

**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: MONDAY
DATE: AUGUST 15, 2022
CALENDAR: 10:30 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. [19-26305](#)-A-13 **IN RE: FRANCISCO QUINTANA**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [[32](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

2. [21-22506](#)-A-13 **IN RE: KEVIN KENNEDY**
[DPC-1](#)

OBJECTION TO CLAIM OF STACEY MACDONALD, CLAIM NUMBER 7
6-24-2022 [[32](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

3. [22-21207](#)-A-13 **IN RE: MANJIT SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-18-2022 [[25](#)]

PETER MACALUSO/ATTY. FOR DBT.
7/26/22 FINAL INSTALLMENT PD. \$155

Final Ruling

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

4. [22-21008](#)-A-13 **IN RE: CYNTHIA PAYSINGER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-26-2022 [[31](#)]

PETER MACALUSO/ATTY. FOR DBT.
7/28/22 INSTALLMENT FEE PD. \$78

Final Ruling

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

5. [20-24713](#)-A-13 **IN RE: BONITA BROOKS**
[DPC-4](#)

MOTION TO DISMISS CASE
7-18-2022 [\[78\]](#)

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: Withdrawn by moving party

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: July 25, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$6,548.44, with another payment of \$5,569.18 due July 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of debtor's counsel, ECF Nos. 82, 83, 84. Counsel is reminded that her declaration contains statements which are hearsay. Hearsay evidence is inadmissible and given no weight by the court. See Fed. R. Evid. 801, 802.

Rule 41

The chapter 13 trustee filed a further reply on August 3, 2022. See ECF No. 86. The trustee indicates that the plan payments are now current and that the trustee no longer wishes to pursue his motion to dismiss.

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. 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 objection and the court will accede to the trustee's request.

The court will allow the withdrawal of the trustee's 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.

IT IS ORDERED that the motion to dismiss is withdrawn.

6. [19-22719](#)-A-13 **IN RE: JOSEPH HYLER AND ANDREA GERBER**
[DPC-3](#)

MOTION TO DISMISS CASE
7-18-2022 [\[43\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: August 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 \$820.00, with another payment of \$415.00 due July 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 47, 48, 49. The declaration states that the debtor has tendered \$830.00 through TFS and that they will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 48.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

7. [21-20121](#)-A-13 **IN RE: TIMOTHY/CLARISSA FRIER**
[DPC-2](#)

MOTION TO DISMISS CASE
7-18-2022 [\[53\]](#)

MARK WOLFF/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: August 1, 2022

Opposition Filed: August 1, 2022 - timely

Motion to Modify Plan Filed: August 2, 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 debtor has failed to make all payments due under the confirmed plan. The trustee contends that plan payments are delinquent in the amount of \$5,439.00, with another payment of \$5,089.21 due July 25, 2022.

MOTION TO MODIFY AS OPPOSITION

Opposition to Motion to Dismiss

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B).

On August 1, 2022, the debtors filed a written opposition to the motion to dismiss, ECF No. 57. The opposition consists of an unsworn statement by the debtor(s)' attorney, explaining the debtors' reasons for the default in plan payments and stating the debtors' intention to file a modified plan. No admissible evidence regarding the facts alleged was filed with the opposition.

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 *admissible evidence* indicating the reasons for the delinquency. As such, the court gives the opposition no weight.

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

Motion to Modify

The court notes that the debtor filed a Modified Chapter 13 plan, ECF No. 62, and a motion to confirm the modified plan, ECF No. 59, on August 2, 2022, which is 13 days prior to the hearing on the motion to dismiss. The modified plan is set for hearing on August 30, 2022; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed July 18, 2022, giving the debtors 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.

Motion to Modify Provides Insufficient Notice

Modified Plans Proposed After Confirmation. If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent 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. 3015(h), 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. 3015 (h) 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)(2) (emphasis added).

In addition to being filed as a late opposition to the trustee's dismissal motion, the Motion to Modify Plan is insufficiently noticed as it is set for hearing on August 30, 2022, at 9:00 a.m. The motion, notice and supporting documents were filed and served on August 2, 2022, providing only 28 days' notice of the hearing. See

Certificate of Service, ECF No. 64. As 35 days' notice is required, the proposed modification will fail, and will not remedy the debtors' default in plan payments.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

8. [21-21721](#)-A-13 **IN RE: ROSA GONZALEZ-MUNOZ**
[DPC-3](#)

MOTION TO DISMISS CASE
7-18-2022 [\[61\]](#)

RONALD HOLLAND/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: August 8, 2022 - untimely

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

Best Interests of Creditors/Estate: Dismiss

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 \$1,693.00 with a further payment of \$1,693.00 due July 25, 2022.

