

**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 31, 2021
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. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-14-2021 [\[93\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

2. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[TJW-1](#)

MOTION TO CONFIRM PLAN
7-8-2021 [\[97\]](#)

TIMOTHY WALSH/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).

11 U.S.C. § 1325(a)(6)

The debtor has to show under § 1325(a)(6) that the proposed chapter 13 plan is feasible, and that the debtor can comply with its terms. The debtor's proposed plan calls for monthly plan payments of \$205.00, ECF No. 100. However, the most recently filed Schedules I/J reflect a monthly net income of (-\$359.92). Also, these schedules were filed on November 5, 2020. The court finds these filings too outdated to consider in determining the debtor's current financial circumstances. The debtor therefore failed to show ability to pay under the plan.

11 U.S.C. § 521

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor's schedules have not been updated as the trustee requested.

Schedule A, ECF No. 1, still has not been updated to include the debtor's middle name.

Schedule B, *id.*, hasn't been updated to include electronics. Also, no documentation has been submitted reflecting the Nissan Pathfinder listed on Schedule B, valued at \$7,335.00.

Schedule E *id.*, also does not list the debtor's income tax debt owed to the IRS for the 2020 tax year in the amount of \$1,716.00, though the debtor's declaration states that such debt exists, ECF No. 99.

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.

3. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[SMR-1](#)

MOTION FOR ORDER FOR ANNULMENT OF THE AUTOMATIC STAY
8-2-2021 [\[79\]](#)

RICHARD JARE/ATTY. FOR DBT.
SID ROSENBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief
Notice: LBR 9014-1(f)(1)
Disposition: Denied
Order: Civil minute order

Subject: 1657 Barrington Drive, Yuba City, CA 95993

The movant creditor Villa Del Sol Homeowners Association requests Annulment of the Automatic Stay, or alternatively a Motion for Stay Relief.

PERFECTING NONJUDICIAL FORECLOSURE SALE

With regard to prepetition nonjudicial foreclosure sales, “[i]n California, a nonjudicial foreclosure sale is deemed perfected as of 8 a.m. on the date of the sale, provided the trustee's sale deed is recorded within 15 calendar days after the sale.” March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, General Limitations on Avoidance Powers § 21:108 (Rutter Group 2020); see Calif. Civ. C. § 2924h(c). Thus, where a debtor files bankruptcy after the foreclosure sale has occurred, but before the sale deed is recorded, the sale is not subject to avoidance under § 544(a) so long as the deed is recorded within 15 days of the sale. See *In re Bebensee-Wong* 248 B.R. 820, 823 (9th Cir. B.A.P. 2000). On the other hand, a foreclosure sale conducted *after* the debtor files a bankruptcy petition is void as violating the automatic stay, regardless of when the sale deed is recorded. *In re Bebensee-Wong*, at 822; see *In re Sanders* 198 B.R. 326, 329 (Bankr. S.D. Cal. 1996)

Here the non-judicial foreclosure sale for the subject property took place on January 22, 2021. The Trustee's Deed Upon Sale was recorded on April 26, 2021 – well over 15 days after the sale. The debtor filed bankruptcy on April 23, 2021, before the Deed Upon Sale was recorded. The foreclosure sale has not been timely perfected and so the debtor retains an interest in the subject property.

RETROACTIVE STAY RELIEF

“[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay.” *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, “[i]f a creditor obtains retroactive

relief under section 362(d), there is no violation of the automatic stay” *Id.* at 573.

“In deciding whether ‘cause’ exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties’ respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct.” *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor’s overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a “scorecard” for arithmetic reasoning. *Id.* The court is aware that “[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive.” *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

Here the creditor states that cause for annulment exists under a balancing of the equities test since the creditor did not know about the bankruptcy filing until they recorded the Deed Upon Sale. The creditor also stated the creditor will suffer undue hardship without the annulment. However, the creditor did not explain as to how any prior filing to their recording of the Deed Upon Sale adversely affected the creditor, why the Creditor believes the plan is proposed on bad faith.

The creditor also stated annulment will not cause the debtor irreparable injury. However, the creditor did not explain why loss of the debtor's primary residence will not cause the debtor irreparable injury.

The creditor does not further explain how the *Fjelsted* factors favor annulment of the stay.

The court has considered the pertinent factors for deciding whether to grant retroactive relief from stay and concludes that retroactive stay relief 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.

