

**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: TUESDAY
DATE: JULY 19, 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. [21-20100](#)-A-13 **IN RE: JORGE VASQUEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2022 [\[68\]](#)

NIMA VOKSHORI/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: July 5, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$11,035.61 with a further payment of \$3,736.55 due June 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.

2. [21-20806](#)-A-13 **IN RE: JEFFREY/NIKEA HARRISON**
[DPC-3](#)

MOTION TO DISMISS CASE
6-21-2022 [\[80\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 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 \$8,494.00 with a further payment of \$3,917.00 due June 25, 2022.

As a courtesy to the court the debtor filed a non-opposition to the motion on June 30, 2022, ECF No. 84.

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.

3. [22-20107](#)-A-13 **IN RE: TEDDIE/SHARION BROWN**
[MRL-2](#)

MOTION TO CONFIRM PLAN
5-25-2022 [\[45\]](#)

MIKALAH LIVIAKIS/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: Chapter 13 Plan, filed May 25, 2022

DEFAULT OF RESPONDENT

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

The debtors seek confirmation of their chapter 13 plan. The plan is supported by Schedules I and J, properly filed May 25, 2022, ECF No. 49. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 51.

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 debtors have sustained that burden, and the court will approve confirmation of the plan.

4. [22-21207](#)-A-13 **IN RE: MANJIT SINGH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK,
CHAPTER 13 TRUSTEE
6-23-2022 [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

5. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[DPC-3](#)

MOTION TO DISMISS CASE
6-21-2022 [\[102\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

Final Ruling

This case was dismissed on July 8, 2022, ECF No. 108. The motion to dismiss will be removed from the calendar as moot. No appearances are required.

6. [19-22810](#)-A-13 **IN RE: DENNIS/RANDI-MARIE MITCHELSON**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2022 [\[113\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1)

Disposition: Continued to August 30, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 5, 2022 - timely

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

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

contends that the payments are delinquent in the amount of \$5,585.00, with another payment of \$1,325.00 due June 25, 2022.

The trustee's motion requests dismissal. Yet the motion fails to provide analysis why the case should be dismissed although the case was previously converted from chapter 7. A separate declaration was filed by the chapter 13 trustee's attorney providing factual information regarding the case, which states:

When reviewing this case, I noted certain details that I believe the Court will want to consider when evaluating whether it is in the best interest of creditors and the estate when considering this motion to dismiss for cause under 11 U.S.C. §1307(c.).

Declaration of Neil Enmark, ECF No. 117, 2:1-5.

The debtors have filed opposition to the motion which is accompanied by a declaration of the debtor. See ECF No. 119, 120, 121.

The opposition states that the debtors have remitted two payments via TFS and plan to bring the plan payments fully current by the date of the hearing on this motion.

The 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.

Moreover, the opposition does not address the trustee's separate declaration regarding the best interests of creditors under 11 U.S.C. § 1307(c).

11 U.S.C. § 1307(b) , (c)

On request of the debtor at any time, *if the case has not been converted under section 706, 1112, or 1208 of this title*, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. § 1307(b) (emphasis added).

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).

This case was previously converted from a Chapter 7. See Order, ECF No. 43. The chapter 7 trustee previously filed a notice of assets in this case on July 12, 2019. Yet the chapter 13 trustee has requested dismissal of the case in his motion.

As the moving party the chapter 13 trustee must specify the relief requested and explain to the court why the relief requested is appropriate. This is essential as the court must consider the requirements of both 11 U.S.C. § 1307(b) and (c) in ruling on the motion. The failure of the trustee to appropriately plead dismissal or conversion could potentially result in an order allowing a debtor to circumvent the prohibition of dismissal under section 1307(b).

Henceforth, in all motions brought under 11 U.S.C. § 1307 the chapter 13 trustee shall indicate *in the notice and motion* whether he requests dismissal, conversion, or reconversion of the case, whether the case has previously been converted, and from which chapter it was converted. In cases which have been previously converted the trustee shall state the factual basis, cite the legal authority, and provide analysis and argument in support of the relief sought in his motion.

At a minimum the chapter 13 trustee should provide the following information, analysis, and argument in previously converted cases: 1) identify any orders entered regarding reconversion/dismissal and the impact of the order upon his motion; 2) identify non-exempt assets; 3) provide the value of any non-exempt asset(s); 4) the amount required under the plan to satisfy the liquidation test of 11 U.S.C. § 1325(a)(4) at confirmation of the plan; 5) the amount distributed by the trustee to *unsecured* creditors under the plan; 6) whether the distribution to unsecured creditors has satisfied the liquidation test; 7) identify any known position of a previously appointed trustee; and 8) any additional relevant information and analysis supporting the trustee's argument for dismissal or conversion.

The court will continue the hearing in this matter to allow the trustee to supplement the record and provide analysis and argument consistent with the court's ruling, and for the debtors to file a reply.

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 continued to August 30, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than August 2, 2022, the trustee shall file and serve supplemental pleadings consistent with the court's ruling in this case, and a status report apprising the court of the plan payments received.

IT IS FURTHER ORDERED that not later than August 16, 2022, the debtors may file and serve a reply.

7. [20-23415](#)-A-13 **IN RE: MICHAEL/CANDACE TODD**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[38\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the moving party

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 6, 2022 - untimely

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the payments are delinquent in the amount of \$3,133.00, with another payment of \$3,133.00 due June 25, 2022.

The debtor has filed a late opposition which is accompanied by the Declaration of the Debtors' Attorney, and Exhibits, ECF Nos.42-44. The declaration states that the plan payments are current based upon a review of information reviewed on the trustee's website. See Declaration, ECF No. 44, 2:1-5.

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

The trustee has filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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. 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.

8. [21-23215](#)-A-13 **IN RE: GINA VASQUEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[23\]](#)

MATTHEW GILBERT/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: July 5, 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 \$4,880.00 with a further payment of \$7,370.00 due June 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.

9. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-7](#)

MOTION TO MODIFY PLAN
6-20-2022 [\[138\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek an order modifying their chapter 13 plan.

