



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: TUESDAY
DATE: SEPTEMBER 10, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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PRE-HEARING DISPOSITION INSTRUCTIONS

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. However, 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. [23-24201](#)-A-13 **IN RE: TRACY ZIMMERMAN**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-29-2024 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
SANTANDER CONSUMER USA INC. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Santander Consumer USA, Inc. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The subject property is a 2018 Chevrolet Cruze. The obligation to Santander which is secured by the subject property is provided for in Class 4 of the confirmed plan.

STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. §1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

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.

Santander Consumer USA, Inc.'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 denied as moot.

2. [24-22001](#)-A-13 **IN RE: LEON BROWN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-26-2024 [\[14\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

3. [21-23206](#)-A-13 **IN RE: JULIEANNE/RANDY PRICE**
[MOH-4](#)

MOTION FOR CONTINUED ADMINISTRATION OF CASE
8-9-2024 [\[93\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The hearing on this motion will be continued to allow Randy Price to file and serve amended Schedules I and J which show his ability to perform the Chapter 13 Plan as indicated in the motion.

IT IS ORDERED that the motion is continued to October 22, 2024, at 9:00 a.m. No later than September 24, 2024, Randy Price shall file and serve amended Schedules I and J, with any applicable attachments, as well as any supporting declarations from third parties in support of the motion.

IT IS FURTHER ORDERED that no later than October 8, 2024, the Chapter 13 Trustee shall file and serve a reply indicating his position after reviewing the additional evidence. The evidentiary record will close on October 8, 2024. The court may rule on this matter without further notice or hearing.

4. [24-23006](#)-A-13 **IN RE: STANLEY BERMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-14-2024 [\[20\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Tentative Ruling

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

5. [24-22210](#)-A-13 **IN RE: CARRIE MURRELL**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-3-2024 [\[18\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from July 30, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Le'Roy Roberson is ordered to appear in this matter at 9:00 a.m. on September 10, 2024, in Department A. The appearance may be made by telephone or Zoom.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from July 30, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; or (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On August 1, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than August 13, 2024. L.R. 230(c) ("A responding

party who has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than August 13, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

Order, ECF No. 26, (emphasis added).

The debtors failed to file: (1) any opposition to the trustee's objection; (2) an amended plan; or (3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by August 13, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor concedes the objection.

CONFIRMATION

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

TRUSTEE SUPPLEMENTAL PLEADING

On August 27, 2024, the Chapter 13 trustee filed a reply as ordered, ECF No. 31.

In his reply the trustee indicates that much of his prior objection has been resolved. However, the plan delinquency issue is not yet resolved, and the trustee has raised two additional issues also discussed below in this ruling.

PLAN FEASIBILITY

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

Plan Delinquency

The trustee originally objected to confirmation contending that the plan payments were delinquent. In his reply the trustee indicates that the plan payments are current with a payment pending via TFS. The supporting declaration states:

My review of the Trustee's records show \$15,675.00 in payments have paid into the Plan, and an electronic payment of \$3,135.00 is pending since 8/23/2024 and will bring plan payments current if it clears,

Declaration of Neil Enmark, 2:3-5, ECF No. 32.

Accordingly, the plan payments are not yet current, as the trustee has not received the funds scheduled to be paid through TFS. The plan cannot be confirmed if the plan payments are not current.

Conflicting Plan Terms

The court has reviewed the proposed plan and finds as follows.

The debtor is obligated to make payments on two vehicles: (1) a Toyota Camry; and (2) a Toyota Highlander.

The Toyota Camry is listed in Class 2, Section 3.08 of the Chapter 13 Plan, ECF No. 3. The Toyota Highlander is listed in Class 4, Section 3.10 of the plan. *Id.*

However, each of the previous claims are also indicated as being in Class 1 of the plan. Chapter 13 Plan, § 7 Non-Standard Provisions, ECF No. 3.

Accordingly, it is unclear to the court how the debtor intends to treat each of the claims. An amended plan is required.

