

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

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

DAY: WEDNESDAY
DATE: JUNE 22, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [22-20800](#)-A-13 **IN RE: PAMELA PARRISH**
[PSB-1](#)

MOTION TO CONFIRM PLAN
4-28-2022 [\[21\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion as moot.

The debtor filed a modified plan on June 9, 2022, ECF No. 47.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to confirm is denied as moot.

2. [22-20800](#)-A-13 **IN RE: PAMELA PARRISH**
[PSB-2](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
6-7-2022 [\[28\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 6468 Linn Way, Rio Linda, California

Judicial Lien Avoided: Cavalry SPV I, LLC, \$14,678.12

All Other Liens:

- Deed of Trust, Pace Funding Group, LLC \$18,360.24
- Deed of Trust, Select Portfolio Servicing, \$217,073.80
- Deed of Trust, Specialized Loan Servicing, \$24,376.02

Exemption: \$500,000.00

Value of Property: \$352,594.00

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 an order avoiding the judicial lien of Cavalry SPV I, LLC under 11 U.S.C. § 522(f)

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). “[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens.” *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Discover Bank, and (ii) Cavalry SPV I, LLC. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$500,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent’s lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$759,811.06. The value of the property is \$352,594.00. The respondent’s judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property’s value by an amount greater than or equal to the judicial lien. As a result, the respondent’s judicial lien will be avoided entirely.

3. [22-20800](#)-A-13 **IN RE: PAMELA PARRISH** [PSB-3](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
6-7-2022 [\[33\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 6468 Linn Way, Rio Linda, California

Judicial Lien Avoided: Cavalry SPV I, LLC, \$14,678.12

All Other Liens:

- Deed of Trust, Pace Funding Group, LLC \$18,360.24
- Deed of Trust, Select Portfolio Servicing, \$217,073.80
- Deed of Trust, Specialized Loan Servicing, \$24,376.02
- Judicial Lien, Cavalry SPV I, LLC, \$14,678.12

Exemption: \$500,000.00

Value of Property: \$352,594.00

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 an order avoiding the judicial lien of Discover Bank under 11 U.S.C. § 522(f)

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Discover Bank, and (ii) Cavalry SPV I, LLC. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$500,000.00 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$774,489.18. The value of the property is \$352,594.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

4. [20-23104](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-4](#)

MOTION TO MODIFY PLAN
5-11-2022 [\[136\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DEBTORS DISMISSED: 5/20/2022

Final Ruling

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

5. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[PGM-1](#)

CONTINUED OBJECTION TO CLAIM OF MEB LOAN TRUST IV, U.S.
BANK, N.A., CLAIM NUMBER 2
2-8-2022 [\[36\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This matter has been resolved by a stipulation of the parties, ECF No. 81. The court signed an order approving the stipulation on June 1, 2022, ECF No. 83. The matter will be removed from the calendar as moot. No appearances are required.

6. [22-20415](#)-A-13 **IN RE: STEVEN BUSER**
[DPC-2](#)

MOTION TO DISMISS CASE
5-25-2022 [\[40\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

7. [19-24016](#)-A-13 **IN RE: SHARON PETERSEN**
[DPC-1](#)

MOTION TO DISMISS CASE
5-17-2022 [\[60\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: June 8, 2022

Opposition Filed: June 8, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,113.00, with another payment of \$478.00 due May 25, 2022.

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

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

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

The debtor has filed a timely opposition, ECF No. 64. The opposition consists of an unsworn statement by debtor's counsel which states as follows.

Debtor intends to either make payments to come current on her Chapter 13 Plan payments or file a Motion to Modify Chapter 13 Plan to cure the Chapter 13 Plan arrears by or before the above-captioned hearing date.

Id., 1:24-28.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating when the debtor will make the payments, or why the delinquency occurred. Neither is there evidence that the debtor will make additional plan payments.