Rule 3015-1(d) (2)

The debtors did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires at least 21 days' notice of the time fixed for filing objections to a proposed modification of a plan. To comply with both Federal Rule of Bankruptcy Procedure 3015-(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(2). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

The plan, notice of hearing, and motion were served on June 20, 2022. See Certificate of Service, ECF No. 143. On June 21, 2022, the debtor served an amended notice of hearing. See Certificate of Service, ECF No. 146. At best the debtor provided only 29 days' notice to all parties in interest.

CIVIL MINUTE ORDER

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

The debtors' Motion to Confirm 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.

10. [19-24016](#)-A-13 **IN RE: SHARON PETERSEN**
[DPC-1](#)

CONTINUED 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: Continued from June 22, 2022

Disposition: Continued to September 13, 2022, at 9:00 a.m.

Order: Civil minute order

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.

The hearing on this motion was continued to allow the debtor's attorney to investigate the possibility that the debtor had died.

On July 5, 2022, the attorney filed a Notice of Death of Debtor, ECF No. 73.

Debtor's attorney has requested (WLG-1) that this hearing be continued to allow him to confer with the domestic partner of the deceased debtor to determine if there is interest and ability to continue administration of the chapter 13 plan under LBR 1016-1(b). Although an order was not submitted with the motion the court will grant the request and continue the hearing on this motion.

The chapter 13 trustee has not filed any additional evidence in support of his motion.

11 U.S.C. § 1307(b) , (c)

On request of the debtor at any time, *if the case has not been converted under section 706, 1112, or 1208 of this title*, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. § 1307(b) (emphasis added).

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).

This case was previously converted from a Chapter 7. Despite a prior order of this court requiring reconversion the chapter 13 trustee has requested dismissal of the case in his motion.

The prior chapter 7 trustee filed a notice of assets in this case on July 26, 2019. Moreover, the chapter 7 trustee filed a response to the debtor's motion to convert to chapter 13. In her response the chapter 7 trustee requested that in the event of plan default that the case be reconverted to chapter 7. See ECF No. 16. On August 14, 2019, the court ordered as follows:

If the chapter 13 trustee moves to dismiss for any reason, the case will be re-converted and not dismissed;

Order, ECF No. 21.

As the moving party the trustee must specify the relief requested and explain to the court why the relief requested is appropriate. This is essential as the court must consider the requirements of both 11 U.S.C. § 1307(b) and (c) in ruling on the motion. The failure of the trustee to appropriately plead dismissal or conversion could potentially result in an order allowing a debtor to circumvent the prohibition of dismissal under section 1307(b).

Henceforth, in all motions brought under 11 U.S.C. § 1307 the chapter 13 trustee shall indicate *in the notice and motion* whether he requests dismissal, conversion, or reconversion of the case, whether the case has previously been converted, and from which chapter it was converted. In cases which have been previously converted the trustee shall state the factual basis, cite the legal authority, and provide analysis and argument in support of the relief sought in his motion.

At a minimum the chapter 13 trustee should provide the following information, analysis and argument in previously converted cases: 1) identify any orders entered regarding reconversion/dismissal and the impact of the order upon his motion; 2) identify non-exempt assets; 3) provide the value of any non-exempt asset(s); 4) the amount required under the plan to satisfy the liquidation test of 11 U.S.C. § 1325(a)(4) at confirmation of the plan; 5) the amount distributed by the trustee to *unsecured* creditors under the plan; 6) whether the distribution to unsecured creditors has satisfied the liquidation test; 7) identify any known position of a previously appointed trustee; and 8) any additional relevant information and analysis supporting the trustee's argument for dismissal or conversion.

The court will continue the hearing in this matter to allow the debtor's attorney to investigate the possibility of continued administration of the case under LBR 1016-1(b), and to file the appropriate motion to accomplish same if appropriate. The hearing will be continued to September 13, 2022, at 9:00 a.m.

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 continued to September 13, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that any request to proceed pursuant to LBR 1016-1(b), and any required modified plan, motion to modify plan, and supporting schedules and declarations, shall be filed and served not later than August 16, 2022.

IT IS FURTHER ORDERED that if a request to proceed pursuant to LBR 1016-1(b) is not timely filed, then the chapter 13 trustee shall file supplemental pleadings consistent with the court's ruling in this matter. The trustee's pleadings shall be filed and served not later than August 30, 2022.

11. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[CRG-2](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN
6-1-2022 [\[34\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2004 Ford F-150

Value: \$4,980.00

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

Debtors seek an order valuing their 2004 Ford F-150. The vehicle is collateral for a loan owed to One Main, the respondent.

VALUATION OF COLLATERAL

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2004 Ford F-150. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$4,980.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2004 Ford F-150 has a value of \$4,980.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$4,980.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

12. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[DPC-1](#)

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

CARL GUSTAFSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: continued from June 9, 2022
Disposition: Overruled
Order: Civil minute order

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

The hearing on this matter was continued from June 22, 2022, to allow for the debtors' motion to value the collateral of One Main (CRG-2) to be heard. The Court has granted the motion to value collateral.

At the prior hearing on this motion the trustee agreed as follows:

If the motion to value collateral of Onemain is granted, the trustee consents to the objection to confirmation being overruled without further notice or hearing.

Civil Minutes, ECF No. 43.

The court will overrule 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 overruled.

13. [22-21218](#)-A-13 **IN RE: CYNTHIA DURAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-29-2022 [\[18\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

SERVICE

The objection was served on the debtor's attorney at 405 Redcliff Avenue, Suite 100, Redding, California, 96002. See Certificate of Service, ECF No. 21. This address is incorrect. The attorney's address is 1901 Park Marina Drive, Redding, California, 96001. See Petition, ECF No. 1.

Rule 9036

(b) Notices from and service by the court

(1) Registered users

The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system.

(2) All recipients

For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply:

(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and

(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code.

(c) Notices from and service by an entity

An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding

(b) (2) (A) and (B).

(d) Completing notice or service

Electronic notice or service is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. It is the recipient's responsibility to keep its electronic address current with the clerk.

Fed. R. Bankr. P. 9036(b), (c), (d).