OPPOSITION

On August 8, 2022, the debtor filed an untimely opposition to the motion. The opposition consists solely of an unsworn statement filed by debtor's counsel.

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 debtor is required to prove the contentions in the opposition and to provide additional relevant information.

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

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. The opposition does not comply with LBR 9014-1(f)(1)(B) as it was not timely filed. Opposition to this motion was due not later than August 1, 2022, and the opposition was not filed until August 8, 2022. Since this opposition is late, the court gives it no weight.

The motion will be granted.

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

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

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

10. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[PGM-5](#)

MOTION TO MODIFY PLAN
7-5-2022 [\[117\]](#)

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).

Unrealistic Budget

The chapter 13 trustee opposes the debtors’ motion contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The debtors have filed Amended Schedules I and J in support of their motion to modify. See Amended Schedules, ECF No. 123. Schedule J shows a monthly expense of \$900.00 for food and housekeeping supplies for a family of 5. The debtors’ previous Schedule J, filed August 17, 2020, shows a monthly expense of \$1,500.00 for the same expense category. See Amended Schedule J, ECF No. 92.

The declaration in support of the motion to modify does not explain how the debtors are able to maintain their household with the \$600.00 reduction in food expense. Neither are there any explanations contained in the Amended Schedule regarding this significant change to a non-discretionary expense. Lacking sufficient evidence, the court finds the proposed plan is not feasible.

SECURED MORTGAGE TREATMENT IN THE PLAN

The Proposed Plan Modifies Rights of Class 1 Claimant

The trustee objects to the treatment of Class 1 secured creditor Lakeview Loan Servicing, Claim No. 12. The trustee contends that the proposed plan impermissibly modifies the claim of Lakeview Loan Servicing. The court agrees with the trustee’s contention.

The proposed plan was filed on July 5, 2022, and is dated July 1, 2022. The motion to modify incorrectly states “[t]he modification proposed by Debtors will not modify the rights of the holder of any secured claim within the Plan.” See Motion, ECF No. 117, 2:15-16. The proposed plan provides for the total sum of \$84,699.02 to be paid *through July 2022 then \$3,500.00 per month thereafter*. See Plan, ECF No. 119. The trustee reports that the debtor had already paid \$84,699.02 as of *June 21, 2022*. Thus, it appears the plan calls for \$0 to be paid in July 2022.

If no payment is made in July 2022 the trustee will be unable to tender the required Class 1 payment to Lakeview Loan Servicing. Thus, the plan, by its own provisions, creates a default in payment to Lakeview Loan Servicing, which prospectively modifies the rights of the Class 1 creditor. As the trustee correctly argues this

default contravenes 11 U.S.C. § 1322(b)(5) which allows for payments on long term debt, and 11 U.S.C. § 1322(c)(1) which allows a default on a residence to be cured. Moreover, the Eastern District Form Plan prohibits modification of Class 1 claims. "Other than to cure of arrears, this plan does not modify Class 1 claims." See E.D. Cal. Chapter 13 Plan, EDC 3-080, Section 3.07(c).

The proposed plan provides for post-petition mortgage arrears for one month, presumably for the payment due July 25, 2022, as the previous plans do not show arrearages for post-petition mortgage payments. However, the ongoing mortgage payments being paid through the plan were not yet in default when the proposed plan was executed and filed. The debtors' declaration in support of the motion affirms that the debtors' intention is to pay \$0 in July 2022. The declaration states, "[w]e are asking the Court to modify our Plan so that we can begin remitting payments of \$3,500.00 per month starting August 25, 2022..." See Declaration, ECF No. 120, 2:5-7.

The debtors have failed to proffer any legal authority supporting their right to modify prospective payments to the Class 1 claimant, absent the claimant's agreement to this treatment in the plan. Absent a written stipulation with the Class 1 claimant the court will not approve the plan.

Moreover, neither the motion nor the declaration explains in sufficient detail why the plan projects a future default in mortgage payments. Thus, the provision to skip a plan payment bolsters the trustee's previous argument that the proposed plan is not feasible.