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

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

UNTIMELY OPPOSITION - MOTION TO MODIFY

On June 8, 2022, the debtor(s) filed an opposition to the motion to dismiss, ECF No. 64. The opposition consists of an unsworn statement by the debtor(s)' attorney indicating the possibility of a modified plan by the date of the hearing on the trustee's motion to dismiss.

If a modified plan is offered as opposition to a motion to dismiss it must be filed 14 days prior to the hearing on the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

No modified plan has been proposed by the opposition date of June 8, 2022. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss. Since this opposition is also late, the court gives it no weight.

The court is aware that the motion to dismiss was filed May 17, 2022, giving the debtor only 29 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a

showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

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.

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

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

SCOTT SHUMAKER/ATTY. FOR DBT.
STEELE LANPHIER/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

9. [22-20919](#)-A-13 **IN RE: ALEC/AMANDA BONIFACIO**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-19-2022 [\[12\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY LLC VS.; WITHDRAWN BY M.P.

Final Ruling

The motion was withdrawn by the moving party on June 8, 2022, ECF No. 27. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

10. [20-21920](#)-A-13 **IN RE: LAMONT LEWIS AND DEEPANJALI SHANKAR**
LEWIS
[CYB-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BROOKS,
CARPENTER FOR CANDACE Y. BROOKS, DEBTORS' ATTORNEY(S)
5-25-2022 [\[58\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Tentative 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: First

Additional Compensation Requested: \$2,177.50

Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Candace Brooks, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$2,177.50. The debtors have filed a declaration in support of the request for additional compensation, ECF No. 61.

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 successfully drafted a motion and obtained an order on the motion to incur debt, allowing the debtors to refinance their real property; corresponded with the debtors, lender and title company; and drafted this motion for compensation

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 \$2,177.50.

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.

Candace Brooks' 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 in the amount of \$2,177.50. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

11. [22-20721](#)-A-13 **IN RE: KEITH/LAURA FARLEY**
[CK-1](#)

MOTION TO CONFIRM PLAN
5-11-2022 [\[16\]](#)

CATHERINE KING/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: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed May 11, 2022

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 initially filed opposition to the motion, objecting to confirmation. The debtors filed a reply to the opposition to include properly executed and filed Schedules I and J, ECF No. 28, and a Declaration of Debtor Laura Farley, ECF No. 29. In response the chapter 13 trustee filed a Status Report, ECF No. 38. In his report the trustee indicates that with the additional information provided in the declaration and the supplemental schedules he no longer opposes confirmation of the debtors' plan.

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.

12. [17-20925](#)-A-13 **IN RE: DANIEL FERRO**
[JSO-2](#)

MOTION TO MODIFY PLAN
5-12-2022 [\[45\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed May 12, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks approval of a modified chapter 13 plan. Amended Schedules were not filed in this case as the plan payments are completed. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 51.

CHAPTER 13 PLAN MODIFICATION

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

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

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

13. [22-20025](#)-A-13 **IN RE: JUAN SALAZAR**
[TLA-2](#)

MOTION TO CONFIRM PLAN
5-6-2022 [\[53\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, dated May 6, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of his chapter 13 plan. The plan is supported by properly executed and filed Supplemental Schedules I and J on May 6, 2022, ECF No. 59. The chapter 13 trustee has filed a non-opposition to confirmation of the proposed plan, ECF No. 60.

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.

14. [22-20426](#)-A-13 **IN RE: JOHN NYSTROM**
[DPC-1](#)

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

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

15. [22-20426](#)-A-13 **IN RE: JOHN NYSTROM**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-13-2022 [[26](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

16. [22-20426](#)-A-13 **IN RE: JOHN NYSTROM**
[GEL-1](#)

MOTION FOR AUTHORITY TO WITHDRAW SPOUSAL WAIVER OF RIGHT TO
CLAIM EXEMPTIONS
6-8-2022 [[36](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

No Ruling

17. [22-20846](#)-A-13 **IN RE: DANA HERNANDEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-26-2022 [\[29\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

SOCIAL SECURITY DOCUMENTATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

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

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

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

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

The debtor failed to provide proof of her social security number at the 341 meeting as required. The court will sustain the objection.