The debtor's attorney is a registered user of the court's e-filing system and has consented to electronic service. See LBR 7005-1. Thus, service by electronic means has been satisfied.

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the

trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,200.00. 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).

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).

If the debtor has not filed 2018, 2019, 2020 or 2021 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 trustee states that the debtor's testimony was unclear regarding her requirement to file tax returns for the four years prior to the filing of the case. As such the plan cannot be confirmed until the debtor either provides tax returns to the trustee or evidence that she is not required to file the returns.

No Proof of Third-Party Support

The debtor's brother provides \$1,470.00 for support each month and the plan is not feasible without the support. See Schedule I, ECF No. 11. The trustee objects to confirmation unless admissible evidence is provided showing the third party's ability and willingness to make the required contribution for the duration of the plan.

Schedules Do Not Evidence 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 \$2,000.00, but the plan requires a monthly payment of \$2,200.00. Thus, the debtor's monthly net income is less than the proposed monthly plan payment.

The trustee also contends that the proposed budget does not support the feasibility of the plan as the amount indicated for food for a household of 3 is only \$350.00 per month. Moreover, the debtor who has listed 2 vehicles in her Schedule A/B does not list any expenses for vehicle insurance in Schedule J.

The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

14. [20-24519](#)-A-13 **IN RE: PRAKHONG/JENNIFER CHANTHORN**
[DPC-4](#)

MOTION TO DISMISS CASE
6-21-2022 [\[64\]](#)

JAMES KEENAN/ATTY. FOR DBT.
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: July 5, 2022

Opposition Filed: July 1, 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 debtors have failed to make all payments due under the confirmed plan. The trustee contends that the payments are delinquent in the amount of \$3,650.00, with another payment of \$3,650.00 due June 25, 2022.

The debtors filed an opposition which consists solely of a cursory, unsworn statement by the debtors' attorney. The opposition states:

Debtors shall be current on their plan payments prior to the hearing date.

Opposition, ECF No. 68.

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

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

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

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration by the debtors is required to prove the contentions in the opposition and to provide additional relevant information. For

example, there is no evidence indicating why the delinquency occurred and how the debtors will be able to make up the delinquent plan payments.

The 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.

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.

15. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[DPC-4](#)

MOTION TO DISMISS CASE
6-21-2022 [\[113\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 15, 2022, at 10:30 a.m.

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 5, 2022 - timely

Motion to Modify Plan Filed: July 5, 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 \$3,287.26, with another payment of \$3,279.02 due June 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 15, 2022, at 10:30 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 15, 2022, at 10:30 a.m.

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

16. [21-20422](#)-A-13 **IN RE: LYNETTE WILSON**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[16\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

This case was converted to a Chapter 7 on July 7, 2022. See ECF No. 28. This motion will be removed from the calendar as moot. No appearances are required.

17. [20-25127](#)-A-13 **IN RE: RYAN/KANDA HOTZE**
[DBL-2](#)

MOTION TO MODIFY PLAN
6-14-2022 [\[51\]](#)

BRUCE DWIGGINS/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

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 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 payments are delinquent in the amount of \$1,499.36 under the proposed modified plan. The plan cannot be confirmed if the plan payments are not current.

Plan Fails to Provide for Post-Petition Mortgage Delinquency

The trustee opposes modification of the plan as the proposed plan does not provide for the cure of delinquent post-petition payments to Class 1 creditor Umpqua Bank. Because the debtor failed to make plan payments timely under the terms of the previously confirmed plan, the trustee was unable to pay post-petition contract installments to Umpqua Bank. The amount of \$1,665.00 for the month of June 2022, is currently owing and is not provided for in the proposed plan. The plan is not feasible as the trustee is charged with making the Class 1 payments and sufficient funds have not been provided.

REPLY

On July 11, 2022, the debtor filed a timely reply with an Exhibit, ECF No. 64, 65. The reply and Exhibit show payments made to the trustee in an amount to bring the plan payment current. The reply does not address the post-petition mortgage delinquency and whether the trustee has sufficient funds on hand to bring the delinquency current without the need for a further amended plan. Absent such evidence 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.

18. [20-25127](#)-A-13 **IN RE: RYAN/KANDA HOTZE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-1-2022 [\[23\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

No Ruling

19. [20-24128](#)-A-13 **IN RE: JOANNA GOODWIN**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[51\]](#)

MOHAMMAD MOKARRAM/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: July 5, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,680.00 with a further payment of \$840.00 due June 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.

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

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

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

21. [20-22331](#)-A-13 **IN RE: BRANDON/JOVINA LIMOSNERO**
[PSB-3](#)

MOTION TO MODIFY PLAN
6-8-2022 [\[87\]](#)

PAULDEEP BAINS/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

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 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 \$150.00. The plan cannot be confirmed if the plan payments are not current.

Plan Fails to Accurately Propose Payment to Unsecured Creditors

The trustee also opposes the plan contending it is not feasible as the plan fails to provide the accurate percentage to be paid to unsecured creditors. The plan proposes to pay 6.71% to unsecured creditors. However, the trustee calculates that the plan will pay 61.844% to the unsecured creditors. The trustee has stated that if the modest delinquency is cured, that he would not oppose correcting the percentage to the unsecured creditors in the order granting the motion.

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.

22. [20-21832](#)-A-13 **IN RE: JUAN RODRIGUEZ**
[DPC-3](#)

MOTION TO DISMISS CASE
6-21-2022 [\[89\]](#)

JEFFREY MEISNER/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: July 5, 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 \$4,599.24 with a further payment of \$2,908.77 due June 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.

23. [22-21239](#)-A-13 **IN RE: MYRNA STICKLING**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-23-2022 [\[20\]](#)

PETER MACALUSO/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).

2021 Income Taxes

Priority obligations must be paid through the plan under 11 U.S.C. § 1322(a)(2).

The debtor provided a copy of her 2021 federal tax return which indicates that the debtor owed \$2,447.00. The debtor has not listed any priority obligations in her Schedule E/F, ECF No. 1. Neither does the plan specify payment of priority obligations, ECF No. 3.