Misclassified Secured Vehicle Claim

"Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." Chapter 13 Plan, § 3.10, ECF No. 3.

The trustee contends that the obligation owed to Toyota Financial, which is secured by the Toyota Highlander, is improperly classified in Class 4 of the plan. There is no claim filed regarding this obligation. The debtor has provided no evidence which proves that the obligation is properly classified in Class 4 of the proposed plan. The Non-Standard Provisions state that the obligation will be satisfied during the term of the plan. Accordingly, the claim is misclassified in Class 4 and should properly be placed in Class 2 of the plan.

Accordingly, the court finds that the plan improperly classifies the obligation secured by the Toyota Highlander.

Misclassified Secured Real Property Claim

"Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence." Chapter 13 Plan, § 3.07, ECF No. 3.

The debtor owes an obligation to Wilmington Savings Fund Society, FSB, in the amount of \$437,305.98. The obligation is secured by the debtor's residence. Claim No. 3. The claimant, which has also objected to confirmation of the plan, contends that the obligation matures on July 1, 2024. Claim No. 3, Attachment 1.

The debtor has provided for the claim in Class 1 of the proposed plan. Chapter 13 Plan, § 3.07, ECF No. 3. Given the maturity date the claim is not properly classified in Class 1 of the plan, but rather belongs in Class 2 of the plan.

Accordingly, the court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

6. [24-22210](#)-A-13 **IN RE: CARRIE MURRELL**
[GB-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON
SAVINGS FUND SOCIETY, FSB
6-28-2024 [\[14\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.
SHANNON DOYLE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from July 30, 2024

Disposition: Overruled as moot

Order: Civil minute order

Attorney Le'Roy Roberson is ordered to appear in this matter at 9:00 a.m. on September 10, 2024, in Department A. The appearance may be made by telephone or Zoom.

The hearing on Wilmington Savings Fund Society, FSB's objection to confirmation was continued from July 30, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; and (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary

sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On August 1, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

. . .

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than August 13, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than August 13, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

Order, ECF No. 27, (emphasis added).

The debtor failed to file: (1) any opposition to the trustee's objection; (2) an amended plan; or (3) a statement indicating that she does not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by August 13, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor concedes the objection.

CONFIRMATION

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

TRUSTEE OBJECTION SUSTAINED

The court has sustained the objection of the Chapter 13 trustee (DPC-1) which renders this objection moot. The trustee's argument regarding the classification of the objecting creditor's claim mirrors that of the creditor.

Accordingly, the court will overrule the objection as moot.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled as moot.

7. [24-22912](#)-A-13 **IN RE: JASON PEREZ AND JENNIFER BECERRA**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SERVBANK, SB
8-15-2024 [\[14\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to October 22, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Servbank, SB, objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to October 22, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 24, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than

September 24, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than October 8, 2024. The evidentiary record will close after October 8, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than September 24, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

8. [24-22923](#)-A-13 **IN RE: ERROL QUOCK AND IRENE WONG**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-14-2024 [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to October 22, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to October 22, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 24, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than September 24, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 8, 2024. The evidentiary record will close after October 8, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than September 24, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

9. [23-24329](#)-A-13 **IN RE: ALEXANDER/VANERY HAYMORE**
[MOH-2](#)

AMENDED MOTION TO CONFIRM PLAN
7-24-2024 [\[72\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed July 24, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Second Amended Chapter 13 Plan, ECF No. 75. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 79.

CHAPTER 13 PLAN CONFIRMATION

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

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

10. [24-21229](#)-A-13 **IN RE: ZIALCITA HUFANA**
[KMM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-31-2024 [\[25\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA LEASE TRUST VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Withdrawn by moving party

Order: Civil minute order

On September 4, 2024, the movant filed a notice of withdrawal of its motion. No party has appeared in opposition to the motion. Accordingly, the motion is withdrawn.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is withdrawn.