DEBTORS' REPLY

New Income

On August 8, 2022, the debtors filed a reply, see ECF No. 133. The debtors also filed an exhibit and declaration in support of the reply, ECF Nos. 134, 135. The exhibit contains a letter indicating that debtor Anthony Yazzie has obtained new employment. Therefore, the supplemental Schedules I and J (ECF No. 123) filed by the debtors on July 5, 2022, are outdated as they do not include the new income contemplated by Mr. Yazzie's new employment.

Prospective Mortgage Modification

The reply does not address the issue raised by the trustee and discussed by the court in this ruling regarding the prospective modification of the debtors' mortgage loan payment. The reply affirms that it is the debtors' intention to do so, however the debtors have failed to state the legal authority allowing them to prospectively modify the loan payment schedule through the chapter 13 plan absent a stipulation with the lender.

The motion will be denied.

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.

11. [19-24624](#)-A-13 **IN RE: THOMAS/SELIMA GARRIS**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[76\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: August 1, 2022 - timely

Motion to Modify Plan Filed: August 1, 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 plan payments are delinquent in the amount of \$2,544.34, with another payment of \$1,696.00 due July 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is September 13, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On August 5, 2022, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 89.

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.

12. [19-22025](#)-A-12 **IN RE: JEFFREY DYER AND JAN WING-DYER**
[RLC-20](#)

MOTION TO BORROW O.S.T.
7-29-2022 [\[333\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling

13. [21-20025](#)-A-13 **IN RE: HAROLD DEAN**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[43\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

14. [22-20527](#)-A-13 **IN RE: CHARLES LEONARD**
[RPH-2](#)

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
6-26-2022 [\[42\]](#)

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

Final Ruling

Motion: Value Collateral [Real Property; Principal Residence]

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

Disposition: Granted

Order: Civil minute order

Subject Property: 741 Tahoe Island Drive, South Lake Tahoe,
California

Liens: First Deed of Trust \$684,387.00 - HSBC Beneficial/Fay
Servicing

Value: \$650,000.00

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

The debtor seeks an order valuing the real property located at 741 Tahoe Island Drive, South Lake Tahoe, California. The subject property is collateral for a note and deed of trust held by respondent, Citibank N.A.

VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a),

1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor requests that the court value real property collateral at \$650,000.00. The collateral is the debtor's principal residence located at 741 Tahoe Island Drive, South Lake Tahoe, California.

The court values the collateral at \$650,000.00. The debt, secured by liens senior to the respondent's lien exceeds the value of the collateral. Because the amount owed to senior lienholders exceeds the collateral's value, the respondent's claim is wholly unsecured, and no portion will be allowed as a secured claim. See 11 U.S.C. § 506(a).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The real property collateral located at 741 Tahoe Island Drive, South Lake Tahoe, California has a value of \$650,000.00. The collateral is encumbered by senior liens securing debt that exceeds the collateral's value. The respondent has a secured claim in the amount of \$0.00 and a general unsecured claim for the balance of the claim.

15. [22-20527](#)-A-13 **IN RE: CHARLES LEONARD**
[RPH-3](#)

MOTION TO CONFIRM PLAN
6-26-2022 [\[46\]](#)

ROBERT HUCKABY/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 \$4,433.00 with an additional payment of \$4,433.00 due on July 25, 2022. The plan cannot be confirmed if the plan payments are not current.

11 U.S.C. 1325(b)

The trustee successfully objected to the debtor's previous plan as Form 122C-1 had been incorrectly completed. The debtor has amended the form. See ECF No. 51. The trustee notes that the income figures in the amended form differ significantly from the figures which appeared in the debtor's original filing.

The trustee contends that without detailed information regarding the debtor's calculation of gross income received in the six-month period prior to the filing of the case he cannot determine if the information in the form is true, complete, and accurate.

The court notes that the debtor has provided no explanation for the changes in income, either in the declaration in support of his motion, as exhibits evidencing income, or in the form itself.

The debtor has failed to meet his burden of proof and the court will deny the motion.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce Citibank, N.A.'s Class 2 secured claim based on the value of the collateral securing such claim. The debtor has filed a motion to value the collateral of Citibank, N.A. (RPH-1). The court has granted that motion. Accordingly, the court will overrule only this objection raised by the trustee.

The court will deny the motion to confirm.