Villa Del Sol Homeowners Association's motion for annulment of/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 denied.

4. [21-22205](#)-A-13 **IN RE: SHELBY HILL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-28-2021 [\[14\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Since the trustee moved to withdraw this objection, ECF No. 18, the court will drop this matter from the calendar as moot.

5. [21-22308](#)-A-13 **IN RE: MILTON MANZANARES AND EVA ROJAS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-11-2021 [\[16\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

11 U.S.C. § 521

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). Here the debtor failed to timely provide 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documents exist. The meeting of creditors was continued to September 2, 2021 at 1:00 p.m. to allow the Trustee to obtain all of the documents and to review them.

11 U.S.C. § 1325(a)(4)

11 U.S.C. § 1325(a)(4) requires that a chapter 13 plan provide the minimum to general unsecured creditors what they would receive in a chapter 7 case. Here the debtor's non-exempt equity totals \$2,387.00 (2016 Nissan Frontier, ECF No. 1) and the debtor proposes a 0% dividend to unsecured creditor, Plan § 3.14, ECF No. 4. The plan calculates that the dividend to unsecured creditors would be approximate .67% (\$1,271.00); nevertheless, the plan still fails liquidation.

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.

6. [19-26311](#)-A-13 **IN RE: NOEMY RIVAS**
[WW-4](#)

MOTION FOR AUTHORIZATION TO USE TAX REFUND
7-27-2021 [[86](#)]

MARK WOLFF/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

7. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-22-2021 [[104](#)]

JASON VOGELPOHL/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
SUN WEST MORTGAGE COMPANY, INC. VS.; RESPONSIVE PLEADING

No Ruling

8. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA**
SIRUNANIAN
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
8-12-2021 [[41](#)]

PETER MACALUSO/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

No Ruling

9. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA
SIRUNANIAN
[DPC-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
8-11-2021 [\[37\]](#)

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.

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).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. The debtors' monthly net income is \$100.00, Schedule J, ECF No. 1. The debtors' plan proposes a monthly payment of \$100.00, ECF No. 4. The debtors' plan relies on a Motion to Value Collateral for U.S. Bank, N.A., listed in Class 2C, ECF No. 4. The debtors have filed a motion to value to date. The creditor opposed the motion to value and now the parties are requesting an evidentiary hearing as to the value of the real property involved. Therefore, the debtor failed to show feasibility of the plan thus far. The court will sustain the objection under § 1325(a)(6).

11 U.S.C. § 521

The debtors failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtors failed to provide the trustee with the required prepetition pay advices or the required tax return for the past prepetition year.

11 U.S.C. § 1322(d)

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years,

11 U.S.C. § 1322(d). Here, due to the IRS' Claim No. 8, the trustee calculates that the debtor would have to extend the plan beyond 60 months (instead of the 36 months proposed) with a continual plan payment of \$100.00/month. Therefore, the plan violates § 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.

10. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA SIRUNANIAN**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-29-2021 [\[27\]](#)

PETER MACALUSO/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY LLC VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: Ford Edge 2020

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 3 prepetition payments totaling \$1,837.53 and 1 postpetition payment totaling \$612.51 are past due.

Alternatively, because the plan which has not been provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

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 2020 Ford Edge, 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.

11. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA SIRUNANIAN**
[PGM-1](#)

MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A.
7-20-2021 [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

12. [21-21223](#)-A-13 **IN RE: BRUCE SHEETS**
[DPC-2](#)

MOTION TO DISMISS CASE
7-21-2021 [\[45\]](#)

ARASTO FARSAD/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); debtor's non-opposition filed

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 \$14,328.56.

FAILURE TO PROSECUTE

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 4.5 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.

13. [18-22724](#)-A-13 **IN RE: ANGELO NOLASCO AND DEBRA RODRIQUEZ-NOLASCO**
[PGM-4](#)

MOTION TO MODIFY PLAN
7-14-2021 [[86](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, July 14, 2021

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.