11. [24-22031](#)-A-13 **IN RE: ELIZABETH MALKIN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-26-2024 [\[14\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from July 30, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor filed opposition as ordered and the trustee filed a reply.

CONFIRMATION

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

The trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved with the debtor's attendance at the continued meeting of creditors. He also states the plan payments are current. Reply, ECF No. 25. Finally, the trustee requests that his objection be overruled.

Accordingly, the court will overrule the objection. The debtor shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled.

12. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**
[DPC-1](#)

MOTION TO DISMISS CASE
8-14-2024 [[36](#)]

RESPONSIVE PLEADING

No Ruling

13. [24-21835](#)-A-13 **IN RE: MARISOL/PHILLIP CHAVEZ**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
6-20-2024 [\[18\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from July 16, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on Lakeview Loan Servicing, LLC's objection to confirmation was continued to allow the parties to augment the evidentiary record.

On August 13, 2024, the debtors filed a response, ECF No. 24. The debtors state that they are negotiating with Lakeview regarding the classification of its claim in the plan. No stipulation has been submitted as of September 4, 2024. Accordingly, the court issues the following ruling.

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)(5)(B)(ii): Improper Classification of Secured Claim

Lakeview Loan Servicing, LLC, objects to confirmation, contending that as residential home mortgage payments were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper.

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

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$7,361.62. Compare Claim No. 30 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

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

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

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

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

a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

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

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

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

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

...

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

Chapter 13 Plan § 3.07, EDC 3-080.

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

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

Id. at § 3.10.

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

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

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

The court is aware that the claim reflects the entire sum consists of escrow shortages. However, only part of the claim reflects anticipated escrow deficiencies. The remaining deficiency is the result of a property tax advance already made by Lakeview related to home improvements which are being paid for through an assessment included on the property taxes. This advance has resulted in the escrow deficiency. Motion, 2:23-27, ECF No. 18. At least \$3,337.92 has already been advanced and this amount is too large to be paid outside of Class 1. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

Lakeview Loan Servicing, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

14. [24-22037](#)-A-13 **IN RE: HELEN ROQUE**
[PGM-1](#)

MOTION TO CONFIRM PLAN
7-24-2024 [\[20\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed July 24, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 24. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 30.

CHAPTER 13 PLAN CONFIRMATION

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

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

15. [24-22437](#)-A-13 **IN RE: ROBERT STANLEY**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-2-2024 [\[23\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition filed by debtor
Disposition: Overruled as moot
Order: Civil minute order

The Chapter 13 trustee objects to the debtor's claim of exemptions in monies on deposit at the First Northern Bank of Dixon with a value of \$2,500.00 under C.C.P. §704.070.

EXEMPTIONS IN BANKRUPTCY

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

AMENDED SCHEDULE C FILED

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1)

In this case the debtor filed an Amended Schedule C on August 6, 2024, ECF No. 27. As such a new 30-day period commences for parties to object to the debtor's new claim of exemptions.

Accordingly, the court will overrule the trustee's objection to exemptions as moot.

CIVIL MINUTE ORDER

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

The Chapter 13 trustee's Objection to the Debtor's Claim of Exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

16. [24-22754](#)-A-13 **IN RE: MY TRAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
8-7-2024 [\[26\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: LBR 3015-1(c)(4); no written opposition required
Disposition: Overruled as moot
Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

17. [24-22754](#)-A-13 **IN RE: MY TRAN**
[DPC-2](#)

MOTION TO DISMISS CASE
8-27-2024 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 8, 2024, at 9:00 a.m.

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to provide business information

Best Interests of Creditors/Estate: Convert to Chapter 7

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$16,966.82.

Failure to Provide Information

The trustee also argues that the debtor's failure to provide business information requested by the trustee represents unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

I have reviewed the documents provided by the Debtor to date and do not show the Debtor has provided to date the business questionnaire, 6 months of profit and loss statements, and proof of license and insurance.

Declaration of Neil Enmark, 2:13-15, ECF No. 35.

