Ruling

This case was dismissed on May 20, 2022. This matter is removed from the calendar as moot. No appearances are required.

53. [22-20597](#)-A-13 **IN RE: PATRICIA BOLOGNA**
[DPC-1](#)

MOTION TO DISMISS CASE
5-11-2022 [\[27\]](#)

JOSHUA STERNBERG/ATTY. FOR DBT.
DEBTOR DISMISSED: 5/20/2022

Final Ruling

This case was dismissed on May 20, 2022. This matter is removed from the calendar as moot. No appearances are required.

54. [19-27699](#)-A-13 **IN RE: MIGUEL/TERESITA LUNA**
[DPC-2](#)

MOTION TO DISMISS CASE
5-11-2022 [\[39\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 26, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,400.00 with a further payment of \$1,200.00 due May 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

55. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[MJD-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-25-2022 [\[10\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

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

The debtors seek an order extending the automatic stay of 11 U.S.C. § 362(a).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to

be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

The debtor's previous case was dismissed for failure to tender plan payments under a confirmed plan. The debtor's declaration in support of this motion states that the debtor failed to tender payments because he and his spouse contracted COVID-19 and were unable to work. Because the debtor's non-filing spouse is self-employed, she earned no income during her illness. The debtor was off work for a period of one month. See Declaration, ECF No. 12.

Creditors Bound by Order

The proof of service does not show that the following creditors were properly served at the correct addresses in this case: U.S. Department of Education; United States Attorney. Moreover, the Social Security Administration has not been served with the motion.

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted, and the stay will be extended as to all creditors except: 1) U.S. Department of Education; 2) United States Attorney; and 3) the Social Security Administration. The motion will be granted.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case to all creditors except: U.S. Department of Education; United States Attorney; and the Social Security Administration. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.