It is unclear whether the debtor still owes the taxes as indicated on the return. Although the trustee has not so alleged, it appears that the tax return was provided to the trustee after the conclusion of the meeting of creditors. Otherwise, the trustee would have been able to confirm whether the taxes are still owed. In future objections the trustee should make this allegation if appropriate.

The trustee estimates that the plan term would need to extend to 60 months if the taxes are still owed. This exceeds the 36-month term proposed in the current plan, rendering the plan mathematically unfeasible.

The court will sustain the objection as the debtor has provided insufficient information to the trustee regarding the amount of any priority debt owed.

Debtor's Income is Uncertain

The schedules and statements filed by the debtor provide inconsistent information regarding the debtor's income and ability to make the payments under the plan. The plan calls for payments of \$100.00 per month. See Chapter 13 Plan, ECF No. 3.

The debtor is self employed as a tax preparer, with projected monthly net income of \$1,700.00. See Schedule I, ECF No. 1. The proposed income of \$1,700.00 per month is not supported by Form 122C-1 which shows the debtor's gross business income for the six

months prior to filing the petition averaged \$1,355.83. See Form 122C-1, ECF No. 1.

Additionally, the debtor provided the trustee with consecutive monthly Profit and Loss statements, from July 2021 through, and including, May 2022. The trustee has analyzed these statements and determined that the average monthly net income equals approximately \$469.00.

Given the inconsistencies in the evidence provided by the debtor, and absent any detailed explanation regarding projected income the court finds that the debtor has not provided sufficient evidence to support the feasibility of the plan under 11 U.S.C. § 1325(a)(6). The court will sustain the objection.

PLAN RELIES ON MOTION TO AVOID JUDICIAL LIEN

LBR 3015-1(i) provides that "[t]he hearing [on a lien avoidance 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 avoid the judicial lien of Wells Fargo Bank, N.A. The debtor has filed a motion to avoid the lien (PGM-1). The court has granted the motion to avoid judicial lien and will overrule this portion of the trustee's objection.

DEBTOR'S REPLY

On July 12, 2022, the debtor filed a timely reply, ECF No. 26. The debtor contends that there are no taxes owed. The court notes that the debtor has also filed the following documents: Amended Schedules A/B and C, Amended Statement of Financial Affairs, ECF Nos. 28, 29.

The court notes that the reply does not include a declaration of the debtor regarding the feasibility issue raised by the trustee. The unsworn argument filed by debtor's counsel is insufficient to refute the trustee's feasibility objection. Additionally, the argument fails to explain the discrepancies between the debtor's schedules, Form 122C-1 and the profit and loss statements provided to the trustee, as previously discussed in this ruling. As such the court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

24. [22-21239](#)-A-13 **IN RE: MYRNA STICKLING**
[PGM-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
6-14-2022 [\[14\]](#)

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

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 5109 Costa Way, Sacramento, California

Judicial Lien Avoided: \$7,576.40 - Wells Fargo Bank, N.A.

All Other Liens:

-Deed of Trust - Reverse Mortgage Funding \$313,793.47

Exemption: \$350,000.00

Value of Property: \$469,000.00

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).

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).

The responding party's judicial lien, all other 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 responding party's judicial lien will be avoided entirely.

25. [19-26941](#)-A-13 **IN RE: MICHAEL WYCLIFFE AND REBECCA WEAVER**
[DPC-4](#)

MOTION TO DISMISS CASE
6-21-2022 [\[85\]](#)

PETER MACALUSO/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: July 5, 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 \$700.00 with a further payment of \$350.00 due June 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.

26. [22-20142](#)-A-13 **IN RE: BOUPHA BOUNGNASIRI**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[30\]](#)

SETH HANSON/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: July 5, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been

filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$9,403.00 with a further payment of \$4,651.00 due June 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

27. [17-24944](#)-A-13 **IN RE: MAURICE TALTON**
[DPC-3](#)

MOTION TO DISMISS CASE
6-21-2022 [\[69\]](#)

DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 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 \$4,400.00 with a further payment of \$2,200.00 due June 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.

28. [22-20544](#)-A-13 **IN RE: MARK KELLEY**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[35\]](#)

MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 5, 2022 - timely

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

Best Interests of Creditors/Estate: Dismiss

DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that payments are delinquent in the amount of \$1,950.00, with another payment of \$1,950.00 due June 25, 2022.

The trustee further contends that the debtor has failed to file a motion to confirm the plan filed in this case and that this failure constitutes unreasonable delay under 11 U.S.C § 1307(c)(1).

Plan Delinquency

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 40-41. The declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 41.

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. Additionally, the declaration fails to state the reason the plan payments are delinquent or how the debtor will be able to bring the payments current. The court is unable to deny the motion given the outstanding delinquency.

Failure to Set Plan for Confirmation Hearing

The debtor has failed to confirm a plan within a reasonable time. The debtor filed this case on March 9, 2022, yet the plan was not filed until April 6, 2022. Because the plan was filed more than 14 days after the filing of the petition the debtors are required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1). The failure to file a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

Neither the opposition nor the declaration offers any reason for the delay in bringing the plan to confirmation. The opposition merely states that the debtor will do so prior to the hearing on this motion. The debtor's opposition does not fully resolve the grounds for dismissal. A motion to confirm the plan was not filed by the date the opposition was due. A statement of intent to file a motion to confirm is not equivalent to cure of the basis for dismissal. The court is unable to deny the motion given the debtor's failure to properly prosecute the chapter 13.

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

29. [22-20846](#)-A-13 **IN RE: DANA HERNANDEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
6-29-2022 [\[42\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 30, 2022, at 9:00 a.m.

Order: Civil minute order

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

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 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.

DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the payments are delinquent in the amount of \$3,360.00.

Failure to Prosecute

The trustee also moves to dismiss the case as the debtor has failed to file an amended plan after the court sustained the trustee's objection to confirmation on June 22, 2022. See ECF No. 40, 41. The debtor has yet to file an amended plan.

11 U.S.C. § 1307

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).