CIVIL MINUTE ORDER

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

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

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

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

16. [20-21831](#)-A-13 **IN RE: TANIA GILL**
[MMM-1](#)

MOTION TO APPROVE LOAN MODIFICATION
7-11-2022 [[20](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve Loan Modification

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

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

Order: Civil minute order if appropriate

The debtor seeks an order authorizing the modification of her home mortgage held by Rushmore Loan Management Services, LLC.

The chapter 13 trustee opposes the motion indicating that the evidence proffered by the debtor does not state whether an impound account is required for property taxes and insurance, and if not, how the taxes and insurance will be paid; whether the modified monthly payment of \$772.63 includes taxes and insurance; and that the debtor has failed to file amended Schedules I and J in support of her motion. See trustee's opposition, ECF No. 25. Therefore, the trustee has insufficient information to advise the court of the proposed loan modification's impact on the confirmed chapter 13 plan.

The court finds the evidentiary record is insufficient. The court considers supplemental Schedules I and J to be an integral part of a debtor's prima facie case for the granting of this type of motion.

The court will continue the motion to allow the debtor to augment the evidentiary record and for the trustee to review and evaluate the debtor's evidence. Were this hearing not continued for additional evidence the court would deny the motion.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to September 13, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than August 23, 2022, the debtor shall file and serve all additional evidence in support of her motion on all interested parties;
IT IS FURTHER ORDERED that no later than August 30, 2022, the trustee shall file a status report updating his position regarding this motion and an evaluation of any evidence filed by the debtor.

17. [22-20833](#)-A-13 **IN RE: NICK MANGIDUYOS**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[24\]](#)

MARK SHMORGON/ATTY. FOR DBT.
DEBTOR DISMISSED: 07/22/2022

Final Ruling

This case was dismissed on July 22, 2022. This motion is removed from the calendar as moot. No appearances are required.

18. [22-20635](#)-A-13 **IN RE: MARIA LUPERCIO**
[CYB-1](#)

MOTION TO CONFIRM PLAN
6-15-2022 [\[22\]](#)

CANDACE BROOKS/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: Continued to August 30, 2022, at 9:00 a.m.

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).

SECURED MORTGAGE CREDITOR TREATMENT IN THE PLAN

The trustee opposes the motion to confirm the amended plan contending that the debtor has failed to properly classify the claim of Wells Fargo Bank, N.A. The creditor has filed a claim, Claim No. 3, which is secured by a deed of trust in the debtor's residence. The claim provides for arrearages as of the date of the petition in the amount of \$5,039.65. The proposed plan provides for the claim of Wells Fargo Bank, N.A. in Class 4. This is contrary to existing law and the Eastern District Form Plan.

However, the debtor has filed an objection to the claim of Wells Fargo Bank, N.A. The hearing on the objection to claim will be held on August 30, 2022, at 9:00 a.m. The court will continue the hearing on this motion to coincide with the hearing on the objection to claim.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to August 30, 2022, at 9:00 a.m.

19. [18-27538](#)-A-13 **IN RE: EDWARD VILLANUEVA**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[26\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: July 28, 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 plan payments are delinquent in the amount of \$4,106.97, with another payment of \$3,760.24 due July 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 30, 31. 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. 31. The opposition is cursory and insufficient as it does not provide any relevant information to the court. For example, the opposition does not indicate the reasons for the plan delinquency. Neither does the opposition state how the debtor will be able to pay a delinquency totaling \$7,867.21. Failure to provide relevant information in future cases may result in the granting of the motion to dismiss.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

20. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[DPC-2](#)

MOTION TO DISMISS CASE
7-18-2022 [\[51\]](#)

MUOI CHEA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: July 31, 2022 - timely

Motion to Modify Plan Filed: August 1, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$5,019.01, with another payment of \$2,212.00 due July 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is September 13, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

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

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

MOTION BY MELANIE TAVARE TO WITHDRAW AS ATTORNEY
7-21-2022 [\[26\]](#)

MELANIE TAVARE/ATTY. FOR DBT.

Final Ruling

Matter: Motion to Withdraw as Attorney

Disposition: Denied without prejudice

Order: Civil minute order

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

LBR 9014-1(f)

In the Eastern District of California notice of a motion must comply with the requirements of LBR 9014-1(f)(1), (2). The rule allows a choice of two different notice periods. LBR 9014-1(f)(1) requires 28 days' notice of the motion and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 9014-1(f)(2) requires only 14 days' notice of the motion and does not require the opposing party to file and serve written opposition prior to the hearing on the motion. See, LBR 9014-1(f)(1), (2).