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 \$1,680.00. 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).

Schedules Do Not Support Feasibility

The plan is not feasible. See 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor has monthly net income of approximately \$680.00, but the plan requires a monthly payment of \$1,680.00. Thus, the debtor's monthly net income is less than the proposed monthly plan payment.

The court will sustain the feasibility objections.

MATHEMATICAL FEASIBILITY

The trustee contends that the plan is underfunded. The plan requires funding in the amount of \$107,053.18 including trustee compensation at the current rate. However, the specific payments called for by the plan, are insufficient for the plan to complete within the 36-month plan term. While additional payments are proposed from third parties, no specific or estimated amount is indicated in the plan, and no declaration has been filed by any third party in support of the plan. As such the plan is not mathematically feasible.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

The court will sustain the objection.

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The debtor testified at the 341 meeting that she was required to file tax returns for the four-year period prior to the filing of the case yet has not done so. If the debtor has not filed the tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

The court will sustain the objection.

As the court has sustained the previous objections it need not address the remaining matters raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

18. [22-20948](#)-A-13 **IN RE: SAMER AYOUB**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-26-2022 [\[15\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$4,525.00. The plan cannot be confirmed if the plan payments are not current.

Proposed Plan Payment Increases

The proposed plan calls for payments of \$4,525.00 per month for 12 months followed by \$5,055.00 per month for 48 months, ECF No. 3. Schedules I and J show that the debtor has the ability to pay \$4,525.00, ECF No. 1.

The debtor has not supported the plan by providing evidence of his ability to pay the increased plan payment after 12 months have passed. Without credible evidence regarding the debtor's ability to pay the increased payment the proposed plan is speculative and is not feasible under 11 U.S.C. § 1325(a)(6).

The court sustains the feasibility objections.

LIQUIDATION

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

Tax Refunds

The trustee contends that the plan does not pass the liquidation test as the testimony given by the debtor at the 341 meeting differs from the information provided in the Statement of Financial Affairs regarding tax refunds received by the debtor. The debtor testified that he received \$7,049.00 in tax refunds prior to the filing of the case and spent the funds. Conversely, the tax refunds are not indicated in the Statement of Financial Affairs, ECF No. 1.

Litigation Proceeds

The debtor is prosecuting two lawsuits as evidenced in the Statement of Financial Affairs. See Statement of Financial Affairs ECF No. 1, Part 4, No. 9. At least one of the proceedings has settled with payment in favor of the debtor. The proceeds from the settled litigation or other litigation interests are not listed in Schedule A/B as required. The trustee has requested information from the debtor regarding the litigation and settlement proceeds but has not received the information. The court notes that on May 20, 2022, the debtor filed Amended Schedule A/B but did not list any interest in litigation at items 33 and 34, ECF No. 13. Without additional information regarding the litigation matters the trustee cannot accurately perform the liquidation calculation to determine if the plan satisfies 11 U.S.C. § 1325(b)(4).

Loan Proceeds

Shortly before the filing of the case the debtor incurred a debt through PenFed Credit Union. The obligation appears to be a secured claim, although no claim has been filed. The trustee questions whether the debtor received any cash proceeds when incurring the obligation through PenFed Credit Union as the transaction appears to be a refinance of an earlier obligation with the same creditor. Without additional information regarding the loan transaction the trustee is unable to determine if the cash proceeds, if any, have been properly listed in the debtor's schedules. If they have not been listed, then the trustee cannot accurately perform the liquidation calculation to determine if the plan satisfies 11 U.S.C. § 1325(b)(4).

The court will sustain the trustee's liquidation objections.