As the moving party it is incumbent upon the chapter 13 trustee to request appropriate relief and explain to the court why he is entitled to the relief sought. See Fed. R. Bankr. P. 9013, LBR 9014-1(d) (3) (A), (C), (D).

Even in cases which have not previously been converted, but where the trustee believes the facts warrant conversion under section 1307(c), the trustee must present the facts, analysis, and argument in support of his motion. The trustee's pleading in this case is incomplete.

Here the trustee requests *dismissal* of the case. While the trustee requests dismissal he presents facts which possibly support an order converting the case. Yet the trustee has not advocated his position by presenting any analysis of the facts supporting his request for dismissal. Neither has the trustee interposed an argument for conversion.

If the trustee does not believe the facts warrant conversion of the case the trustee should present analysis and argument supporting dismissal. Instead of presenting analysis and argument for the relief sought (dismissal) the trustee instead states:

7. I calculate that Debtor shows the ability to pay \$600 per month, (Schedule I, DN 12, Page 2, \$1300 net from business & \$1,500 from family.) 8. I show debtor scheduled real property for \$350,000.00, (DN 20, Page 1, Item 1.1), and exempted the property in full without citing a statute for the exemption, (DN 15, Page 1.) I show Debtor shows the real property was transferred to a trust on March 23, 2022, (DN 9, Page 9, Question 10.)

Declaration of Neil Enmark, ECF No. 44, 2:12-18.

Neither does the motion present any analysis or argument for conversion versus dismissal of the case but rather states:

Where under 11 U.S.C. §1307(c) the Court must determine whether it is in the best interest of creditors and the estate to dismiss the case or convert the case the Trustee notes the Debtor has not made plan payments but shows the ability to pay \$600 per month, (Schedule I, DN 12, Page 2, \$1300 net from business & \$1,500 from family), scheduled real property for \$350,00, (DN 20, Page 1, Item 1.1), and exempted the property in full without citing a statute for the exemption, (DN 15, Page 1.) Debtor shows the real property was transferred to a trust on March 23, 2022, (DN 9, Page 9, Question 10.)

Motion to Dismiss, ECF No. 42, 2:5-13.

The court notes that the debtor has filed a motion to dismiss her case which is set for hearing on August 2, 2022.

The court will continue the hearing in this matter to allow the trustee to supplement the record in a manner consistent with this ruling, and to allow for the debtor's reply. The court will continue the debtor's motion to dismiss (NCK-3) to coincide with the hearing on this 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 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 continued to August 30, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than August 2, 2022, the trustee shall file and serve supplemental pleadings consistent with the court's ruling in this case.

IT IS FURTHER ORDERED that the debtor may file a reply not later than August 16, 2022.

IT IS FURTHER ORDERED that the debtor's Motion to Dismiss, (NCK-3) which is currently set for hearing on August 2, 2022, at 9:00 a.m. shall be continued until August 30, 2022, at 9:00 a.m.

30. [19-20747](#)-A-13 **IN RE: DANIEL/TERESA STALTER**
[CK-6](#)

MOTION TO MODIFY PLAN
5-27-2022 [\[127\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied with prejudice; debtors' withdrawal of motion is disallowed

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 FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,542.09. The plan cannot be confirmed if the plan payments are not current.

Schedules I and J

The plan is not supported by properly and recently filed amended Schedules I and J. The most recently filed budget schedules were filed on February 8, 2019, nearly 41 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).

WITDRAWAL OF MOTION

Fed. R. Civ. P. 41

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

On July 11, 2022, the debtors attempted to withdraw their motion to modify plan as follows:

Debtors herein, DANIEL RAY STALTER and TERESA MARIA STALTER, through their attorney, CATHERINE KING, hereby withdraw the motion to confirm modified plan set to be heard July 19, 2022, at the hour of 9:00a.m.

Withdrawal, ECF No. 144, 1:17-21.

On July 5, 2022, the chapter 13 trustee filed opposition to this motion as previously discussed in this ruling. There is no evidence that the trustee has stipulated to a withdrawal of the motion. As such the debtors may not unilaterally withdraw their motion to modify the plan. The court will presume from the debtors' attempt to withdraw the motion that the debtors concede the proposed plan is not suitable for confirmation. The court will deny the motion with prejudice in accordance with its ruling and disallow the withdrawal of 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 with prejudice. The court denies modification of the chapter 13 plan.

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

31. [21-23457](#)-A-13 **IN RE: DAVID SOUZA**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [[23](#)]

CANDACE BROOKS/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: July 5, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under §

1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,480.00 with a further payment of \$740.00 due June 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.

32. [20-20658](#)-A-13 **IN RE: BERNARDO/RACHAEL HUBBARD**
[DPC-3](#)

MOTION TO DISMISS CASE
6-21-2022 [\[64\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 1, 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 \$3,092.86, with another payment of \$2,951.31 due June 25, 2022.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 68, 69, 70. The opposition includes a request by debtors' counsel requesting the opportunity to supplement the record or file a modified plan upon his return from vacation, ECF No. 68. The court grants this request.

The debtors' declaration states that the debtors have made one payment via TFS in the amount of \$4,569.17. The debtors further state that on July 8, 2022, they will make another payment which will bring the plan payment current. See Declaration, ECF No. 69.

On July 11, 2022, the debtors filed a status report updating the declarations previously filed. See ECF No. 72. The status report indicates the plan payments are now current.

Unless the chapter 13 trustee confirms the payments are current the court will dismiss the case and adopt the following ruling. However, given counsel's detailed explanation regarding his absence from the office the court will consider a conditional order in this case.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under

this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

33. [19-21664](#)-A-13 **IN RE: RESPAL/NENITA MENDOZA**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[111\]](#)

ARASTO FARSAD/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 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 \$6,908.51 with a further payment of \$3,528.06 due June 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.

34. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-6](#)

MOTION TO DISMISS CASE
6-21-2022 [[170](#)]

MARY TERRANELLA/ATTY. FOR DBT.
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: July 5, 2022

Opposition Filed: July 5, 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 \$11,364.00, with another payment of \$5,682.00 due June 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of Debtor's Counsel, ECF Nos. 174-175. The declaration states as follows:

I requested my secretary contact Mr. Norman on Tuesday, July 5, 2022 (sic) to verify a previous conversation she had had (sic) with him regarding the Trustee's Motion to Dismiss Case in which he indicated he would be able to bring the delinquent plan payments current. She did contact him on July 5, 2022 (sic) and he reiterated that he would definitely bring his plan payments current, in the amount of \$17,046.00, no later than July 10, 2022.