14. [21-20825](#)-A-13 **IN RE: STEPHEN WACHIRA**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-9-2021 [\[46\]](#)

JOSEPH CANNING/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

15. [21-20825](#)-A-13 **IN RE: STEPHEN WACHIRA**
[JMC-3](#)

MOTION TO CONFIRM PLAN
7-19-2021 [\[55\]](#)

JOSEPH CANNING/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

16. [19-22526](#)-A-13 **IN RE: KENNETH/ANN VALLIER**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [\[88\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

17. [19-22526](#)-A-13 **IN RE: KENNETH/ANN VALLIER**
[MJD-8](#)

MOTION TO MODIFY PLAN
7-16-2021 [\[96\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

18. [18-27529](#)-A-13 **IN RE: YESENIA GONZALEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [\[52\]](#)

MUOI CHEA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Since the trustee agreed to drop this motion to dismiss if the court grants the debtor's Motion to Modify (Item 19), and since the court granted said motion, the court will drop this motion from the calendar as moot.

19. [18-27529](#)-A-13 **IN RE: YESENIA GONZALEZ**
[MC-1](#)

MOTION TO MODIFY PLAN
7-18-2021 [\[58\]](#)

MUOI CHEA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 18, 2021

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.

20. [17-20031](#)-A-13 **IN RE: JAMES MURRAY**
[RS-3](#)

MOTION TO MODIFY PLAN
7-15-2021 [\[93\]](#)

RICHARD STURDEVANT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms.

Missing Terms

The debtor has paid a total of \$124,120.66 to the trustee through June 2021, month 53, under the confirmed plan. The debtor has not stated payments made up until month 53 in the proposed plan. The debtor has to make clear the terms of the proposed plan, including what payments have been made.

M T Bank Not Classified

The confirmed plan called for the trustee to pay creditor M T Bank in Class 1 for prepetition arrears and monthly postpetition payments. The trustee has paid prepetition arrears of \$16,529.67 in full as of May 28, 2021. M T Bank is not provided for in the proposed plan either in Class 1 or Class 4. The Trustee requests these payments be authorized by the debtor. It appears the debtor will commence making the Post-Petition Monthly Payment directly as the supplemental Schedule J, ECF No. 96, reports a home ownership expense of \$1,391.89 (same amount as the Notice of Mortgage Payment Change filed 12/29/20). If the debtor is to make the payment directly the creditor should be included in Class 4.

Provisions to be Deleted

Section 7.03 of the plan conflicts with Section 7.04, ECF No. 98. Section 7.03 states that the debtor will pay \$17,700.44 for the remainder of the plan. But Section 7.04 states monthly payments will be made which amount to \$16,548.00. The trustee requests that Section 7.03 be deleted.

Also, the trustee requests that Section 7.05 be deleted.

The debtor hasn't shown ability to comply with the terms of the proposed plan due to the foregoing. The court cannot grant the proposed modifications to the chapter 13 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 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.

21. [17-24834](#)-A-13 **IN RE: PATRICIA LEMKE**
[PGM-5](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
7-23-2021 [[127](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR DISCHARGED: 11/20/2017

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

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, Peter G. Macaluso has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,500.00 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 applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation, ECF No. 62. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 116. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, and that the movant has shown that substantial and unanticipated post-confirmation work was necessary. The court will approve the application. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

Peter G. Macaluso's application for allowance of 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. The court allows compensation in the amount of \$1,500.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1,500.00.

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.

22. [21-20536](#)-A-13 **IN RE: MICHAEL GARDINER**
[DPC-2](#)

MOTION TO DISMISS CASE
7-28-2021 [\[33\]](#)

STEPHAN BROWN/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 \$1,450.00.

FAILURE TO PROSECUTE

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 6.5 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.

23. [21-22138](#)-A-13 **IN RE: VICTOR GARCIA MONJARAZ AND RUTH BERROTERAN GARCIA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-28-2021 [\[21\]](#)

CARL GUSTAFSON/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).

11 U.S.C. § 1325(a)(4)

11 U.S.C. § 1325(a)(4) requires that a chapter 13 plan provide general unsecured creditors at least the minimum they would receive in a chapter 7 case. According to Schedules A, B and C, the total value of non-exempt property in the estate is \$17,875.00, ECF No. 1. The total amount that will be paid to unsecured creditors is only \$9,642.22, ECF No. 9. The plan therefore fails the liquidation test.

11 U.S.C. § 1325(a)(6)

The debtor has to show under § 1325(a)(6) that the proposed chapter 13 plan is feasible, and that the debtor can comply with its terms.

The plan calls for monthly payments of \$400.00. Schedule J shows a monthly net income of \$400.68, ECF No. 1. However, the debtor admitted at the 341 meeting that the income in Schedule I, line 8h (\$190.00 from "Anticipated income from sell/scrap of cars") was listed in error. Therefore, the debtors haven't shown ability to make plan payments.