The court notes that the trustee has also raised this in his objection to confirmation, DPC-1.

The meeting of creditors was held on August 1, 2024, and the trustee did not have the information he required to properly analyze the proposed Chapter 13 Plan considering the debtor's financial circumstances. In this case the debtor is self-employed, operating a nail salon. Schedule I, ECF No. 17. A review of this schedule also shows that the debtor has failed to provide the attachment to Schedules I and J which indicates projected business income and expenses.

DEBTOR RESPONSE

Although not required, the debtor filed opposition to this motion, ECF No. 46. The debtor requests a continuance of the hearing to coincide with the motion to confirm plan which the debtor has filed. The court will grant the continuance in this instance.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this motion will be continued to October 8, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that:

- (A) The debtor shall file admissible evidence in opposition to the motion. The debtor(s) shall file and serve a written response to the motion not later than September 24, 2024; the opposition shall specifically address each issue raised in the trustee's motion and include **admissible evidence** in support of the debtor's position.
- (B) The trustee shall file and serve a status report under this motion control number apprising the court of the status of all issues raised in his motion no later than October 1, 2024. The evidentiary record will close after October 1, 2024.

18. [24-21955](#)-A-13 **IN RE: CHIPIKO MALEKANO**
[TLA-1](#)

MOTION FOR COMPENSATION FOR THOMAS L. AMBERG, JR., DEBTORS
ATTORNEY(S)
8-12-2024 [\[15\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

The court will continue the hearing on this motion for the Chapter 13 trustee to file a response. The response shall state whether the confirmed plan is feasible with payment of the compensation and reimbursement of expenses requested in the application. This motion was filed pursuant to LBR 9014-1(f)(1) and required written response no later than August 27, 2024. No response has been filed.

IT IS HEREBY ORDERED that the hearing on this motion is continued to October 8, 2024. No later than September 24, 2024, the Chapter 13 trustee shall file and serve a response to the motion which shall include the analysis indicated by the court regarding plan

feasibility. The debtor may file and serve any reply no later than October 1, 2024.

19. [23-20257](#)-A-13 **IN RE: AUSTIN MERRITT**
[TLA-5](#)

MOTION TO APPROVE LOAN MODIFICATION
8-19-2024 [[117](#)]

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling

20. [24-22460](#)-A-13 **IN RE: HAYDEN/MANDY COIT**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-6-2024 [[18](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
PHH MORTGAGE CORPORATION VS.
RESPONSIVE PLEADING

No Ruling

21. [24-21361](#)-A-13 **IN RE: JOSHUA WILLIAMS**
[GEL-1](#)

MOTION TO CONFIRM PLAN
7-29-2024 [[66](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.
DEBTOR DISMISSED: 08/01/24

Final Ruling

This case was dismissed on August 1, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

22. [24-20663](#)-A-13 **IN RE: BRANDON/SHINYA GARLOFF**
[DPC-2](#)

MOTION TO DISMISS CASE
8-7-2024 [\[34\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 27, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$4,300 with one payment(s) of \$2,150 due prior to the hearing on this motion.

The trustee also seeks dismissal because the debtor has failed to file an amended plan following the court's order denying confirmation of the previously proposed Chapter 13 Plan, on June 4, 2024.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, and the debtor's failure to file an amended plan. The court hereby dismisses this case.

23. [24-20964](#)-A-13 **IN RE: FRANK BELL**
[DPC-2](#)

MOTION TO DISMISS CASE
8-14-2024 [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 8, 2024, at 9:00 a.m.

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan; debtor lacks competency

Best Interests of Creditors/Estate: Dismiss

Petition Filed: March 12, 2024

Plan Status: Not confirmed

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the previously proposed Chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the previously

proposed plan are delinquent in the amount of \$3,412.42 with one payment(s) of \$3,506.21 due prior to the hearing on this motion.

The trustee reports that because of the debtor's failure to tender plan payments that only one payment has been made to Class 1 creditor Rushmore Service Center.

