



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

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

DAY: TUESDAY
DATE: JUNE 13, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [23-21103](#)-A-13 **IN RE: EUGENE NOH**
[SS-2](#)

MOTION TO CONFIRM PLAN
5-2-2023 [\[24\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order confirming the Chapter 13 Plan filed in this case. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 29. The matrix therefore does not comply with LBR 7005-1. 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:

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

IT IS ORDERED that the motion is denied without prejudice.

2. [22-20612](#)-A-13 **IN RE: BRITTANY/STEVEN UREN**
[DPC-3](#)

MOTION TO DISMISS CASE
5-8-2023 [\[59\]](#)

ASHLEY AMERIO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6), and this represents unreasonable delay prejudicial to creditors, as the debtors have failed to file an amended plan and set for confirmation. Motion to Dismiss, 2:1-2, ECF No. 59. A Chapter 13 Plan has never been confirmed in this case.

COMPLIANCE WITH RULE 9013

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request.

11 U.S.C. § 1307(c)(6)

(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—

. . .

(6) material default by the debtor with respect to a term of a *confirmed plan*;

. . .

11 U.S.C. § 1307(c)(6) (emphasis added).

Because a plan has never been confirmed in this case the motion is not properly brought under 11 U.S.C. § 1307(c)(6). Moreover, unreasonable delay which is prejudicial to creditors is found at 11 U.S.C. § 1307(c)(1), which the trustee did not cite as a basis for relief.

The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

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 without prejudice.

3. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-11](#)

MOTION TO MODIFY PLAN
5-3-2023 [\[195\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FAILS TO INCLUDE ATTACHMENT

A nonstandard provision will be given no effect unless this section indicates one is included in section 7 *and it appears in section 7.*

Third Modified Chapter 13 Plan, Section 1.02, ECF No. 199 (emphasis added).

The proposed modified plan states:

[t]he terms of the Stipulation Resolving Debtor's Objection To Payment Change Notice Filed December 19, 2022 Regarding Amended Claim No 8-3 which was filed with the Court on April 7, 2023 at Docket # 191, *a copy of which is attached hereto*, is incorporated into this Plan.

Id., Additional Plan Provisions (emphasis added).

The Stipulation is not attached to the proposed plan as indicated. Thus, all interested parties have not been provided adequate notice of all the plan provisions. Reference to an ancillary item on the court's docket is not sufficient.

PLAN FAILS TO PROVIDE PROPERLY FOR SECURED CLAIM

The proposed modified Plan reclassifies Midfirst Bank's secured claim regarding 3013 Handel Way, Sacramento, California, from Class 1 to Class 4.

The trustee has disbursed ongoing mortgage payments and mortgage arrears, to Midfirst pursuant to a previously confirmed plan. Yet the proposed modified plan does not indicate that the payments previously paid by the Chapter 13 trustee are allowed in the amounts they were paid. While this provision may be contained in the stipulation, the debtor has failed to attach the stipulation to the plan as the court has previously discussed. Additionally, neither the court, the trustee, nor any other party, should have to sift through the stipulation to determine that this essential language is included in the modified plan.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

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

4. [22-22222](#)-A-13 **IN RE: RODERICK SINGLETON**
[KLG-2](#)

MOTION TO CONFIRM PLAN
5-5-2023 [\[67\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN 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 \$5,769.00 with the next scheduled payment of \$5,769.00 due May 25, 2023.

Unrealistic Expenses for Duration of Plan

The Debtor recently amended Schedule J reducing expenses, ECF No. 72. The trustee contends that the proposed budget appears to be unrealistic as expenses were reduced to the following amounts: 1) utilities - \$250.00; 2) water - \$70.00; 3) telephone - \$176.00; 4) food - \$570.00; 5) clothing - \$95.00; 6) personal care - \$80.00; 7) medical and dental - \$100.00; 8) transportation - \$200.00; 9) entertainment - \$100.00; and 10) vehicle insurance (increased) - \$60.00.