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

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.

. . .

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), (iii) (emphasis added).

The notice states only as follows:

Notice is hereby given that a hearing on the Motion to Withdraw as Counsel of Record for Debtor will be heard on August 15, 2022 (sic) at 10:30 a.m. in the United State Bankruptcy Court, Honorable Fredrick E. Clement presiding, located at 501 I Street, Seventh Floor, Courtroom no. 28 Sacramento, California 95814 (sic)

Notice of Motion to Withdraw, ECF No. 27, 1:18-23.

The notice was dated and filed on July 21, 2022. The Certificate of Service indicates that the notice and motion were served on July 21, 2022. See, Certificate of Service, ECF No. 28. Thus, only 25 days' notice was provided. The notice failed to provide any information about how the debtor should oppose the motion if desired. This violates LBR 9014-1(d)(3)(B)(i). The notice also failed to advise the responding party how to review the court's prehearing dispositions as required by LBR 9014-1(d)(3)(B)(iii).

DOCKET CONTROL NUMBER

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

CIVIL MINUTE ORDER

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

Melanie Tavare's Motion to Withdraw as Attorney 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.

22. [22-21245](#)-A-13 **IN RE: ROBERT MURRAY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-21-2022 [\[22\]](#)

MELANIE TAVARE/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 trustee served his objection on debtor's counsel at an address which is inconsistent with the information on the court's docket. However, debtor's counsel, Melanie Tavare, is a registered user of the court's efilings system. Therefore, service under Fed. R. Bankr. P. 9036 is correct.

MEETING OF CREDITORS

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. Due to technological difficulties the trustee was unable to examine the debtor at the initial meeting of creditors. A continued meeting of creditors was scheduled on July 28, 2022. The debtor failed to appear at the continued meeting. See Status Report, ECF No. 29.

Thus, the trustee has been unable to examine the debtor regarding the proposed plan and issues raised in this motion. The court will sustain the objection

PLAN FEASIBILITY

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

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

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

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

Failure To Provide Financial/Business Documents

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

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with

additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor has failed to produce the following documents: completed Business Questionnaire provided to the debtor by the trustee; 6 months of profit and loss statements; proof of license and insurance.

The failure to provide income and business 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).

Ability to Make Plan Payments

The trustee contends that the debtor's proposed expenses in Schedule J do not support the debtor's ability to make plan payments over time. The trustee specifically contends that the following expenses are unrealistic for a household of two persons: \$250.00 for food; \$0.00 for personal care, clothing, and entertainment; and \$100.00 for transportation expense. See Schedule J, ECF No. 11.

The court finds that absent additional evidence these proposed expenses are meager and unrealistic. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

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. The court denies confirmation of the chapter 13 plan.

23. [20-21352](#)-A-13 **IN RE: BRETT TRAINA**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[19\]](#)

SETH HANSON/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: August 1, 2022

Opposition Filed: August 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 \$3,444.05, with another payment of \$2,568.61 due July 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 23, 24. The debtor's declaration states that the debtor has already made two payments via TFS and will make the final payment by August 12, 2022, to bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 24. The declaration also states that the delinquency was caused by a temporary reduction in the debtor's hours at his employment.

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 detailed explanation and significant payments already tendered the court will entertain a conditional order in this matter.

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.

24. [19-26861](#)-A-13 **IN RE: JEFFREY SCUKA**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[24\]](#)

SCOTT HUGHES/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: August 1, 2022

Opposition Filed: August 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 \$1,932.72, with another payment of \$1,765.25 due July 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).

As a courtesy to the court the debtor's attorney filed a timely opposition. See ECF No. 28. The opposition consists of an unsworn statement by the debtor's attorney, which states:

I contacted the debtor by e-mail and text message the day I received the motion. As of the date of this declaration, the debtor has still not contacted me regarding the default or this motion to dismiss his case. 3. I am filing a response on the last possible day to let the court and the trustee know that I have not heard from the debtor.

Id., 2:1-7.

The opposition further states that the debtor has tendered a payment of \$800.00. Even if this is true and the evidence admissible the plan payments remain delinquent.

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

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.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

25. [22-21563](#)-A-13 **IN RE: JOLENE/AARON SILVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-29-2022 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.

***[Since posting its original rulings, the court has changed its intended ruling on this matter]**

Final Ruling

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

26. [20-23368](#)-A-13 **IN RE: CYNTHIA ANDERSON**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[27\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: August 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 \$1,630.00, with another payment of \$1,630.00 due July 25, 2022.