Declaration, ECF No. 175, 1:24-26, 2:1-3.

The debtor's opposition does not fully resolve the grounds for dismissal. First, 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. Second, the declaration provides no information regarding the delinquency such as why the delinquency occurred, and how the debtor will be able to send \$17,046.00 to cure the delinquency. Third, the evidence submitted is inadmissible. The court is unable to deny the motion given the outstanding delinquency.

LBR 9014-1(f)(1)(B), Fed. R. Evid. 801, 802

LBR 9014-1

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

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

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. The evidence mandate in LBR 9014-1 necessarily implies that the evidence must be admissible under the Federal Rules of Evidence.

Fed. R. Evid. 801, 802

"Hearsay" means a statement that:
(1) the declarant does not make while testifying at the current trial or hearing; and
(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Fed. R. Evid. 801.

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Fed. R. Evid. 802.

The assertion in the declaration that the debtor will bring the payments current by July 10, 2022, is hearsay, and is inadmissible. The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. There is no admissible evidence in support of the opposition offered. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

35. [21-22570](#)-A-13 **IN RE: NENITA ANTONIO**
[DPC-3](#)

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

TIMOTHY WALSH/ATTY. FOR DBT.

No Ruling

36. [21-22570](#)-A-13 **IN RE: NENITA ANTONIO**
[TJW-3](#)

AMENDED MOTION TO CONFIRM PLAN
6-6-2022 [\[70\]](#)

TIMOTHY WALSH/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).

IMPROPER NOTICE

The debtor failed to provide proper notice of the motion to confirm under LBR 3015-2, 9014-1(f)(1).

LBR 3015-1

Modified Plans Proposed Prior to Confirmation. If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. *Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1).* LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

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

LBR 3015-1 states that a party seeking to confirm a chapter 13 plan must comply with LBR 9014-1(f)(1) and the notice and motion must comply with the provisions of this rule.

LBR 9014-1(f)(1)

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

. . .

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).

LBR 9014-1(f)(1) requires that any potential respondent be advised that written opposition to the motion must be filed not later than 14 days prior to the hearing. A party may not alter the requirements of LBR 3015-1 and 9014-1 and proceed according to LBR 9014-1(f)(2) in a motion to confirm a chapter 13 plan.

LBR 9014-1(d) Notice Content

Notice.

- (i) The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.
- (ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.
- (iii) The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website

at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

LBR 9014-1(d)(3)(B)(i), (ii), (iii).

The amended notice filed and served in this matter states as follows:

This motion is based upon the contents of the motion, the schedules and petition on file with this court, the filed declaration of the debtor in support of the plan, and the exhibits filed concurrent herewith. OPPOSITION: Opposition, if any, must be presented at the hearing of this motion. Failure to so oppose may result in the late filing opposition being rejected by the Court, by a ruling in favor of the movant or be such other and further relief the Court may deem appropriate.

Amended Notice, ECF No. 71, 2:20-26.

The content of the notice failed to comply with LBR 9014-1(d) as it did not advise responding parties of the requirement to oppose the motion in writing, did not advise respondents of the consequences of failing to file a written response, and did not include the specific language required in LBR 9014-1(d)(3)(B)(iii) regarding the court's posting of tentative rulings as indicated above.

The court will deny the motion as the debtor failed to provide proper notice of the motion to all potential responding parties. As such, the court need not address the issues raised in opposition to the motion by the chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

The 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.

37. [22-21270](#)-A-13 **IN RE: ADAM/KRISTIN STERIO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
6-29-2022 [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

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).

If the debtors have not filed a 2021 tax return, and were 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.

IRS Claim Renders Plan Mathematically Unfeasible

The Internal Revenue Service filed Claim No. 10 reflecting: \$47,983.57 secured; \$32,299.42 priority; and \$23,926.83 general unsecured. The claim reflects that no tax returns were filed for the 2021 tax year.

The debtors' treatment of the secured portion of the claim is unclear as the plan does not provide for payment of the secured portion of the IRS claim. See Plan, ECF No. 3. Neither does Schedule J show an expense for payment of 2021 taxes. Thus, the plan is not feasible.

Moreover, the plan estimates that the amount of the priority obligations to be paid totals \$5,150.00. Based on the IRS claim, the trustee estimates that the plan will take 240 months to complete as the plan estimates priority claims at \$5,150.00, and the priority portion of the filed claim totals \$32,299.42.

The plan is not mathematically feasible as it 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) 1325(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

CIVIL MINUTE ORDER

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

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

The 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.

38. [21-21372](#)-A-13 **IN RE: BRENDA SMITHEY**
[MET-1](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: continued from June 22, 2022

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan - Modified, filed May 4, 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 hearing on this motion was continued from June 22, 2022, to allow the debtor to properly file Schedules I and J in support of her modified plan. On June 19, 2022, the debtor properly filed the schedules, ECF No. 31. The chapter 13 trustee has filed a non-opposition to the motion to modify the plan. See ECF No. 29.

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.

39. [21-20073](#)-A-13 **IN RE: EDGARDO/LETICIA PADOAN**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[32\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
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: July 5, 2022

Opposition Filed: June 26, 2022 - timely

Modified Plan: filed July 14, 2022 - untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$7,957.71 with another payment of \$5,052.70 due June 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).

On June 26, 2022, the debtors filed an opposition to the motion to dismiss, ECF No. 36. The opposition consists of an unsworn statement by debtors' attorney and states:

Debtors, EDGARDO YANAGITANI PADAOAN and LETICIA RAON PADAOAN, through their Attorney of Record, DAVID P. RITZINGER, hereby respond to the motion of the Chapter 13 Trustee to dismiss the Debtors' case by admitting that they were in default of their confirmed plan and hereby inform the Court and all interested parties that the Debtors will file a modified plan and will have paid all amounts due under the modified plan, prior to the July 19, 2022 hearing date.