The debtor has not filed a reply refuting the trustee’s opposition. Moreover, Schedule J appears to be incomplete as it does not indicate the number of individuals residing in the debtor’s household, or provide their relationship to the debtor. *Id.* Schedule I, shows that at least one additional person resides in the debtor’s household. Schedule I, ECF No. 13. The declaration filed in support of the motion implies that multiple people reside in the household as the debtor refers to “we” in explaining how expenses were reduced. Declaration, ECF No. 70.

Because the court is unable to determine the debtor’s household size, it cannot determine whether the proposed expenses are realistic for the duration of the plan. Therefore, the debtor has failed to prove the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

5. [23-20924](#)-A-13 **IN RE: ANITA VERGARA**
[DPC-1](#)

AMENDED MOTION TO DISMISS CASE
5-17-2023 [\[30\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 30, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, Failure to Provide Tax Returns/Pay Advices, Failure to Confirm Plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$78.05 with a further payment of \$78.05 due May 25, 2023.

Failure to Provide Documents

The debtor has failed to provide pay advices to the trustee which contravenes 11 U.S.C. §521(a)(1)(B)(iv). Additionally, the debtor has failed to provide tax returns to the trustee which contravenes 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). Neither has the debtor provided the trustee the following additional documents before or at the meeting of creditors: photographic identification, §§ 707(b)(2)(A), (B), 1325(b)(3).

Failure to File Motion to Confirm Chapter 13 Plan

The debtor filed a plan on April 21, 2023. The petition was filed March 24, 2023. Because the plan was not filed within 14 days of the petition filing date the trustee did not serve the plan with the notice of the meeting of creditors. Thus, the debtor is required to file a motion to confirm the plan and she has not yet done so. LBR 3015-1(c)(3).

The court finds that each of the bases argued by the trustee constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). For each of these reasons the case will be dismissed.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

6. [21-23526](#)-A-13 **IN RE: JANET HAWK AND CALEB HENDRYX**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-8-2023 [\[46\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
CREDIT ACCEPTANCE CORPORATION VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2017 Dodge Grand Caravan

Confirmed Chapter 13 Plan: provides for obligation in Class 2

Plan Delinquency: \$1,488.00

Last Disbursement to Movant Under the Plan: December 30, 2022

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).

Credit Acceptance Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 13 trustee has filed a response which states: 1) the obligation owed to the movant, and secured by the subject vehicle, is provided for in Class 2 of the confirmed plan; 2) plan payments are delinquent in the amount of \$1,488.00; 3) the trustee received the last plan payment on December 8, 2022, in the amount of \$361.00; and 4) no payments have been sent to the movant since December 30, 2022. Response, ECF No. 54.

Given the plan delinquency the court is unclear why this matter arises as a motion for stay relief.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as the obligation is provided for in Class 2 of the confirmed plan. The debtor is in default pursuant to the terms of the plan and the trustee has been unable to tender payments to the movant since December 30, 2022.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

SERVICE

Rule 5 Service

Service of the motion on the debtors and their attorney is required in accordance with Rule 7004, as indicated in the certificate of service filed in this matter, ECF No. 53. However, service on the remaining parties is properly accomplished by first class mail under Fed. R. Civ. P. 5.

The Certificate of Service in this matter should indicate that service is made on the debtors pursuant to Fed. R. Bankr. P. 7004 but also indicate service on the other parties under Rule 5. Thus, Parts 6 and 7 are incorrectly completed as service under Rule 5 is not indicated. Here the certificate only indicates service under Fed. R. Bankr. P. 7004. See Certificate of Service, Section 6, 7, ECF No. 53.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2017 Dodge Grand Caravan, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

7. [23-20838](#)-A-13 **IN RE: PAUL ROCCO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-16-2023 [\[20\]](#)

STEPHAN BROWN/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

The Chapter 13 trustee objects to confirmation of the initial plan filed by the debtor on April 3, 2023. Chapter 13 Plan, ECF No. 10.