The debtor filed a timely opposition which is accompanied by the declaration of the debtor's attorney and Exhibits evidencing payment, ECF Nos. 31, 21, 33. The attorney's declaration states that counsel mailed the payments to the trustee in an amount sufficient to bring the plan payments current on August 1, 2022. See Declaration, ECF No. 33, 2:9-12. Moreover, counsel has submitted copies of the payments, made via cashier's checks, tendered as exhibits. See ECF No. 32. Thus, it appears that the plan payments are current.

The motion will be denied.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

27. [22-21369](#)-A-13 **IN RE: STEPHANIE/ERIC POLDERVAART**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-21-2022 [\[16\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); written opposition filed by the debtor

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).

TRUSTEE'S OBJECTION

The chapter 13 trustee objects to confirmation contending that: the debtor has failed to file a motion to value the collateral of Ally Financial rendering the plan not feasible under 11 U.S.C. § 1325(a)(6); that the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4); and that the additional provisions proposed in the plan place an administrative burden on the chapter 13 trustee.

DEBTORS' RESPONSE

On July 27, 2022, the debtors filed a response to the trustee's objection which states in part:

[T]he debtors respectfully request that the Court acknowledge that the debtors shall file an Amended Schedule C and an Amended Plan, along with a motion to confirm amended plan pursuant to Local Rule 3015-1(d).

Response, ECF No. 20, 2:9-13.

Thus, the debtors have acceded to the trustee's objection and intend to file an amended plan. As such, the court will

sustain the trustee's objection and deny confirmation of the plan.

CIVIL MINUTE ORDER

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

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

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

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

28. [18-25184](#)-A-13 **IN RE: MICHELE DAVENPORT**
[DPC-6](#)

MOTION TO DISMISS CASE
7-18-2022 [\[139\]](#)

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

***[Since posting its original rulings, the court has changed its intended ruling on this matter]**

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: August 1, 2022

Opposition Filed: August 2, 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 debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$2,315.00, with another payment of \$2,315.00 due July 25, 2022.

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

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

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

The opposition does not comply with LBR 9014-1(f)(1)(B) as it was not timely filed. Opposition to this motion was due not later than August 1, 2022, and the opposition was not filed until August 2, 2022. Additionally, while the opposition indicates payments have been tendered, it also acknowledges that as of the date of the opposition the plan payments are not current. See Response, ECF No. 143, 1:23-24.

The debtor failed to request additional time to file opposition under Fed. R. Bankr. P. 9006(b)(1) or to provide any reason for the filing of the opposition after the date it was due. As such the court gives the opposition no weight.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On August 9, 2022, the trustee filed a request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 151.

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.

29. [20-23887](#)-A-13 **IN RE: DANIEL/ALEXIS GENTRY**
[DPC-1](#)

MOTION TO DISMISS CASE
7-18-2022 [\[25\]](#)

JULIUS CHERRY/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: August 1, 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 \$3,800.00 with a further payment of \$1,900.00 due July 25, 2022.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section,
on request of a party in interest or the United States

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

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

30. [22-20994](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[JLL-1](#)

MOTION TO CONFIRM PLAN
7-4-2022 [\[20\]](#)

JENNIFER LEE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed July 4, 2022

Motion: Confirm Chapter 13 Plan

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).

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN 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).

TRUSTEE STATUS REPORT

Documents

The trustee opposed the motion indicating that the debtors had failed to provide business documents which in turn prevented the trustee from completing his analysis regarding the feasibility of the proposed plan. On August 8, 2022, the trustee filed a status report. See ECF No. 36. The trustee indicates in his report that all documents have been received resolving this portion of the trustee's opposition to the proposed plan.

Rights and Responsibilities

The trustee opposed the motion indicating that the Rights and Responsibilities had not been properly executed by the debtors and counsel. The trustee offers several options for confirming the plan given the need for an amended Rights and Responsibilities form. However, on August 7, 2022, the debtors filed an amended Rights and Responsibilities form, the terms of which match the attorney fees proposed in the amended plan. See ECF No. 34.

As all matters raised in the trustee's objection have been resolved and there is no further opposition to the amended plan, the court will grant the motion to confirm.

The court finds that the debtors have sustained their burden of proving the plan meets the requirements for confirmation, and the court will approve confirmation of the plan.