

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: AUGUST 18, 2020
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. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[CYB-2](#)

MOTION TO VALUE COLLATERAL OF COMMONWEALTH CENTRAL CREDIT
UNION
7-23-2020 [[34](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

2. [20-22701](#)-A-13 **IN RE: EVAN PASTERNAK AND SONJA DURAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-16-2020 [[30](#)]

CANDACE BROOKS/ATTY. FOR DBT.

No Ruling

3. [20-20704](#)-A-13 **IN RE: BRIAN/TRACEE STACY**
[JCW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-5-2020 [[17](#)]

DAVID RITZINGER/ATTY. FOR DBT.

JENNIFER WONG/ATTY. FOR MV.

MATRIX FINANCIAL SERVICES CORPORATION VS.; RESPONSIVE PLEADING

No Ruling

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-27-2020 [[17](#)]

PETER MACALUSO/ATTY. FOR DBT.
8/4/20 FINAL INSTALLMENT PAID \$310

Final Ruling

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

5. [18-22708](#)-A-13 **IN RE: DEDAN KIMANI**
[PLG-2](#)

MOTION TO MODIFY PLAN
6-29-2020 [[53](#)]

STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

6. [20-20008](#)-A-13 **IN RE: BRIAN PUNCHES**
[DPC-1](#)

MOTION TO DISMISS CASE
7-20-2020 [[107](#)]

JEFFREY GUYTON/ATTY. FOR DBT.

No Ruling

7. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[ALG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PINGORA LOAN SERVICING,
LLC
7-6-2020 [[17](#)]

STEPHAN BROWN/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

No Ruling

8. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
7-16-2020 [\[21\]](#)

STEPHAN BROWN/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.

The debtors' plan may not provide for all projected disposable income for the applicable commitment period under 11 U.S.C. §1325(b). The debtors are above median income. Form 122C-1, ECF 1. Line 45 on Form 122C-2 shows the debtors have projected disposable income of negative \$807.08 after deductions. The trustee calculates that the projected disposable income may be positive \$946.84, (giving Debtors the ability to increase the dividend to unsecured creditors by \$297.22 per month). ECF 21.

1. Form 122C-1 reflects that the debtors' monthly gross income is \$14,027.73.
2. Schedule I, Line 8h., indicates that debtors have additional income of \$1,080.00 for Adoption Assistance, but such funds are not identified in the debtors' Statement of Financial Affairs. ECF 1.
3. The debtors' schedules also show a 27 year old son as a dependent but does not reflect any income from the son on either Schedule I or the means test, if any exists.
4. The debtors have claimed more than \$521.00 on a contract with Mechanics Bank for a 2020 Tacoma, but the contract is \$327.29. Claim 4.
5. The debtors claimed a tax withholding of \$2,826.40. ECF 1. Schedule I indicates their tax withholding is \$2,230.98.
6. The debtors' 2019 state and federal tax returns provided to the Trustee show total taxes that amount to \$1,676 per month. But the Social Security and Medicare tax rate is 7.65% for employees, which would be \$12,877.46 per year where Debtor projects \$168,332.76 annual income. The debtors would not have the 6.2% of the social security tax on \$30,632.76 of income, so \$1,899.23 less annually, so \$158.27 less per month, Debtors appear to owe taxes of

- \$2,591.19 per month. The means test has the taxes too high.
7. The debtors claimed involuntary deductions of \$45.00. ECF 1.
 8. On Form 122C-2; The debtors claimed optional telephone service \$200.00. ECF 1. Reviewing Schedule J indicates the phone and internet service are \$673.00, and the debtors already has residential telephone service expense as part of the utility expense under the national standards,

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.

9. [20-22808](#)-A-13 **IN RE: TRISHA/DANNY HUFF**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2020 [[25](#)]

STEPHAN BROWN/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY LLC VS.; RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2018 Ford F150

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).

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

The debtor has missed 9 pre-petition payments totaling \$10,821.48 due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 Ford F150, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

10. [19-26311](#)-A-13 **IN RE: NOEMY RIVAS**
[DPC-3](#)

MOTION TO DISMISS CASE
7-21-2020 [[60](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

11. [20-22712](#)-A-13 **IN RE: BRYAN JONES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-15-2020 [[15](#)]

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Per the trustee's request to dismiss his objection to confirmation, this court shall drop this matter from the calendar.