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.

On May 9, 2023, the debtor filed an amended plan. As such, the debtor is required to file and serve a motion to confirm the most recently filed plan, LBR 3015-1(d)(1).

The trustee's objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot. The court denies confirmation of the plan filed April 3, 2023.

8. [23-20838](#)-A-13 **IN RE: PAUL ROCCO**
[KAZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MCLP ASSET COMPANY,
INC.,
5-18-2023 [\[24\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

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

MCLP Asset Company, Inc., objects to confirmation of the debtor's plan. The debtor's initial plan was filed on April 3, 2023. Chapter 13 Plan, ECF No. 10.

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.

On May 9, 2023, the debtor filed an amended plan. As such, the debtor is required to file and serve a motion to confirm the most recently filed plan, LBR 3015-1(d)(1).

The creditor's objection to the initial plan will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot. The court denies confirmation of the plan filed April 3, 2023.

9. [22-22543](#)-A-13 **IN RE: JOHN SCHULTZ**
[MRL-1](#)

MOTION TO MODIFY PLAN
5-3-2023 [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

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

Order: Civil minute order

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

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

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

SCHEDULES I AND J

If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

LBR 3015-1(g)(3).

This court considers current budget schedules to be part of a debtor's prima facie case for confirmation or modification of a Chapter 13 Plan.

On May 3, 2023, the debtor(s) filed supplemental Schedules I and J in support of the motion to modify the plan, ECF No. 24. The motion and proposed plan were filed on the same date, ECF Nos. 21, 23.

Rule 1009

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. *The debtor shall give*

notice of the amendment to the trustee and to any entity affected thereby.

. . .

Fed. R. Bankr. P. 1009 (emphasis added).

Because the supplemental schedules were in support of the motion to modify the plan, they must be served with the motion to modify. The creditors which are served with the proposed plan and the motion would similarly be impacted by the amended budget schedules which provide proof of plan feasibility.

The Certificate of Service filed by the debtors indicates that supplemental schedules were served with the motion to modify the plan. See Certificate of Service, Section 4, ECF NO. 26.

Section 105(a)

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

The supplemental schedules were filed without the amendment cover sheet, form EDC 2-015. This court requires the use of EDC 2-015 when either supplemental or amended schedules are filed.

The form provides the following instructions:

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

EDC 2-015.

The use of form EDC 2-015 requires that it be attached to the amended or supplemental schedules ensuring: 1) that documents are properly filed and served in compliance with Rule 1009(a); and 2) that all amended or supplemental documents pertaining to a particular matter are accurately and easily located on the court's docket.

Henceforth, the court requires that all supplemental schedules, and other documents as indicated on form EDC 2-015 be filed attached to the properly executed Form EDC 2-015.

Because the failure to use form EDC 2-015 was the only objection raised by the trustee the court will continue this hearing to allow the debtor to properly file the supplemental schedules using form EDC 2-015.

If the schedules are properly filed, the court intends to rule on this matter without further notice or 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 motion is continued to July 10, 2023, at 11:00 a.m. No later than June 26, 2023, the debtor shall file supplemental schedules I and J using form EDC 2-015. The form shall be fully completed and signed by the debtor and debtor's counsel.

10. [23-20245](#)-A-13 **IN RE: CHERYL ADLER**
[GC-2](#)

MOTION TO AMEND AND/OR MOTION TO CONFIRM PLAN
5-28-2023 [\[40\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Tentative Ruling

Motion: Amend Order; Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(2); written opposition not required

Disposition: Granted

Order: Civil minute order

Subject: First Amended Chapter 13 Plan, ECF No. 17

The debtor's motion requests relief under Fed. R.Civ. P. 59(e), as incorporated by Fed. R. Bankr. P. 9023. On May 17, 2023, the court entered an order denying confirmation of the debtor's proposed Chapter 13 Plan. Order, ECF No. 38. The debtor filed the instant motion to amend on May 28, 2023. The motion is timely under Fed. R. Bankr. P. 9023.