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.

24. [18-22944](#)-A-13 **IN RE: DARRIN/DEZIREE SUTLIFF**
[MET-1](#)

MOTION TO MODIFY PLAN
7-14-2021 [\[43\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 14, 2021

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.

25. [17-27445](#)-A-13 **IN RE: BRIAN/WENDY NICKLE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [\[89\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

26. [17-27445](#)-A-13 **IN RE: BRIAN/WENDY NICKLE**
[MJD-6](#)

MOTION TO MODIFY PLAN
7-19-2021 [\[96\]](#)

MATTHEW DECAMINADA/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).

11 U.S.C. § 1325(a)(6)

The debtor has to show under § 1325(a)(6) that the proposed chapter 13 plan is feasible, and that the debtor can comply with its terms.

The debtor's proposed plan calls for monthly plan payments of \$2,050.00, ECF No. 98. However, the most recently filed Schedules I/J reflect a monthly net income of \$1,652.20, ECF No. 76. Also, these schedules were filed on June 8, 2020. The court finds these filings too outdated to consider in determining the debtor's current financial circumstances.

In addition, the debtors did not specify a monthly dividend for Class 2(A) creditor Caliber Home Loans.

Section 7.01 of the plan also contains the year 2020, and it should be corrected to 2021.

For the foregoing reasons, the debtor failed to show ability to pay under 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 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.

27. [19-21346](#)-A-13 **IN RE: CHARLES KOCH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [[67](#)]

MICHAEL HAYS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Since the trustee agreed to drop this motion to dismiss if the court grants the debtor's Motion to Modify (Item 28), and since the court granted said motion, the court will drop this motion from the calendar as moot.

28. [19-21346](#)-A-13 **IN RE: CHARLES KOCH**
[MOH-2](#)

MOTION TO MODIFY PLAN
7-15-2021 [[76](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, July 15, 2021

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.

29. [16-22450](#)-A-13 **IN RE: PETER/MARIAN SKILLMAN**
[PLC-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, AS
TO JOINT DEBTOR
7-29-2021 [\[53\]](#)

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

Final Ruling

Motion: Substitution of Representative and Waiver of Personal Financial Management

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

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).

The debtors move to waive the Financial Management Course Certificate requirement as it pertains to Marian Anders Skillman.

DISCUSSION

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless . . .
. after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to a *debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone*. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C.A. § 109(h)(4) (emphasis added).

Here Mrs. Skillman became incapacitated by dementia before being able to obtain the Financial Management Course Certificate. The trustee further does not oppose the waiver.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is granted. The co-debtor Marian Anders Skillman shall not be required to file a Certificate of Completion of Course in Personal Financial Management.

30. [21-21652](#)-A-13 **IN RE: MARIA PAGTAKHAN**
[GW-1](#)

MOTION TO CONFIRM PLAN
8-2-2021 [\[37\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

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 PRA Receivables, U.S. Bank, N.A. Citibank, N.A., and Svo Portfolio Services have not received notice.

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.

31. [21-21155](#)-A-13 **IN RE: CURTIS/CHRYSTAL ASH**

OBJECTION TO CONFIRMATION OF PLAN BY RIVERMARK COMMUNITY
CREDIT UNION
8-11-2021 [\[52\]](#)

CATHERINE KING/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

11 U.S.C. § 1325(a) (6)

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. The debtors' plan relies on a Motion to Value Collateral for the creditor, listed in Class 2B, ECF No. 32. The claimed amount by the creditor is \$43,417.00. The debtors valued the debt in Class 2B at \$35,000.00, and filed a Motion to Value Collateral, ECF No. 40, which has been withdrawn due to failure to provide the creditor notice, ECF No. 58. The debtors have failed to file another motion to value to date. The creditor objected to confirmation, challenging the plan's value, ECF No. 17. Also, the collateral is not subject to cramdown since the debt was incurred within 910 days pre-petition. 11 U.S.C. § 1325(a) (hanging paragraph).

The debtor failed to show feasibility of the plan thus far.

L.B.R. 3015-1(i)

"If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing 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." L.B.R. 3015-1(i).

Again, the debtors reduced the creditor's secured claim based on the proposed value of its collateral in the plan but withdrew the filed Motion to Value which hadn't been served on the creditor. There is no motion to value filed to date. Therefore, this plan fails to comply with L.B.R. 3015-1(i).