CIVIL MINUTE ORDER

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

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

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

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

19. [22-20948](#)-A-13 **IN RE: SAMER AYOUB**
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
5-26-2022 [[19](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Objection: Discharge of Debtor

Disposition: Overruled without prejudice

Order: Civil minute order

The trustee did not provide a sufficient period of notice of the hearing on this objection to discharge. The motion was brought pursuant to LBR 9014-1(f)(1) which requires 28 days' notice of the objection. The certificate of service, ECF No. 22, states that the motion was served on May 26, 2022, providing only 27 days' notice of the hearing on the objection. The court will overrule the objection to discharge 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 Objection to Discharge has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection overruled without prejudice.

20. [22-20961](#)-A-13 **IN RE: DAVID WILLIAMS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
5-25-2022 [\[17\]](#)

COLBY LAVELLE/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The debtor testified at the 341 meeting that he has not filed a tax return for the 2020 tax year. If the debtor has not filed a 2020 tax return, and was required to do so, then the plan may not be

confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

The court will sustain the objection.

FAILURE TO PROVIDE FINANCIAL DOCUMENTS

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

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

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

The court will sustain the objection.

IMPROPER CLASSIFICATION OF SECURED CREDITOR

The proposed plan calls for treatment of the claim of Mazda Financial Services in Class 1. The debtor testified at the 341 meeting that the obligation is secured by his vehicle and that only 2.5 years remain in payments on the claim. The claim is properly scheduled in Class 2 of the plan. Class 2 claims are defined as follows: "Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." See Chapter 13 Plan, EDC-3-080, Section 3.08.

The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

21. [21-22570](#)-A-13 **IN RE: NENITA ANTONIO**
[DPC-3](#)

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

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to July 19, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: June 8, 2022

Opposition Filed: June 2, 2022 - timely

Motion to Modify Plan Filed: June 2, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as there is no plan pending after the court denied confirmation of the previous plan on March 15, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 19, 2022, at 9:00 a.m.

The court will continue the hearing on this motion to coincide with the hearing on the motion to confirm the amended plan.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to July 19, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

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

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-25-2022 [\[53\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

23. [22-20670](#)-A-13 **IN RE: ELENA GONZALEZ**
[PGM-2](#)

MOTION TO CONFIRM PLAN
5-12-2022 [\[38\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

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. The motion is also opposed by secured creditor, U.S. Bank, N.A.

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 f \$1,400.00. The plan cannot be confirmed if the plan payments are not current.

Mathematical Feasibility

The trustee contends that the plan is underfunded. The plan proposes payments totaling \$84,000.00. To be mathematically feasible, the plan must pay: \$51,271.20 for ongoing mortgage payments; \$55,170.97 for mortgage arrears; \$5,900.00 in attorney fees; and trustee compensation currently at 3.9% of the plan payment. The trustee calculates that at least \$1,948.36 per month, (for \$116,901.33 total), is required to fully fund the plan. As such the plan is not mathematically feasible.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

U.S. Bank, N.A. Claim

On May 27, 2022, U.S. Bank, N.A. filed Claim No. 3 in this case. U.S. Bank's claim is provided for in the proposed plan in Class 1 as it is secured by the debtor's residence located at 56 Obermeyer Avenue, Gridley, California. The plan calls for the debtor to file an adversary proceeding or objection to the claim of U. S. Bank within 15 days of the filing of the claim, as the debtor disputes the amount owed on the claim. The plan calls for suspended payments on the mortgage arrears owed to U.S. Bank pending the outcome of the litigation. See First Amended Chapter 13 Plan, ECF No. 40, Section 7, Non-Standard Provisions.

The debtor has failed to file either an adversary proceeding, or an objection to the claim of U.S. Bank by the date indicated in the plan. Therefore, as the trustee correctly contends, the plan is currently in default. The plan is not feasible as proposed absent the filing of the anticipated litigation.

U.S. Bank has also opposed confirmation of the proposed plan contending that the plan does not properly provide for payments on its claim for mortgage arrears, violating 11 U.S.C. § 1322(b)(2),

and (5). The bank's loan was cross collateralized with the debtor's property at 56 Obermeyer Avenue and another property located at 722 Walnut Street, Yuba City, California. Prior to the filing of this case the property on Walnut Street was foreclosed.