Rule 59(e)

Federal Rule of Civil Procedure 59(e) permits motions to alter or amend a judgment. Fed. R. Civ. P. 59(e), *incorporated by* Fed. R. Bankr. P. 9023. "Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Id.* at 1255 n.1 (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2810.1 (2d. ed. 1995)).

"A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (emphasis omitted) (internal quotation marks omitted). A clear or manifest error of law or fact "is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). "A 'manifest error' is not demonstrated by the disappointment of the losing party." *Id.*

More recently, the Ninth Circuit has established "four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curiam)).

Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) held that such a "motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Stated differently, "[a] district court does not abuse its discretion when it disregards legal arguments made for the first time on a motion to amend, and a party that fails to introduce facts in a motion or opposition cannot introduce them later in a motion to amend by claiming that they constitute 'newly discovered evidence' unless they were previously unavailable." *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001) (citation omitted); accord *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) ("The overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not turn the late filed documents into 'newly discovered evidence.'").

DISCUSSION

At the prior hearing the Chapter 13 trustee opposed confirmation of the plan solely because the treatment of the IRS claim contravened 11 U.S.C. §§ 1322, 1325, and there was no evidence that the IRS accepted the proposed treatment of its claim. The debtor argued that the plan should be confirmed because the IRS had not opposed the motion to confirm the plan. The court held that a stipulation was required to show that the IRS had accepted the treatment of its claim in the proposed plan. No other opposition was presented to the confirmation of the plan by any other party.

The debtor had not obtained a stipulation at the time of the previous hearing and the court denied the motion to confirm the plan.

On May 23, 2023, the debtor filed a stipulation which is signed by counsel for the IRS, and for the debtor. The stipulation is consistent with to the proposed treatment of the IRS claim in the First Amended Chapter 13 Plan. Accordingly, there is no longer an impediment to confirmation of the plan.

Because the stipulation was not available at the previous hearing and because this was the sole basis for the trustee's opposition to the motion to confirm the plan the court will grant the motion, under Rule 59(e), absent objection by the Chapter 13 trustee.

CONFIRMATION

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

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).

As the court has granted the motion to amend under Rule 59(e) there is no basis to oppose the motion to confirm the plan. Accordingly, and absent further opposition by the Chapter 13 trustee at the hearing, the court will confirm the First Amended Chapter 13 Plan, ECF No. 17.

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 amend under Fed. R. Civ. P. 59(e) and motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion to amend under Fed. R. Civ. P. 59(e) is granted.

IT IS FURTHER ORDERED that the motion to confirm the First Amended Chapter 13 Plan, ECF No. 17, is granted. The debtor shall prepare an appropriate order confirming the plan to be approved and signed by the Chapter 13 trustee. The trustee shall lodge the order with the court.

11. [23-21645](#)-A-13 **IN RE: RICHARD/ANGELA PARRISH**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-29-2023 [\[11\]](#)

PETER MACALUSO/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 under 11 U.S.C. § 362(c)(3)(B).

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.*

DISCUSSION

The debtors' previously filed Chapter 13 case was dismissed because the debtors defaulted in making plan payments. The reasons the debtors were unable to make the payments were: 1) the needed to assist their daughter with critical care medical expenses; and 2) the debtors contracted COVID and missed employment for at least 20 days. Because of this the debtors were unable to make up the 2 missed plan payments. Declaration, 1:20-26, ECF No. 13.

The Chapter 13 Plan in the instant case proposes a plan payment which is \$300.00 less than the previous case as the debtors have proposed to surrender a vehicle. As the debtors are retired, they can manage their household without the surrendered vehicle. Additionally, the debtors' daughter now has medical insurance so the debtors will not have to pay for her medical expenses. *Id.*, 2:1-5.

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.