12. [20-23012](#)-A-13 **IN RE: BRETT YODER AND DANIEL BRUSSATOI**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-2020 [[18](#)]

NIKKI FARRIS/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.

The debtors' plan may not be feasible under 11 U.S.C. § 1325(a)(6). The debtors' projected disposable monthly income listed on Schedule J is \$246.64, ECF 1, and the debtors propose a Plan payment of \$245.00, ECF 2. A review of Debtors' expenses indicated they have

\$400.00 in food for 2 adult males and they have not allocated any expenses for the vehicle registration for two new vehicles. According to the DMV, the registration fee for a 2020 Hyundai Tucson is \$484.00/year (\$40/mo.) and for a 2019 Hyundai Tucson is \$414.00/year (\$34.50/mo). Also, Debtor Brett Yoder reports no income received from any source for the current year and the two prior years, in the Statement of Financial Affairs, questions 4 and 5. ECF 1. Schedule I indicates that he has been employed as a custodian for Lassen Union High School District for the last 4 years. His prior income is not revealed.

The trustee also finds the debtors may not be proposing the plan in good faith under § 1325(a)(3). The debtors purchased the two brand new vehicles over the past two years prior to filing two bankruptcies. Debtor Brett Yoder's previous Chapter 13 case, #19-20127, indicates on Schedule F that the debtors owed \$21,467.68 of unsecured debt. Currently, the debtors' schedules in this case show \$91,830.77. ECF 1. Also, Debtor Daniel Brussatoi purchased their residence while his spouse was in the last Chapter 13 case. The debtors owe \$134,902.12 for their residence. The creditor is listed in Class 4 of the plan. Schedule F also shows the debtors owe \$10,000.00 to Daniel Brussatoi, Sr. ECF 1. The debtors admitted at the 341 meeting that they were making insider payments to Daniel Brussatoi, Sr., and therefore admitted to making avoidable transfers at the detriment of creditors.

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.

13. [19-23016](#)-A-13 **IN RE: DENISE EDWARDS**
[MWB-3](#)

OBJECTION TO CLAIM OF QUANTUM 3 LLC, CLAIM NUMBER 8
6-29-2020 [\[94\]](#)

MARK BRIDEN/ATTY. FOR DBT.
WITHDRAWN BY M.P.

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

14. [19-22717](#)-A-13 **IN RE: SIGIFREDO SANCHEZ AND CONSUELO RAMIREZ**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2020 [\[49\]](#)

THOMAS GILLIS/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
AMERICREDIT FINANCIAL SERVICES INC. VS.

No Ruling

15. [20-21018](#)-A-13 **IN RE: FREDERICK SALANTI**
[DBL-2](#)

OBJECTION TO CLAIM OF ONEMAIN FINANCIAL GROUP, LLC., CLAIM
NUMBER 2
6-17-2020 [\[32\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

No Ruling

16. [20-21618](#)-A-13 **IN RE: CHRISTINA CORTINO**
[DPC-2](#)

MOTION TO DISMISS CASE
7-10-2020 [\[33\]](#)

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case.

Payments under the proposed plan are delinquent in the amount of \$6,665.61, and the debtor had a scheduled payment of \$2,571.87 due on July 25, 2020.

Case has been pending for 5 months, but the debtor has not filed an amended plan as recommended in the trustee's objection to confirmation, ECF #29.

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 proposed chapter 13 plan in this case. The court hereby dismisses this case.

17. [20-20019](#)-A-13 **IN RE: LILIA LEWIS**
[DPC-1](#)

MOTION TO DISMISS CASE
7-20-2020 [\[34\]](#)

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

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 a delinquency in payments under the debtor's proposed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$16,811.45. The debtor was also scheduled to pay \$4,227.89 by July 25, 2020.

The case has been pending 7 months, and no plan has been confirmed since the court sustained Wells Fargo Bank's objection to confirmation, ECF 31.

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 proposed chapter 13 plan in this case. The court hereby dismisses this case.

18. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[DPC-3](#)

MOTION TO DISMISS CASE
7-21-2020 [\[79\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

19. [20-22923](#)-A-13 **IN RE: SHAYLA BOWMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-22-2020 [\[17\]](#)

MATTHEW GILBERT/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.

Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). that a chapter 13 debtor must surrender to the trustee is long. Documents the debtor must surrender to the trustee at the meeting of creditors include a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1). The debtor has not given proof of her social security number at the meeting.

CIVIL MINUTE ORDER

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

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

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

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

20. [20-22424](#)-A-13 **IN RE: MOHAMMED TAMIK AND SADRUL NISHA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-24-2020 [[27](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

The trustee having requested the court to overrule the objection, ECF 49, the court will drop this matter from the calendar.

21. [14-26025](#)-A-13 **IN RE: THOMAS/TONYA ROGERS**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2020 [[141](#)]

PETER CIANCHETTA/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
NATIONSTAR MORTGAGE LLC VS.

No Ruling

22. [20-21425](#)-A-13 **IN RE: DYLAN ANDERSON**
[DPC-2](#)

MOTION TO DISMISS CASE
7-20-2020 [[49](#)]

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 debtor has failed to provide the trustee with required payment advices the debtor received 60 days pre-filing. See 11 U.S.C. § 521(a)(3)-(4).

The debtor has failed to provide the trustee with a required 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).

For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors.

For the reasons stated in the motion, cause exists to dismiss the case. *Id.* § 1307(c)(1).

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having entered the default of the 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 for unreasonable delay by the debtor that is prejudicial to creditors. The court hereby dismisses this case.

23. [20-22825](#)-A-13 **IN RE: LEAH ELEMEN**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
6-24-2020 [\[17\]](#)

PETER MACALUSO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling

24. [20-22825](#)-A-13 **IN RE: LEAH ELEMEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-16-2020 [[35](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

25. [20-22825](#)-A-13 **IN RE: LEAH ELEMEN**
[PGM-2](#)

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
6-24-2020 [[21](#)]

PETER MACALUSO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

26. [20-23733](#)-A-13 **IN RE: RYAN MCCULLOUGH**
[LBG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-3-2020 [[9](#)]

LUCAS GARCIA/ATTY. FOR DBT.

No Ruling

27. [19-27735](#)-A-13 **IN RE: AMY MCCLELLAN**
[DPC-2](#)

MOTION TO DISMISS CASE
7-20-2020 [[44](#)]

JOHN DOWNING/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 9 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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 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. The court hereby dismisses this case.

28. [20-22937](#)-A-13 **IN RE: ROBERT LOYA AND JULIE MCLAIN**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN
SERVICING LLC
6-24-2020 [[16](#)]

PETER MACALUSO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

No Ruling

29. [20-22937](#)-A-13 **IN RE: ROBERT LOYA AND JULIE MCLAIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-2020 [\[27\]](#)

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 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.

Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). that a chapter 13 debtor must surrender to the trustee is long. Documents the debtor must surrender to the trustee at the meeting of creditors include a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1). The debtor has not given proof of her social security number at the meeting.

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.

30. [20-22938](#)-A-13 **IN RE: ADRIANNE MIMS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-2020 [\[18\]](#)

ERIC BOEING/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.

The plan does not fund in 60 months. Debtor proposes paying \$200.00 for 60 months. The Franchise Tax Board filed unsecured claim for tax years 2013, 2017-2019 (Claim 19). The IRS also filed Claim 7 for \$23,467.63 for tax years 2017-2019. The trustee calculates that with the currently proposed plan payment, the plan will have been extended to 189 months. The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

Creditor Rudolph Inc. has a secured claim on the debtor's 2018 Mitsubishi Eclipse, but is misclassified in Class 4. Schedule I indicates Debtor will pay the creditor \$2,304.00 a month. If the creditor were moved to Class 2 with 4.75% interest, the payment would drop from \$304.00 to \$147.00, thus giving an additional \$9,420.00 income to be paid to general unsecured creditors.

The plan also does not provide for all projected disposable income to be applied to general unsecured creditors under § 1325(b). The debtor has taken several impermissible deductions on Form 122C-2. ECF 18.