Failure to File Amended Plan

The trustee also moves to dismiss this case as the debtor has failed to file an amended plan after the court denied confirmation of the previously filed plan on July 16, 2024. The court's docket shows that no plan has been filed as of August 29, 2024, 6 weeks after the court's decision.

Debtor Has Failed to Prove Competency

The Chapter 13 trustee challenges the debtor's competency in filing the petition and to prosecute a Chapter 13 Plan. The trustee has been unable to conduct the meeting of creditors despite 4 attempts to do so. At least two of the meetings were continued because the debtor was unable to provide foundational evidence such as his name, or to answer general questions relating to the debtor's well-being and ability to answer questions.

An application to appoint a representative to continue with administration of the case under Fed. R. Bankr. P. 1016 was filed and served on September 3, 2024. The motion alleges that the debtor had sufficient capacity to file the case but has since become unable to prosecute his Chapter 13 proceeding.

The court will continue the hearing on this motion to coincide with the hearing on the debtor's application to appoint a representative and waiver of other requirements.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this motion will be continued to October 8, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that:

- (A) The debtor shall file admissible evidence in opposition to the motion. The debtor(s) shall file and serve a written response to the motion not later than September 24, 2024; the opposition shall specifically address each issue raised in the trustee's motion and include **admissible evidence** in support of the debtor's position.
- (B) The trustee shall file and serve a status report under this docket control number apprising the court of the status of all issues raised in his motion to dismiss, no later than October 1, 2024.

24. [24-22164](#)-A-13 **IN RE: JOHN/KIMBERLY MCCABE**
[EAT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
6-6-2024 [\[15\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from July 30, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on Lakeview Loan Servicing, LLC's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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)(5)(B)(ii): Improper Classification of Secured Claim

Lakeview Loan Servicing, LLC, objects to confirmation, contending that as residential home mortgage payments were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper.

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

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed

amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$8,110.45. Compare Claim No. 24 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

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

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

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

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

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

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

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

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

...

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

Chapter 13 Plan § 3.07, EDC 3-080.

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

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

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the

formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

The parties attempted to resolve this objection with a stipulation which the court specifically disapproved. First, the objecting creditor has filed Claim No. 24. The claim has not been withdrawn or amended. The claim shows that pre-petition arrears total \$8,110.45. Of this amount \$4,555.92 represents a projected escrow deficiency. The remainder of \$3,554.53 is from escrow deficiencies advanced by the lender and missing principal/interest payments. Accordingly, absent an amendment or withdrawal of the claim or a successful claim objection by the debtor, this claim should be paid in Class 1 of the plan.

The debtor contends that there are no pre-petition arrears owed. However, the debtors have not filed an objection to the claim.

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.

Lakeview Loan Servicing, LLC'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.

25. [23-21966](#)-A-13 **IN RE: KELLI/JUSTIN LOPEZ**
[MRL-1](#)

MOTION TO MODIFY PLAN
7-23-2024 [\[28\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted with conditions

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).

TRUSTEE OPPOSITION

The Chapter 13 trustee opposes the motion contending that the plan is not proposed in good faith, 11 U.S.C. § 1325(a)(3).

The trustee argues that the previously confirmed plan called for payments into the plan of: (1) bonuses received by the debtor through employment; and (2) income tax refunds exceeding \$2,000. The proposed modified plan contains no such provisions.

Additionally, the trustee indicates that his previous motion to dismiss (DPC-1) was filed in part because the debtor failed to pay bonuses which were received, pursuant to the confirmed plan.

A review of Schedule I filed in support of the instant motion on July 24, 2024, shows that the debtors have included projected bonuses averaging \$700 per month in their income. Schedule I, ECF No. 33. Given that the monthly average exceeds the past bonus of approximately \$6,908 (\$575 per month) the court finds that this estimate satisfies the good faith requirement regarding the bonuses.