The debtor's reason for proposed delay in payments on the mortgage arrears is her contention that U.S. Bank's claim is inflated as it failed to credit payments the creditor ostensibly received from the foreclosure of the Walnut Street property.

In its opposition U.S. Bank has made a prima facie showing that the debtor's treatment of its claim in the proposed plan is incorrect. U.S. Bank, as to this note and as a junior lienholder, was not the foreclosing party on the Walnut Street property, nor did it receive any funds from the foreclosure. The property was foreclosed by a senior lienholder. See Exhibits 1-4, ECF No. 64.

Thus, absent some other basis for objection, U.S. Bank's claim is presumed valid. There is no basis for the proposed delay in the plan regarding mortgage arrears as there appears to be no legal basis to object to the claim. Notably the debtor has filed no such objection. To fail to provide any payment to cure mortgage arrears contravenes 11 U.S.C. § 1322(b)(2) and (5).

The court will deny the motion to confirm.

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.

24. [21-21372](#)-A-13 **IN RE: BRENDA SMITHEY**
[MET-1](#)

MOTION TO MODIFY PLAN
5-4-2022 [\[20\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to July 19, 2022, at 9:00 a.m.

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Schedules I and J

The debtor has not supported the plan by filing recently and properly amended Schedules I and J. 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).

IMPROPERLY FILED SCHEDULES I AND J

The chapter 13 trustee has filed a non-opposition to the motion stating as follows.

The Debtor has a signed recent Schedule I & J effective May 3, 2022, (DN 25,26,27.)

Non-Opposition, 1:28, 2:1, ECF No. 29.

This statement is incorrect, there are no signatures on the schedules nor were the schedules, when filed, affixed to a signed Amendment Cover Sheet, EDC 002-015.

SUPPORTING EVIDENCE

On May 4, 2022, the debtor(s) filed Supplemental Schedules I and J in support of the motion and plan, ECF Nos. 25 and 26.

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

LBR 9004-1(c)

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

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

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court and may not be considered.

Amendment Cover Sheet

On May 4, 2022, the debtors also signed and filed a separate Amendment Cover Sheet, ECF No. 27. No schedules were *attached* to the amendment cover sheet.

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

Thus, the separate filing of the Amendment Cover Sheet from the amended documents is not sufficient. First, filing the documents separately does not serve the effective use of the court's electronic docket. Reference to the documents as a whole is difficult and easily leads to errors in reviewing documents by the court and other parties to the current, as well as subsequent, litigation. Second, interested parties served with the documents piecemeal will not be able to easily determine to which Schedules I and J the latterly served separate cover sheet refers.

The court will continue the hearing on this motion to allow the debtors to correct the evidentiary record by properly filing and serving verified Amended or Supplemental Schedules I and J.

Henceforth, it is the court's intention to deny without further hearing all motions which are not properly supported by evidence.

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 continued to July 19, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than July 5, 2022, the debtors shall properly file Schedules I and J in support of the motion. Should the debtors fail to properly and timely file the schedules the motion will be denied without further notice or hearing.

25. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-3](#)

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

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

26. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-5](#)

CONTINUED MOTION TO SELL
4-25-2022 [[152](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

27. [20-20691](#)-A-13 **IN RE: DON MICHAEL LUMAQUIN**
[PSB-2](#)

MOTION TO INCUR DEBT
5-18-2022 [[42](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

28. [20-22192](#)-A-13 **IN RE: ERIN STUHR**
[DPC-1](#)

MOTION TO DISMISS CASE
5-17-2022 [\[47\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: June 8, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$990.00 with a further payment of \$495.00 due May 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

29. [17-20993](#)-A-13 **IN RE: EVAN/CELESTE NEISER**
[MRL-5](#)

MOTION FOR COMPENSATION FOR MIKALAH R. LIVIAKIS, DEBTORS'
ATTORNEY(S)
5-27-2022 [[92](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

30. [18-27595](#)-A-13 **IN RE: MARLINE PARIZAL**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-31-2022 [[20](#)]