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. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

12. [23-20449](#)-A-13 **IN RE: ROSALINDA RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-22-2023 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

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

13. [23-21049](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-17-2023 [\[31\]](#)

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

Amended Plan Filed: May 23, 2023

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. Amended Plan, ECF No. 37. The objection will be overruled as moot.

As a courtesy to the court the debtors also filed a declaration indicating their intent to propose an amended plan, ECF No. 35.

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.

14. [23-21049](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CHASE MORTGAGE
HOLDINGS, INC.
5-11-2023 [\[25\]](#)

CATHERINE KING/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

Amended Plan Filed: May 23, 2023

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. Amended Plan, ECF No. 37. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

15. [18-23651](#)-A-13 **IN RE: THOMAS HURST**
[PGM-6](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
5-6-2023 [\[115\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

Number of Requests for Additional Compensation: Second

Additional Compensation Requested: \$4,462.50

Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$4,462.50.

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

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

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

In this case the applicant requests compensation during the period of May 6, 2021, through March 30, 2023, in connection with limited services. The services performed, and for which compensation is requested, are in connection with only the: 1) preparation of this motion for compensation; and 2) work performed in connection with the debtor's recovery of funds from the Fire Victim Claim to which the debtor was entitled. The funds were used, in part, to complete the Chapter 13 plan.

Though the trustee believes the compensation sought is reasonable he raises opposition to the motion because the time period encompassed by the attorney's work on the Fire Victim Claim overlaps the time period indicated in a previous motion for additional compensation (PGM-3).

The first application (PGM-3) for compensation did not include the services performed on behalf of the debtor for work on the Fire Victim Claim. That application requested compensation for modification of the Chapter 13 plan following a motion to dismiss filed by the trustee.

Conversely, this second and final application requests additional compensation only in connection with counsel's efforts in resolving the Fire Victim Claim. The court has reviewed both applications and finds there were no duplicated services.

The applicant successfully obtained this court's approval of the settlement with the Fire Victims Trust Fund and facilitated payment in full of the 100% Chapter 13 Plan. The debtor has filed a declaration in support of the requested compensation, ECF No. 118.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$4,462.50.

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.

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows the additional compensation on a final basis in the amount of \$4,462.50. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

16. [23-20651](#)-A-13 **IN RE: STEPHEN GLOVER**
[WW-1](#)

MOTION TO CONFIRM PLAN
5-2-2023 [\[24\]](#)

MARK WOLFF/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 trustee

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed May 2, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 26. The plan is supported by Schedules I and J filed, March 1, 2023, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, 33.

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.

17. [20-21152](#)-A-13 **IN RE: LINDA WOOLEY**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2023 [\[32\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,983.87, with another payment of \$2,118.08 due March 25, 2023.

The debtor filed a timely opposition which consisted of an unsworn statement by counsel. The opposition indicated that the debtor would pay \$3,000.00 and would file a modified plan. Opposition, ECF No. 36. A modified plan was filed and the hearing on this motion was continued to allow for hearing on the debtor's proposed modified plan.

The court denied the debtor's motion to modify the plan on May 17, 2023. Order, ECF No. 60.

On May 17, 2023, in connection with this motion the court ordered as follows:

IT IS ORDERED that the Trustee's Motion to Dismiss is continued to June 13, 2023, at 9:00 a.m. in Courtroom 28, Seventh Floor, 501 I Street, Sacramento, California.

IT IS FURTHER ORDERED that no later than May 30, 2023, the debtor may file further opposition to the motion.

IT IS FURTHER ORDERED that no later than June 6, 2023, the trustee shall file a status report.

IT IS FURTHER ORDERED that the evidentiary record shall close on June 6, 2023. The court may rule on this matter without further hearing.

Order, ECF No. 61.

Nothing further has been filed by the debtor or the trustee. Because the modified plan was to resolve the delinquency and because it was not approved, the court will grant the 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. 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.