CIVIL MINUTE ORDER

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

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

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

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

31. [20-20939](#)-A-13 **IN RE: ANDREW HUNLEY**
[DPC-2](#)

MOTION TO DISMISS CASE
7-20-2020 [\[38\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

No Ruling

32. [20-22040](#)-A-13 **IN RE: YVETTE LERMA**
[MS-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DEIGHAN LAW LLP
FOR MARK SHMORGON, DEBTORS ATTORNEY(S)
7-10-2020 [\[46\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Deighan Law LLP has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,000.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable

compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

Deighan Law LLP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,000.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$4000.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$4,000.00 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

33. [20-22342](#)-A-13 **IN RE: ERIC SHIU**
[WLG-1](#)

MOTION TO CONFIRM PLAN
7-3-2020 [[22](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 3, 2020

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).

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

34. [20-20843](#)-A-13 **IN RE: MARLON/MICHELLE VALENZUELA**
[SLE-1](#)

MOTION TO VALUE COLLATERAL OF EXETER FINANCE, LLC
7-1-2020 [[42](#)]

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This case having been dismissed on August 7, 2020, the court will drop this motion from the calendar as moot.

35. [20-20843](#)-A-13 **IN RE: MARLON/MICHELLE VALENZUELA**
[SLE-2](#)

MOTION TO CONFIRM PLAN
7-2-2020 [[49](#)]

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This case having been dismissed on August 7, 2020, the court will drop this motion from the calendar as moot.

36. [20-22445](#)-A-13 **IN RE: GREG/TERESA REYNOLDS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-24-2020 [[18](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.

No Ruling

37. [20-21346](#)-A-13 **IN RE: BENJAMIN/MELISSA RINGER**
[DPC-2](#)

MOTION TO DISMISS CASE
7-14-2020 [[40](#)]

STEPHEN REYNOLDS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The trustee having requested that the court dismiss this motion, ECF 30, the court will drop this matter from the calendar as moot.

38. [20-21946](#)-A-13 **IN RE: SUE PIERCE**
[KLG-2](#)

MOTION TO VALUE COLLATERAL OF TMX FINANCE
7-8-2020 [[45](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Denied without prejudice

Order: Civil minute order

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).

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 2012 Toyota Prius. The creditor has not filed a proof of claim. Nothing in the debtor's motion, exhibits, schedules or plan state whether the lien secured a purchase money security interest or when the debt was incurred. See 11 U.S.C. § 1325(a) (hanging paragraph). The court finds that the debtor has not satisfied her burden of proof that the lien secured by the motor vehicle can be stripped down. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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 denied without prejudice.

39. [20-22849](#)-A-13 **IN RE: GLORIA SULLIVAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-22-2020 [\[21\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

40. [19-27256](#)-A-13 **IN RE: MILTON CHEEK**
[DPC-1](#)

MOTION TO DISMISS CASE
7-21-2020 [\[65\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 10 months, yet a plan has not been confirmed. Also, payments under the proposed plan are delinquent \$20,195.00, and \$5,059.00 will be due before motion is heard. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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 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. The court hereby dismisses this case.

41. [19-27456](#)-A-13 **IN RE: TYNITRA LANE**
[SLE-1](#)

MOTION TO MODIFY PLAN
7-13-2020 [[27](#)]

STEELE LANPHIER/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

42. [20-20956](#)-A-13 **IN RE: DARREN/HILLARY WHITE**
[CK-2](#)

MOTION TO CONFIRM PLAN
7-14-2020 [[50](#)]

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

43. [19-26558](#)-A-13 **IN RE: JOSE HERNANDEZ MURGUIA AND BRIDGETTE**
HERNANDEZ
[JCK-3](#)

MOTION TO MODIFY PLAN
7-7-2020 [[35](#)]

KATHLEEN CRIST/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

44. [18-27962](#)-A-13 **IN RE: GUILLERMO MIRALRIO**
[RPZ-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-5-2020 [[56](#)]

W. SHUMWAY/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
CITIBANK, N.A. VS.; RESPONSIVE PLEADING

No Ruling

45. [18-27962](#)-A-13 **IN RE: GUILLERMO MIRALRIO**
[WSS-1](#)

MOTION TO MODIFY PLAN
6-23-2020 [[65](#)]