Opposition, ECF No. 36, 1:20-25.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtors are willing and financially able to propose a modified plan, or that they have met with their attorney to discuss such action.

Neither does the debtors' opposition resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to file a modified plan at 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

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). In this case opposition to the motion was due not later than July 5, 2022. In defense of the instant motion to dismiss the debtors filed a modified plan and a motion to modify plan on July 14, 2022. See ECF No. 39, 40. The opposition is deemed untimely. Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss. The debtors may avail themselves of remedies under Fed. R. Civ. P. 60(b) if appropriate.

The court is aware that the motion to dismiss was filed June 21, 2022, giving the debtor only 28 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 debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

40. [22-21175](#)-A-13 **IN RE: REBECCA MACIAS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
6-29-2022 [\[20\]](#)

MICHAEL BENAVIDES/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).

GOOD FAITH

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

Failure to File Accurate and Complete Schedules and Statements

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and

failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The chapter 13 trustee states that in reviewing bank statements provided by the debtor the trustee discovered payments made to Westgate Resorts for a timeshare, possible additional income, and an expense for a storage facility. None of these items were previously disclosed by the debtor in her bankruptcy documents. See ECF No. 12.

At the meeting of creditors, the debtor admitted she has a timeshare which is not disclosed in her schedules. The Trustee requested that Schedule A/B be amended to list the timeshare. To date, no amendment has been filed.

The trustee reports that the bank statements reflected a \$2,850.14 deposit from "ST TCHRS RET SYS (RET BENFT)" which does not appear to be listed on the debtor's Schedule I. At the meeting of creditors the debtor was unable to identify the source of this deposit. retired.

The bank statements reflect payments to Safe-Hold Storage. The debtor admitted that she has a storage unit, and that its contents primarily belong to her brother in-law who resides in Japan. The storage expense is not listed in the debtor's budget nor is it listed in the Statement of Financial Affairs. See ECF No. 12.

The debtor has failed to subsequently amend the Statement of Financial Affairs or her schedules. The court finds that the debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a) (3).

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).

Community Obligations

The debtor has been married for approximately 9 years and has filed the bankruptcy petition individually. The proposed 60-month plan calls for a 100% distribution to all allowed unsecured claims. See Plan, ECF No. 13.

The trustee contends that he is unable to assess the feasibility of the proposed plan as it appears that there are potential community obligations which are being paid outside the plan with community funds. The obligations are in the name of the debtor's non-filing spouse. The amount of the monthly payment is listed at \$700.00 on Schedule J, ECF No. 12.

To the extent that the obligations are the debtor's they must be listed in her schedules. However, the court has not been provided sufficient information either by the trustee or the debtor to determine whether the debtor is liable for the obligations which are to be paid outside the plan. To the extent the trustee requests the debtor provide him with sufficient information to make this determination the court sustains this objection.

The trustee argues that the discharge granted could discharge community claims to the benefit of the non-filing spouse, citing *In re Kimmel*, 378 B.R. 630, (B.A.P. 9th Cir. 2007), *aff'd*, 302 F. App'x 518 (9th Cir. 2008). However, *Kimmel* dealt with a chapter 7 case. The trustee has not considered the implications of section 1328(a) which provides that only debts which are "provided for by the plan" are discharged in a chapter 13 case. See 11 U.S.C. § 1328(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 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.

41. [22-20277](#)-A-13 **IN RE: PAMELA AMBUNAN**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-2-2022 [\[44\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

42. [22-20277](#)-A-13 **IN RE: PAMELA AMBUNAN**
[PGM-2](#)

MOTION TO CONFIRM PLAN
6-14-2022 [\[48\]](#)

PETER MACALUSO/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 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 \$120.00. The plan cannot be confirmed if the plan payments are not current.

Percentage to Unsecured Creditors is Unclear and Uncertain

The plan proposes to pay unsecured creditors 8%, ECF No. 49. However, the debtor's declaration in support of the plan states that the plan shall pay 0% to unsecured creditors. The court will not presume the conclusion reached by a creditor receiving conflicting information contained in simultaneously served documents

The motion will be denied.

IMPROPERLY CLASSIFIED SECURED OBLIGATIONS

11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payments on the date of the petition that her classification of those mortgage claims in Class 4 (direct payment) is improper. The obligations are owed to the following creditors who have filed claims to which the debtor has not objected: 1) the Golden One Credit Union, Claim No. 4; and 2) NewRez, LLC, dba Shellpoint Mortgage Servicing, Claim No. 21.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditors' claims in Class 4, yet the claims are in default and includes a pre-petition arrearage in the amount of: \$1,022.18, Claim No. 4; and \$1,742.20, Claim No. 21. Compare Claim No. 4 and Claim No. 21 (each reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor

otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion). Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

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

(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.

...

(b) Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. §

1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

Given the improper classification of the mortgage claims the court need not reach the remaining issues in the trustee's opposition. The proposed plan is inconsistent with the court's previous ruling issued in this case, on this issue on April 5, 2022, ECF No. 39.

REPLY

On July 12, 2022, the debtor filed a timely reply, ECF No. 64. The reply does not address the misclassification of the obligations secured by the debtor's residence. Neither has the debtor filed objections to the claims filed by the creditors. 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.

43. [20-20580](#)-A-13 **IN RE: ALEKSANDR POKATILOV**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[39\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: June 22, 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 \$4,075.40, with another payment of \$2,041.90 due June 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 43-44. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 44.

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. Moreover, the declaration is insufficient as it does not explain how or why the plan payments became delinquent or how the debtor will be able to bring the plan payments current. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

44. [19-27281](#)-A-13 **IN RE: ROBIN JACOBS**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[29\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 5, 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 \$2,502.44, with another payment of \$1,512.89 due June 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 33, 34. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 34. The debtor, who is self-employed, explains the delinquency is a result of a change in billing policies of his customers and will

have the ability to make up the missed plan payments. *Id.*, 1:21-25, 2:1-3.