18. [21-24252](#)-A-13 **IN RE: MARY MURPHY**
[DPC-1](#)

MOTION TO DISMISS CASE
5-4-2023 [\[24\]](#)

DAVID RITZINGER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The Chapter 13 trustee moves to dismiss the case under 11 U.S.C. § 1307(c). See Motion to Dismiss, 1:23, ECF No. 24. For the following reasons the court will deny the motion without prejudice.

MOTION FAILS TO SUFFICIENTLY CITE BASIS FOR RELIEF

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

. . .

Fed. R. Bankr. P. 9013.

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

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

Both the Federal Rules of Bankruptcy Procedure and the court's Local Rules of Practice require that the moving party cite the applicable statute which serves as a basis for the relief requested.

- (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--
- (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees and charges required under chapter 123 of title 28;
 - (3) failure to file a plan timely under section 1321 of this title;
 - (4) failure to commence making timely payments under section 1326 of this title;
 - (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
 - (6) material default by the debtor with respect to a term of a confirmed plan;
 - (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c).

Section 1307(c) lists *eleven* different subsections which may be a basis for the relief requested in the trustee's motion.

While the trustee has indicated in his motion that the debtor is in default pursuant to the terms of a confirmed plan, he has not cited the applicable subsection of 11 U.S.C. § 1307(c).

The trustee's motion is properly brought under 11 U.S.C. § 1307(c)(6), yet he has failed to provide this citation as required by Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A).

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:

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

IT IS ORDERED that the motion is denied without prejudice.

19. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-17-2023 [\[32\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

20. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[JLS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE LOAN
TRUST 2020-A
5-18-2023 [\[36\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
JOSHUA SCHEER/ATTY. FOR MV.

Final Ruling

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

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

plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

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

21. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[JLS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2023 [\[41\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
JOSHUA SCHEER/ATTY. FOR MV.
AJAX MORTGAGE LOAN TRUST 2020-A, MORTGAGE-BACKED SECURITIES,
SERIES 2020-A VS.

No Ruling

22. [22-22758](#)-A-13 **IN RE: LEONARDO PADILLA ORTIZ**
[GC-3](#)

MOTION TO CONFIRM PLAN
4-21-2023 [\[50\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed April 20, 2023

DEFAULT OF RESPONDENT

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

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

The debtor seeks confirmation of his Second Amended Chapter 13 Plan, ECF No. 49. The plan is supported by Schedules I and J filed October 26, 2022, exactly six months prior to the filing of the instant motion, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 57.

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.

23. [23-21162](#)-A-13 **IN RE: RHINA SALINAS-RODEZNO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-16-2023 [\[23\]](#)

DEBTOR DISMISSED: 5/31/23

Final Ruling

This case was dismissed on May 31, 2023. Accordingly, this Order to Show Cause is removed from the calendar as moot. No appearances are required.

24. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KB-6](#)

MOTION TO VALUE COLLATERAL OF FIFTH THIRD BANK N.A.
5-16-2023 [\[235\]](#)

KIM BEATON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral

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

Disposition: Denied without prejudice

Order: Civil minute order

Petition Filed: May 31, 2022

The debtors seek an order valuing the collateral of Fifth Third Bank. The motion will be denied without prejudice for the following reasons.

SERVICE

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Service of the motion was insufficient.

No certificate of service was filed in this matter as required by LBR 9014-1(e). Accordingly, the court will deny the motion.

MOTION MUST BE SUPPORTED BY CREDIBLE EVIDENCE

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

The motion to value collateral is unsupported by any evidence. There is no declaration filed in support of the motion as required by LBR 9014-1. The court has previously denied another motion filed by counsel for this same deficiency. See Civil Minutes, ECF Nos. 103, 178.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both

letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in previous motions filed by the debtors: 1) a previous objection to claim, filed January 15, 2023, ECF No. 186; and 2) a motion to confirm plan filed on May 16, 2023, ECF No. 232.

The court has previously denied other motions filed by counsel, in part for failure to properly designate a docket control number to her motion. See ECF Nos. 128, 129, 130, 178.