The court will sustain the creditor's objection.

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:

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

Rivermark Community Credit Union'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.

32. [21-21155](#)-A-13 **IN RE: CURTIS/CHRYSTAL ASH**
[CK-2](#)

MOTION TO VALUE COLLATERAL OF RIVERMARK COMMUNITY CREDIT
UNION
7-19-2021 [\[40\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

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

33. [21-21155](#)-A-13 **IN RE: CURTIS/CHRYSTAL ASH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-28-2021 [\[48\]](#)

CATHERINE KING/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).

11 U.S.C. § 1325(a) (6)

11 U.S.C. § 1325(a) (6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. Payments under the proposed plan are delinquent in the amount of \$1,050.00.

11 U.S.C. § 341

The debtor failed to appear at the 341 meeting held on July 22, 2021. The meeting has been continued to August 12, 2021, at 10:00 a.m.

11 U.S.C. § 521

The debtors failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a) (3)-(4). The debtors failed to provide the trustee with the required 60 days prepetition pay advices or the required tax return for the past prepetition year.

11 U.S.C. § 1322(d)

Absent application of the CARES Act, 11 U.S.C. § 1329(d) (which is not applicable here), a chapter 13 plan may not exceed five years, 11 U.S.C. § 1322(d). Here, due to the filed claims by creditors, the trustee calculates the plan should be extended to 76 months to satisfy all claims. Therefore, the plan violates § 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.

34. [21-20956](#)-A-13 **IN RE: JON HILL**
[DPC-2](#)

MOTION TO DISMISS CASE
8-3-2021 [\[49\]](#)

GEORGE BURKE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

This case having been dismissed, the court will drop this matter from the calendar as moot.

35. [21-22357](#)-A-13 **IN RE: LOREE WOODS-BOWMAN**
[ALG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SUN WEST MORTGAGE
COMPANY, INC.
7-19-2021 [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

§ 1325(a)(5) AND IMPROPER CLASSIFICATION OF SECURED CLAIM

Creditor Sun West Mortgage Company holds the first and second deeds of trust in the respective amounts of \$383,185.00 and \$6,600.00 on the debtor's primary residence located at 328 Promenade Circle, Suisun City, CA 94585-6314. The creditor has filed two proofs of claim (Claim No. 4-5). Claim No. 4 states pre-petition arrears total \$3,809.92. Claim No. 5 states pre-petition arrears total \$32.04. Its

claims are deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claims are delinquent based prepetition arrearages set forth on the filed proofs of claim.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

By placing this secured claim in Class 4, the plan violates § 1325(a)(5). The allowed secured claim in this case includes the prepetition arrearage shown on the proof of claim, which amount was past due on the petition date. Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Because the plan fails to provide for cure of the prepetition arrearage, the plan does not provide payment distributions on account of this secured claim that are at least equal to the allowed amount of such claim. Further, the secured claim holder does not accept the plan, and Class 4 is not a mechanism for surrender.

In addition, this district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080. Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1. Therefore, placing the claim in Class 4 also contravenes the terms of this district's form plan. Class 4 of the plan indicates payment of only the ongoing post-petition mortgage installments on the Class 4 claim and not the pre-petition arrearage. Therefore, this claim must be placed in Class 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.

Sun West Mortgage Company'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.

36. [21-22357](#)-A-13 **IN RE: LOREE WOODS-BOWMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-11-2021 [\[17\]](#)

MOHAMMAD MOKARRAM/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).

§ 1325(a)(5)(B)(ii) AND IMPROPER CLASSIFICATION OF SECURED CLAIM

Creditor Sun West Mortgage Company holds the first and second deeds of trust in the respective amounts of \$383,185.00 and \$6,600.00 on the debtor's primary residence located at 328 Promenade Circle, Suisun City, CA 94585-6314. The creditor has filed two proofs of claim (Claim No. 4-5). Claim No. 4 states pre-petition arrears total \$3,809.92. Claim No. 5 states pre-petition arrears total \$32.04. Its claims are deemed allowed until a party in interest objects. 11 U.S.C. § 502(a). As a result, the claims are delinquent based prepetition arrearages set forth on the filed proofs of claim.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the

plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

By placing this secured claim in Class 4, the plan violates § 1325(a)(5). The allowed secured claim in this case includes the prepetition arrearage shown on the proof of claim, which amount was past due on the petition date. Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim. See *id.* §§ 1325(a)(5)(B)(ii), 1322(b)(5) (permitting the curing of any default and ongoing maintenance payments on long-term debt maturing after the plan's term).