W. SHUMWAY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

46. [19-27463](#)-A-13 **IN RE: JOAN PHILLIPS**
[RJ-4](#)

MOTION TO CONFIRM PLAN
6-16-2020 [[68](#)]

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

47. [20-21066](#)-A-13 **IN RE: VERONICA LARA**
[MJH-3](#)

MOTION TO CONFIRM PLAN
7-1-2020 [[48](#)]

MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

48. [20-23473](#)-A-13 **IN RE: TRAVIS/TINA SAHR**
[MOH-1](#)

MOTION TO COMPEL ABANDONMENT
8-3-2020 [[25](#)]

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

49. [19-27574](#)-A-13 **IN RE: RYAN SAHADEO**
[WSS-1](#)

MOTION TO CONFIRM PLAN
6-23-2020 [[52](#)]

W. SHUMWAY/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.

11 U.S.C. §1325(a)(9) requires the Debtor to file all applicable tax returns to be able to confirm a plan. 11 U.S.C. §1308 generally requires all tax returns for the last four years. The claim of the Franchise Tax Board, Claim 3, shows no state tax returns for 2015-2018. The debtor admitted at the 341 meeting tax that his returns weren't filed since 2011.

This plan may not be feasible under 11 U.S.C. § 1325(a)(6). No rsb proof of ability to pay. The debtor's motion identifies a "\$100,000 note to debtor from 30-32 Mozart LLC," and the debtor on his schedules only called this "Note Receivable." Trustee can't locate this entity with CA's Secretary of State online search. Also, the plan payment of \$1400.00/month insufficient to pay ongoing \$2,179.47 to creditor U.S. Bank Trust N.A. (Claim 6).

The plan also fails the § 1325(a)(4) Chapter 7 liquidation analysis. The plan proposes to pay 0% to general unsecured creditors, when the debtor's non-exempt equity is \$75,375.00.

The plan does not comply with § 1307(c)(1). Payments under the proposed plan are delinquent in the amount of \$3,022.04, and \$91,758.84 is due on August 25, 2020.

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor has not provided the trustee with Profit and Loss statements from the past six months, proof of license or insurance, or written statements that such documents do not exist. Also, none of the sent business questionnaires were filled out or returned.

The debtor has failed to provide the trustee with the required tax returns for the past two years 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).

The debtor has failed to comply with 11 U.S.C. §521(a)(3). The debtor's schedules are inaccurate and unamended. See ECF 69.

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.

INSUFFICIENT SERVICE

All creditors and parties in interest have not received the notice required by Federal Rule of Bankruptcy Procedure 2002(b). The certificate of service shows that several creditors or parties in interest have not received notice or have not received notice at the correct address.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master mailing list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master mailing list should indicate a date near in time to the date of service of the notice.

50. [19-21375](#)-A-13 **IN RE: CYNTHIA ARIETA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-2020 [[54](#)]

THOMAS AMBERG/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.
MECHANICS BANK VS.; RESPONSIVE PLEADING

No Ruling

51. [19-26879](#)-A-13 **IN RE: GHASSAN KAMAL**
[DPC-2](#)

MOTION TO DISMISS CASE
7-21-2020 [[65](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

52. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[RJ-2](#)

MOTION TO CONFIRM PLAN
6-26-2020 [[62](#)]

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

53. [19-27880](#)-A-13 **IN RE: JONATHAN GARCIA**
[RJ-3](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
7
7-5-2020 [[66](#)]

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the debtor moved to withdraw his objection, ECF 87, the court will drop this matter from the calendar as moot.

54. [20-22982](#)-A-13 **IN RE: EDWARD MEDINA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-29-2020 [\[26\]](#)

HARRY ROTH/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.

The plan does not fund in 60 months with the proposed plan payments of \$3,285.00. Creditor Rushmore Laon Mgt Services' arrears causes the plan to run 81 months. The debtor needs to increase the plan payment to \$4,080.85. 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.

55. [20-22982](#)-A-13 **IN RE: EDWARD MEDINA**
[DVW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, NA
7-24-2020 [\[18\]](#)

HARRY ROTH/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.