Schedule I also states that the debtors intend to pay tax refunds exceeding \$2,000 into the plan. *Id.*, Line 13. The court will grant the motion if the debtors agree to add the income tax provision into the order confirming the modified plan. With this change to the plan the court finds that it is proposed in good faith.

The court will hear from the parties.

The debtors shall submit an order confirming the modified plan which is consistent with this ruling, and which has been signed by the Chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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 granted with conditions as indicated in the court's ruling. The debtors shall submit an order confirming the modified plan which is consistent with the court's ruling, and which has been signed by the Chapter 13 trustee.

26. [24-21272](#)-A-13 **IN RE: KRISTINA WOYICKI**
[DPC-2](#)

MOTION TO DISMISS CASE
8-2-2024 [\[31\]](#)

MATTHEW GRECH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 27, 2024

Opposition Filed: August 14, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$217.00, with one payment(s) of \$567.00 due prior to the hearing on this motion. The trustee also seeks dismissal as the debtor has failed to file an

amended plan after the court denied confirmation of the previously filed plan.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 36, 37. The declaration states that the debtor has tendered \$220.00 to the trustee via TFS and that she will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 37.

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

Additionally, neither the debtor's declaration nor the motion state why an amended plan has not yet been filed or when the plan will be filed.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

27. [24-21673](#)-A-13 **IN RE: AARON MCCONVILLE**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-17-2024 [\[38\]](#)

DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from July 16, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. Neither party has filed additional argument as ordered or updated the court regarding the status of the objection.

After the trustee's objection was filed the debtor filed numerous amendments to the bankruptcy schedules, to which the trustee has provided no analysis.

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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce Santander Consumer USA's Class 2 secured claim (Claim No. 15) based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

As the court sustains this portion of the trustee's objection to confirmation it need not reach the remaining bases of objection raised by the trustee.

CIVIL MINUTE ORDER

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

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

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

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

28. [24-22775](#)-A-13 **IN RE: EVELYN DOMONDON**
[DPC-1](#)

MOTION TO DISMISS CASE
8-14-2024 [\[36\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 27, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to attend meeting of creditors; failure to provide tax returns

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$460.71 with one payment(s) of \$460.71 due prior to the hearing on this motion.

The trustee also contends that the debtor's failure to attend the meeting of creditors on August 8, 2024, constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1). The trustee also contends that the debtor failed to provide tax returns as required by 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).

The court finds that the debtor's failure to make plan payments, attend the meeting of creditors and provide tax returns constitutes unreasonable delay which is prejudicial to creditors. Accordingly, the court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case; the debtor's failure to attend the meeting of creditors and provide required tax returns to the trustee. The court hereby dismisses this case.

29. [24-22775](#)-A-13 **IN RE: EVELYN DOMONDON**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-14-2024 [\[40\]](#)

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

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$460.71, with an additional payment of \$460.71 due August 25, 2024. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

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

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

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

SOCIAL SECURITY DOCUMENTATION; GOVERNMENTAL IDENTIFICATION

(b) Individual debtor's duty to provide documentation

(1) Personal identification

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

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

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

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

The debtor(s) failed to provide the required social security information and photo identification prior to the meeting of creditors. The court will sustain the trustee's objection.

MEETING OF CREDITORS

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

30. [24-22678](#)-A-13 **IN RE: ALAN/MEGAN KENNEDY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-7-2024 [\[17\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to October 22, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to October 22, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 24, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than September 24, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 8, 2024. The evidentiary record will close after October 8, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than September 24, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

31. [24-23479](#)-A-13 **IN RE: EVELYN DOMONDON**
[RAM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-12-2024 [\[12\]](#)

ROBERT MILLER/ATTY. FOR MV.
JEFFREY VIEYRA VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2768 Georgia Street, Vallejo, California

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).

Jeffrey Vieyra, dba Funding Solutions, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). Relief is sought pursuant to 11 U.S.C. § 362(d)(1) and (d)(4). The Chapter 13 trustee has filed a non-opposition to the motion. The debtor has filed the following cases in the Eastern District of California.