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. However, given the debtor's detailed explanation regarding the circumstances causing the delinquency the court will consider a conditional order in this case.

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.

45. [22-21182](#)-A-13 **IN RE: STACY TUCKER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-22-2022 [\[15\]](#)

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).

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 trustee reports that the debtor has not filed tax returns for 2018, 2019 and 2020. If the debtor has not filed tax returns for 2018, 2019 and 2020, 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 this objection.

Mathematical Feasibility

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 76 months to fund as proposed given the claim filed by the Internal Revenue Service, Claim No. 2.

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 deny confirmation of the debtor's plan.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection,

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

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

46. [21-22195](#)-A-13 **IN RE: OKHARINA HOLMES**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2022 [\[42\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 5, 2022

Opposition Filed: July 5, 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 \$7,757.00, with another payment of \$3,880.00 due June 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 46, 47. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 47. The debtor further explains that she and her daughter have been ill with COVID-19, that she missed 20 days of work, and that she has already tendered \$3,880.00 to the trustee.

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.

However, given the debtor's detailed explanation regarding the circumstances causing the delinquency the court will consider a conditional order in this case.

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.

47. [17-27497](#)-A-13 **IN RE: IGNACIO RODRIGUEZ**
[TMO-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PG&E
7-5-2022 [\[51\]](#)

T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.
DEBTOR DISCHARGED: 06/04/2021

Final Ruling

On July 11, 2022, the debtor filed a withdrawal of the Motion to Approve Settlement, ECF No. 59. No parties have opposed or otherwise appeared in this matter. As the motion is withdrawn this matter is removed from the calendar as moot. No appearances are required.

48. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[NUU-2](#)

MOTION TO CONFIRM PLAN
6-7-2022 [\[65\]](#)

CHINONYE UGORJI/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

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 \$4,036.00. The plan cannot be confirmed if the plan payments are not current.

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.

49. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-29-2022 [\[39\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Failure to Provide Income Information

The debtor has failed to provide the trustee with required 2021 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. While the debtor provided a copy of the 2020 tax return this return is not the most recently filed return and does not aid the trustee in addressing the debtor's current ability to perform the plan.

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).

Additionally, the debtor failed to provide 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. §521(a)(1)(B)(iv). While the trustee has received some pay advices he still requires advices for the following periods: April 12, 2022 and March 9, 2022.

Other Income

The debtor has failed to provide the trustee with proof of the amounts he receives from coaching. Although this income is not regular the trustee requires this information to determine the average amount the debtor earns each month in assessing the plan's feasibility under 11 U.S.C. § 1325(a)(6). Thus far the debtor has failed to provide this information to the trustee.

The trustee requires proof of income for the debtor's non-filing spouse. Debtor's spouse is employed as a real estate agent and the trustee has not received sufficient information from the debtor to determine if all income has been reported.

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 trustee's objection.

Discrimination

The 60-month plan calls for payment of 0% on unsecured claims. The debtor is married, and his Schedule J lists an expense of \$100.00 per month to be paid to the creditors of his non-filing spouse. The trustee indicates that some of these creditors may also be listed in the debtor's Schedules E/F and that if so, the creditors may receive a distribution greater than the 0% proposed in the plan.

The trustee argues that the additional payment outside the plan represents an unfair discrimination under 11 U.S.C. § 1322(b)(1). Without additional information supporting the trustee's contentions,

such as which claims are being paid outside the plan, whether any such claim is also provided for in the plan, and whether the debtor is obligated on a particular claim, the court is unable to sustain the trustee's objection.

To the extent that the debtor has failed to provide the trustee with information requested regarding the claims being paid outside the plan the court sustains 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.

50. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[DVW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
6-29-2022 [\[43\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

PLAN FEASIBILITY

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

Objecting creditor U.S. Bank objects to confirmation of the proposed plan contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The creditor indicates that the debtor has filed 3 prior chapter 13 cases as follows: Case No. 2016-25194, E.D. Cal. Bankr. (2016), filed August 8, 2016, and dismissed August 11, 2017; Case No. 2018-20779, E.D. Cal. Bankr. (2018) filed February 13, 2018, and dismissed February 25, 2019; and Case No. 2019-25193, E.D. Cal. Bankr. (2019), filed August 19, 2019, and dismissed November 12, 2021. While only the 2019 case was originally disclosed in the petition the debtor amended his bankruptcy petition on June 14, 2022, disclosing all 3 of the prior cases.

U.S. Bank has filed a claim in this case, Claim No. 5. The claim includes \$82,170.76 in mortgage arrears which must be paid through the debtor's plan. In addition, the debtor must make ongoing mortgage payments to U.S. Bank in the amount of \$2,157.81. The total amount owed to this creditor each month throughout the 60-month plan is no less than \$3,527.81.

The objecting creditor contends that the plan payment is short approximately \$229.81 per month. The creditor disputes the ability of the debtor to increase the plan payment as income from coaching appears to be overstated in Schedule I as discussed in the trustee's objection to confirmation. The debtor has indicated he receives \$600.00 per month from coaching yet he stated at the meeting of creditors that he only receives \$1,200.00 twice annually from

coaching. Additionally, the objecting creditor contends that the projection of \$1,000.00 per month in overtime is speculative.

Given the debtor's lack of success in previous chapter 13 cases additional evidence must be presented for the debtor to sustain his burden of proving that the proposed plan is feasible under 11 U.S.C. § 1326(a)(6). The speculative nature of the overtime and the inaccurate reporting of the coaching income do not support the debtor's ability to perform the plan.

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.

U.S. Bank's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

51. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[MJD-3](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 2
6-1-2022 [[22](#)]

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

Final Ruling

The debtor filed an objection to the claim of LVNV Funding, LLC, Claim No. 2. On June 14, 2022, the claimant withdrew Claim No. 2. See ECF No. 37. The court will remove this matter from the calendar as moot. No appearances are required.

52. [20-21929](#)-A-13 **IN RE: THOMAS/LAURETTA HALL**
[CYB-3](#)

MOTION TO INCUR DEBT O.S.T.
7-8-2022 [\[51\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

No Ruling