No Ruling

56. [15-26284](#)-A-13 **IN RE: MORTISHIA FAIRCHILD**
[MET-3](#)

MOTION TO MODIFY PLAN O.S.T.
7-17-2020 [\[57\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
NON-OPPOSITION

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 17, 2020

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1)

protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); *see also In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification. Also, per the trustee's non-opposition, ECF 66, the court will grant the Motion for Approval of Attorney's Fees and Costs.

57. [20-22886](#)-A-13 **IN RE: BENVINDA GOMES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-22-2020 [[15](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

The trustee having requested the court to dismiss this objection to confirmation, the court will drop this objection from the calendar as moot.

58. [20-20091](#)-A-13 **IN RE: KENNETH FALJEAN**
[DPC-1](#)

MOTION TO DISMISS CASE
7-8-2020 [[23](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The trustee having requested the court to dismiss the motion, the court will drop this matter from the calendar as moot.

59. [20-22292](#)-A-13 **IN RE: WARNER/MINNIE BROWN**
[MRL-1](#)

MOTION TO CONFIRM PLAN
6-29-2020 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, June 29, 2020

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).

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

60. [19-27493](#)-A-13 **IN RE: ROGELIO VILLAR**
[DPC-1](#)

MOTION TO DISMISS CASE
7-20-2020 [\[35\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

61. [20-20194](#)-A-13 **IN RE: FLORA BROUGHTON**
[DPC-2](#)

MOTION TO DISMISS CASE
7-21-2020 [[71](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

62. [18-26995](#)-A-13 **IN RE: URBAN/WENDY KIRK**
[FF-3](#)

MOTION TO INCUR DEBT
7-31-2020 [[62](#)]

GARY FRALEY/ATTY. FOR DBT.

No Ruling

63. [19-27497](#)-A-13 **IN RE: JONI SUPERTICIOSO**
[DPC-1](#)

MOTION TO DISMISS CASE
7-20-2020 [[42](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of

\$18,076.48. The debtor was also scheduled to pay \$3,622.00, due July 25, 2020.

The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 8 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. 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 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 proposed chapter 13 plan in this case. The court hereby dismisses this case.

64. [20-20197](#)-A-13 **IN RE: RONALD AHLERS**
[DPC-3](#)

MOTION TO DISMISS CASE
7-21-2020 [\[40\]](#)

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

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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 7 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

This debtor is ineligible to file for Chapter 13 under 11 U.S.C. § 109(e). The trustee calculated that the debtor owes over \$419,275.00 in non-contingent liquidated unsecured debts.

The debtor's plan calls for impermissible modification on mortgage on residence by Ditech and Mr. Cooper under 11 U.S.C. 1322(b)(2). The debtor has not presented evidence that the consented to or are considering the modification presented.

The plan does not fund in 60 months. The claims filed for this case are higher than debtor scheduled. The claims will overextend this plan to 105 months. 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 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. The court hereby dismisses this case.

65. [20-20799](#)-A-13 **IN RE: ANDREW/REBECCA STANLEY**
[MJD-2](#)

MOTION TO CONFIRM PLAN
6-26-2020 [\[46\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DEBTOR DISMISSED: 7/7/20; JOINT DEBTOR DISMISSED: 7/7/20

Final Ruling

The case having been dismissed, the matter is dropped as moot.

66. [16-22288](#)-A-13 **IN RE: RAYMOND/NANCY MALERBI**
[EJS-2](#)

MOTION TO SELL O.S.T.
8-11-2020 [\[31\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Tentative Ruling

Motion: Sell Property [Real Property]

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

Property: 1064 Kirkland Lane, Lincoln, CA 95648

Buyer: Valerie B. Yates

Sale Price: \$489,000.00

Sale Type: Private sale subject to overbid opportunity

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

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is not property of the estate because the debtor's confirmed plan provides that property of the estate revests in debtor upon confirmation of the plan. However, the confirmed plan obligates the debtor to obtain court authorization prior to transferring property, so the plan provides the basis for the court's authority to decide whether to approve the sale.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

67. [16-22288](#)-A-13 **IN RE: RAYMOND/NANCY MALERBI**
[EJS-3](#)

MOTION TO INCUR DEBT O.S.T.
8-12-2020 [\[38\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

No Ruling