Because the plan fails to provide for cure of the prepetition arrearage, the plan does not provide payment distributions on account of this secured claim that are at least equal to the allowed amount of such claim. Further, the secured claim holder does not accept the plan, and Class 4 is not a mechanism for surrender.

In addition, this district's form chapter 13 plan provides that "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Form Chapter 13 Plan, EDC 3-080. Claims that are in default and mature after the completion of the plan's term are to be placed in Class 1. Therefore, placing the claim in Class 4 also contravenes the terms of this district's form plan. Class 4 of the plan indicates payment of only the ongoing post-petition mortgage installments on the Class 4 claim and not the pre-petition arrearage. Therefore, this claim must be placed in Class 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 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.

37. [21-22259](#)-A-13 **IN RE: PHILLIP GARCIA AND GEORGIANNE
MAHONEY-GARCIA
[DPC-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-28-2021 [[16](#)]

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

38. [21-22060](#)-A-13 **IN RE: JACQUE HAND**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-5-2021 [[24](#)]

MICHAEL BENAVIDES/ATTY. FOR DBT.
DEBTOR DISMISSED: 8/5/2021

Final Ruling

The case having been dismissed, the order to show cause is
discharged as moot.

39. [21-22261](#)-A-13 **IN RE: AMANDA VASCONCELLOS
[DPC-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-28-2021 [[16](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

40. [16-20763](#)-A-13 **IN RE: LAWRENCE/CHYANNE MICALLEF**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2021 [[177](#)]

MARK WOLFF/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

41. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-9-2021 [[122](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

42. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[MET-2](#)

MOTION TO MODIFY PLAN
7-6-2021 [[128](#)]

MARY TERRANELLA/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).

11 U.S.C. § 1325(a)(6)

The debtor has to show under § 1325(a)(6) that the proposed chapter 13 plan is feasible, and that the debtor can comply with its terms. The debtor's proposed plan calls for increased monthly plan payments of \$5,682.00. The debtor's amended Schedule J shows a monthly net income of \$5,682.00, ECF No. 134. However, the debtor also filed a supplemental pleading, ECF No. 140, to address the missed June mortgage payment owed. The debtor proposes to pay off those arrears in the amount of \$1,796.17 in August and September 2021. Therefore, the increased plan payments show to be insufficient to pay in full each monthly Class 1 mortgage payment. For the foregoing reasons, the debtor failed to show ability to pay under 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 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.

43. [19-24669](#)-A-13 **IN RE: RAMON CAPARAS**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
8-11-2021 [[146](#)]

ARASTO FARASAD/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the transfer of claim will be vacated.

44. [20-25073](#)-A-13 **IN RE: MARGARET FELIX**
[MS-2](#)

MOTION TO MODIFY PLAN
7-17-2021 [[31](#)]

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

45. [21-21279](#)-A-13 **IN RE: SUSAN STRAUB**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
5-20-2021 [[15](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

46. [19-20882](#)-A-13 **IN RE: HENRY RODRIGUEZ**
[PGM-3](#)

MOTION TO VALUE COLLATERAL OF PERSOLVE, LLC
7-31-2021 [[78](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

47. [20-20483](#)-A-13 **IN RE: NORMA MATTINGLY**
[GEL-1](#)

MOTION TO APPROVE LOAN MODIFICATION
8-2-2021 [\[19\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approval of Mortgage Loan Modification

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

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).

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 362(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

48. [21-22384](#)-A-13 **IN RE: NORMAN MASTERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-3-2021 [\[33\]](#)

ROBERT MCCANN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

49. [21-22485](#)-A-13 **IN RE: SCOTT LOVE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-10-2021 [\[27\]](#)

MICHAEL HAYS/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).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires that a chapter 13 plan is feasible, and that the debtor is able to comply with its terms. The debtors' monthly net income is \$232.00, Schedule J, ECF No. 1. The debtors' plan proposes a monthly payment of \$245.00, ECF No. 4. The debtors' plan relies on a Motion to Value Collateral for One Main Financial, listed in Class 2C. The debtors have filed a motion to value to date, ECF No. 15. The court has continued its hearing so the debtor may augment the record with a supplemental declaration. The debtor has not timely done so, so the court cannot rule on said Motion to Value. Therefore, the debtor failed to show feasibility of the plan thus far. The court will sustain the objection under § 1325(a)(6).