DISMISSAL OF ACTION FOR FAILURE TO COMPLY WITH LOCAL RULES

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

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

CIVIL MINUTE ORDER

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

The debtors' Motion to Value Collateral has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

25. [23-20865](#)-A-13 **IN RE: CHARLES LEONARD**

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
4-20-2023 [\[29\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Wilmington Savings Fund Society, F.S.B, objects to confirmation of the debtor's plan.

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 debtor has proposed a 60-month plan with monthly payments of \$4,433.00. Chapter 13 Plan, Sections 2.01, 2.03, ECF No. 15. The proposed Chapter 13 plan calls for payment of arrears in the amount of \$ 83,935.69, *id.*, Section 3.07. Debtor's Schedules I and J show net income of \$4,433.00, ECF No. 16.

However, the arrears owed as of the date the petition was filed total \$112,097.98, Claim No. 1. The difference is \$28,162.29 which would require an increased payment of \$469.37 excluding interest and trustee compensation. The schedules show that the debtor does not have the ability to increase the plan payment.

The court will sustain the objection.

VIOLATION OF LBR 9014-1(c)

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

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

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

Counsel is reminded that future failure to comply with LBR 9014-1(c)(1) may result in the denial of relief and/or sanctions.

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.

Wilmington Savings Fund Society, F.S.B.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

26. [23-20865](#)-A-13 **IN RE: CHARLES LEONARD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-17-2023 [\[38\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained in part; overruled in part; and confirmation denied

Order: Civil minute order

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

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

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 \$4,433.00. 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 tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

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

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

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce Citibank, N.A.'s Class 2 secured claim based on the value of the collateral securing such claim. The court has granted the debtor's motion to value the collateral of Citibank, N.A. (RPH-2). Therefore, this portion of the trustee's objection will be overruled.

The court will sustain the trustee's remaining objections.

CIVIL MINUTE ORDER

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

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

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

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

27. [23-20865](#)-A-13 **IN RE: CHARLES LEONARD**
[RPH-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF CITIBANK N.A.
4-4-2023 [\[18\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral Real Property

Notice: Continued from May 16, 2023

Disposition: Granted

Order: Civil minute order

Subject: 741 Tahoe Island Dr., South Lake Tahoe, California

Value: \$640,000.00

Consensual Lien: First Deed of Trust Wilmington Savings Fund
Society, F.S.B - \$684,901.66

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

The debtor seeks an order valuing the collateral of Citibank, N.A. at \$640,000.00 under 11 U.S.C. §§ 506(a), 1322(b)(2). The hearing on this motion was continued to coincide with the objections to confirmation filed by the trustee and Wilmington Savings Fund Society, F.S.B.

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible

evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral. The collateral is the debtor's principal residence located at 741 Tahoe Island Dr., South Lake Tahoe, California.

The court values the collateral at \$640,000.00. The debt secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 741 Tahoe Island Dr., South Lake Tahoe, California has a value of \$640,000.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

28. [22-22775](#)-A-13 **IN RE: ORRIN MARKELL**
[TBG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
3-28-2023 [\[42\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from May 2, 2023

Disposition: Granted

Order: Civil minute order

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

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

The hearing on the debtor's motion to confirm the Chapter 13 Plan was continued to allow the trustee to review additional schedules filed by the debtor and to file a status report regarding his opposition to the motion.

On May 26, 2023, the trustee filed a status report. Status Report, ECF No. 96. In his report the trustee indicates that he has reviewed the filed schedules and no longer opposes the motion. Accordingly, the court will grant the motion.

AMENDED SCHEDULES

The debtor has filed amended schedules at ECF Nos. 66, 67. However, the Amendment Cover Sheet was separately filed from the schedules to which it refers. The amendment cover sheet states: "[a]mendment(s) to the following petition, list(s), schedule(s), or statement(s) are attached hereto:". ECF No. 68 (emphasis added).