MATTHEW GILBERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from May 3, 2022

Disposition: Denied

Order: Civil minute order

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

At the prior hearing on this motion the trustee consented to the court denying the dismissal motion without further notice or hearing if the motion to modify was granted. See Civil Minutes, ECF No. 35.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

31. [18-27595](#)-A-13 **IN RE: MARLINE PARIZAL**
[MG-1](#)

MOTION TO MODIFY PLAN
5-2-2022 [\[27\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed May 2, 2022

DEFAULT OF RESPONDENT

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

The debtor seeks an order approving her proposed modified plan. The debtor has executed and properly filed Supplemental Schedules I and J on May 2, 2022, in support of her plan, ECF No. 26. The chapter 13 trustee has filed a non-opposition to the proposed modification, ECF No. 37.

CHAPTER 13 PLAN MODIFICATION

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

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

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

32. [22-20496](#)-A-13 **IN RE: LAMBERT DAVIS**
ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-6-2022 [[41](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

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

33. [22-21396](#)-A-13 **IN RE: JOSE/MARGARITA VALADEZ**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-7-2022 [\[13\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

The debtors seek an order extending the automatic stay of 11 U.S.C § 362(a). The debtors' previous case was dismissed for plan delinquency under a confirmed plan. The plan payment in the prior case was \$4,430.75 and the plan delinquency was \$13,013.18. See Trustee's Motion to Dismiss, ECF No. 129, Case No. 2020-23104, Cal. E.D. Bankr. (2020).

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). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

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

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

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

The debtors have offered the following evidence in support of the proposed plan in this case. Debtor Jose Valadez is a self-employed truck driver. At the end of Form 122C-2, ECF No. 1, the debtors list their income by month for the 6-month period prior to the filing of the case. The average monthly income for the 6-month period prior to the filing of the case is only \$19,892.00. The debtors have also offered as evidence an attachment to Schedules I and J indicating their projected business income and expenses, ECF No. 12. The average monthly income projected in this document is \$40,000.00 per month. This is significantly less than the average in Form 122C-2.

The debtors contend that their income has recently increased due to changed business relationships. Assuming this is true, and absent any other specific evidence of actual income, the court assumes the income in Form 122C-2 for the 3-month period prior to filing the case is representative of the debtors' income. The average monthly income for the 3-month period is only \$38,069.00 per month. This is nearly \$2,000.00 per month less than what is projected in the Attachment to Schedules I and J. The debtors have not proven that their income will be sufficient to fund the plan.

Additionally, the debtors have offered Schedules I and J in support of the motion, ECF No. 1. Schedule J lists the projected amount of \$600.00 per month for self-employment taxes. Schedule I projects \$9,000.00 per month in self-employment income after deduction of business expenses. The debtor has failed to prove that the amount of \$600.00 (which is proposed at only 6.6%) is sufficient to pay the required self-employment taxes, and thus the proposed plan is not feasible.

The supporting declaration, schedules and statements filed by the debtor do not support the feasibility of the proposed plan in this case. Therefore, the facts do not constitute a sufficient and substantial change in personal or financial affairs. The motion will be denied.

CIVIL MINUTE ORDER

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

The debtor's Motion to Extend the Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

34. [22-20597](#)-A-13 **IN RE: PATRICIA BOLOGNA**
[SLG-1](#)

OBJECTION TO CLAIM OF 2ND CHANCE MORTGAGES, INC., CLAIM
NUMBER 1
5-3-2022 [\[20\]](#)

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

Final Ruling

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

35. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[DPC-3](#)

MOTION TO DISMISS CASE
5-25-2022 [\[61\]](#)

CHINONYE UGORJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the moving party

Order: Civil minute order

Opposition Due: June 8, 2022

Opposition Filed: June 7, 2022 - timely

Motion to Modify Plan Filed: June 7, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$7,197.84.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On June 15, 2022, the trustee filed a Status Report which included a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 72. The court construes this as a request to withdraw the motion.

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

appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.