11 U.S.C. § 521

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).

CIVIL MINUTE ORDER

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

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

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

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

50. [21-22485](#)-A-13 **IN RE: SCOTT LOVE**
[MOH-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL
GROUP, LLC
7-19-2021 [[15](#)]

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

51. [21-20987](#)-A-13 **IN RE: JENNIFER BUTTERFIELD**
[DPC-2](#)

MOTION TO DISMISS CASE
8-3-2021 [[33](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); debtor's non-opposition filed

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 \$748.00.

FAILURE TO PROSECUTE

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 5.5 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.

52. [17-24490](#)-A-13 **IN RE: RAYMOND/ELIZABETH CAMPBELL**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-21-2021 [[109](#)]

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

No Ruling

53. [17-24490](#)-A-13 **IN RE: RAYMOND/ELIZABETH CAMPBELL**
[LBG-401](#)

MOTION TO MODIFY PLAN
7-19-2021 [\[116\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

11 U.S.C. § 1325(a)(6)

The debtor has to show under § 1325(a)(6) that the proposed chapter 13 plan is feasible, and that the debtor can comply with its terms.

No Supplemental Schedules I and J

The debtor did not file supplemental Schedules I and J to demonstrate feasibility of the proposed plan. The most recently filed schedules were filed on July 7, 2017, ECF No. 1. The court finds these filings too outdated to consider in determining the debtor's current financial circumstances.

Also, while the motion, ECF No. 116, and declaration, ECF No. 118, state the debtors' social security and pension income has remained the same, they state that Ray Campbell's contract work has decreased beginning June 2020 from \$8,000.00 to \$2,500.00. The debtors filed a self-prepared spreadsheet of their June 2020 income along with supporting bank statements for the same period and a deposit summary for the last six months of Ray Campbell's contract work income, ECF No. 119. Supplemental schedules are necessary to assess feasibility.

Percentage to Unsecured Creditors

Section 3.14 of the modified plan proposes to reduce the percentage to unsecured creditors from 26% to no less than 18%. The trustee has disbursed in amounts greater than 18%. Therefore, the proposed plan does not authorize these prior disbursements to unsecured creditors.

Section 7

Section 7 proposes plan payments of \$800.00 for 35 months (June 2020), then \$250.00 for 25 months. The additional provision states the total paid in as of the date of filing (7-19-21) is \$30,754.99. The trustee's records reflect that \$30,754.99 was the total paid in through May 2021 (month 46), and the actual total paid in through July 19, 2021 is \$31,254.99.

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.

54. [21-22391](#)-A-13 **IN RE: JOYCE DAHLGREN**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GULF HARBOUR
INVESTMENTS CORPORATION
8-12-2021 [[16](#)]

DAVID RITZINGER/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

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

Section 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the pre-petition arrears on a Class 1 claim does not reduce the amount of the arrears reflected in a filed proof of claim.

The objection will be overruled because any understatement of the prepetition arrears in the plan does not alter or affect the creditor's rights.

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

55. [21-22594](#)-A-13 **IN RE: PETER/REBECCA DELGADO**
[PGM-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
7-27-2021 [\[17\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

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 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).

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.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as Beck's Furniture. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$525.00.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value non-vehicular, personal 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 personal property collateral described as a Beck's Furniture has a value of \$525.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$525.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

56. [21-22195](#)-A-13 **IN RE: OKHARINA HOLMES**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LOANCARE, LLC, N.A.
7-29-2021 [[31](#)]

CANDACE BROOKS/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

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

Section 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the pre-petition arrears on a Class 1 claim does not reduce the amount of the arrears reflected in a filed proof of claim.

The objection will be overruled because any understatement of the prepetition arrears in the plan does not alter or affect the creditor's rights.

CIVIL MINUTE ORDER

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

57. [17-25899](#)-A-13 **IN RE: CARLOS/ROBIN ROBLES**
[CYB-8](#)

MOTION TO APPROVE LOAN MODIFICATION
8-17-2021 [\[137\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

Notice: LBR 9014-1(f)(2); trustee's non-opposition filed

Disposition: Granted

Order: Civil minute order

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

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests stay relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. 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 court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.