In this case there is nothing attached to the cover sheet. This results in significant inconvenience to the court. Moreover, it may also result in the court not being able to locate all of the amended documents to the detriment of the debtor.

Henceforth, documents which are not appropriately attached to the cover sheet will not be considered by the court in its rulings.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor shall prepare an appropriate order confirming the plan for the Chapter 13 trustee's approval.

29. [19-23082](#)-A-13 **IN RE: DUANE ZAMBOANGA**
[AT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-30-2023 [\[38\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
JORDAN O'BRIEN/ATTY. FOR MV.
SUNRIDGE TOWNHOMES OWNERS ASSOCIATION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Sunridge Townhomes Owners Association seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented

using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

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

The movant failed to use the required form in memorializing service in this matter. See Certificate of Service, ECF No. 42.

VIOLATION OF LBR 9014-1(c)

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

The docket control number used in this motion was used in a previous motion by the movant - a motion for stay relief filed on May 2, 2023, ECF No. 31.

DISMISSAL OF ACTION FOR FAILURE TO COMPLY WITH LOCAL RULES

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

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

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

Sunridge Townhomes Owners Association's Motion for Stay Relief has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

30. [23-20287](#)-A-13 **IN RE: GREGORY JACKSON**
[PVR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-23-2023 [\[61\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
PAUL REZA/ATTY. FOR MV.
SCHOOLSFIRST FEDERAL CREDIT UNION VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil Minute Order

Subject: 1857 Springvale Road, Placerville, California

Delinquency: Prepetition - \$16,484.22; Post-Petition - \$2,567.20

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

Movant, Schools First Federal Credit Union, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). While providing for the movant's claim in Class 1, the Chapter 13 Plan in this case has not been confirmed, and the movant contends that post-petition payments are delinquent in the amount of \$2,567.20. Declaration of Dioselin Hernandez, ECF No. 65.

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as – both prepetition and postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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.

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

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

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

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

31. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-10-2023 [[26](#)]

STEPHAN BROWN/ATTY. FOR DBT.

No Ruling

32. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[TBG-1](#)

MOTION TO MODIFY PLAN
4-25-2023 [\[34\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

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 \$1,425.00. The plan cannot be confirmed if the plan payments are not current.

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on March 2, 2022, at the inception of the case nearly 14 months ago, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

Moreover, the court considers the filing of current budget schedules to be part of the debtor’s prima facie case for confirmation of a plan. Thus, the schedules should be filed at the outset of the motion and not in response to the trustee’s opposition to the motion.

DEBTOR REPLY

On June 6, 2023, the debtor filed a reply, ECF No. 43. The reply indicates that the debtor intends to file a further amended plan. *Id.*, 2:1-3.

Given the debtor’s intention to file a further amended plan, and the filing deficiency the court need not reach the remaining issues raised in the trustee’s opposition. The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

33. [22-21396](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-3](#)

MOTION TO MODIFY PLAN
5-3-2023 [\[61\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil Minute Order

Subject: Second Modified Chapter 13 Plan, filed May 3, 2023

DEFAULT OF RESPONDENT

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

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).

TRUSTEE OPPOSITION

The trustee opposes the motion contending that: 1) plan payments are delinquent in the amount of \$10.00; and 2) the proposed plan contains conflicting provisions regarding the plan term.

The court will allow the debtors to correct the plan term in the order. The order shall state that the plan term is 60 months.

However, the court will not grant the motion to modify unless the plan payments are current, even if the delinquency is a modest \$10.00. The trustee shall be prepared to advise the court at the hearing if the plan payments are current.

DEBTOR REPLY

On June 7, 2023, the debtors filed a reply to the trustee's opposition. Reply, ECF No. 70.

The debtors propose to cure the delinquency as follows:

"Payments are to be paid \$19,794.70 paid thru February 2023, then \$3,460.00 for 52 months, thru March 2023, for a total of 60 months."

The trustee shall be prepared to advise the court if the debtor's proposed language resolves his opposition to the motion. If not, the court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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