Case Number	Chapter	Date Filed	Disposition
24-20136	7	January 13, 2024	Discharged - May 6, 2024. Relief from stay granted June 5, 2024.
24-22775	13	June 26, 2024	Pending - Stay relief granted to Movant on August 1, 2024.
24-23479	13	August 7, 2024	Pending - instant case

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as prepetition payments are past due. The movant has received no payments since December 2023. Section 362(d)(1) authorizes stay

relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

SECTION 362(d)(4)

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order." § 362(d)(4).

APPLICATION

In re Evelyn Fidel Domondom, 2024-20136, E.D. Cal. Bankr. (2024)

As indicated previously in this ruling the debtor has filed 3 bankruptcy cases in 2024. The first case, a Chapter 7, was discharged and an order granting relief from the stay was entered against the bankruptcy estate. The relief sought against the debtor was denied as moot because the discharge had been entered.

In re Evelyn Fidel Domondom, 2024-22775, E.D. Cal. Bankr. (2024)

The second case was filed under Chapter 13 and is still pending. Relief from stay was granted to the movant in this case on August 1, 2024. Order, ECF No. 35. A foreclosure sale was then scheduled for August 7, 2024. Declaration of Steve Wheeler, 2:27-28, ECF No. 15.

While filed, a Chapter 13 Plan has not been confirmed in the case. Moreover, while the proposed plan provided for the movant's claim in Class 1, it did not provide for a plan payment in an amount

sufficient to pay the movant's ongoing monthly payment. Chapter 13 Plan, ECF No. 27. The Chapter 13 trustee filed a motion to dismiss the case for the following reasons: (1) plan delinquency; (2) the debtor's failure to attend the meeting of creditors; and (3) the debtor's failure to provide documents required pursuant to 11 U.S.C. § 521. Motion to Dismiss, ECF No. 36.

Instant Case

The debtor filed this case on August 7, 2024, just after the court's order granting stay relief in the concurrently pending Chapter 13 case. The filing of this case presented the scheduled foreclosure sale on August 7, 2024. The court notes that because the previously filed Chapter 13 is still pending the movant is unable to benefit from the stay relief provisions of 11 U.S.C. § 362(c)(3)(A).

Additionally, the movant reports that the monthly payment on the subject property is \$5,127.92. The Chapter 13 Plan filed in this case provides for the movant's claim in Class 1 but the plan payment is only \$460.71 per month. Chapter 13 Plan, § 2.01, ECF No. 8. This amount is not sufficient to pay even the ongoing monthly payment of \$2,601.99, as required.

The court finds that the debtor's multiple bankruptcy filings constitute cause for relief pursuant to 11 U.S.C. § 362(d)(4) and will grant the in-rem relief requested by the movant.

CIVIL MINUTE ORDER

Jeffrey Vieyra, dba Funding Solutions' motion for relief from the automatic stay under § 362(d)(4) has been presented to the court. Having rendered findings of fact and conclusions of law orally on the record pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to real property commonly known as 2768 Georgia Street, Vallejo, California, 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, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

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.

32. [24-22480](#)-A-13 **IN RE: RHONDA RICHARDSON**
[DPC-1](#)

MOTION TO DISMISS CASE
8-6-2024 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

The Chapter 13 trustee moves to dismiss this case contending that the debtor's failure to confirm a Chapter 13 Plan constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 107(c) (1).

The hearing on the motion to dismiss coincides with the debtor's motion to confirm the Chapter 13 plan. The Chapter 13 trustee filed a non-opposition to the motion to confirm plan and reports that plan payments are current. The motion to confirm plan, PGM-1 has been granted.

Accordingly, the court will deny the motion to dismiss. In future cases the trustee shall file a status report under the docket control number of his motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

33. [24-22480](#)-A-13 **IN RE: RHONDA RICHARDSON**
[PGM-1](#)

MOTION TO CONFIRM PLAN
8-6-2024 [\[29\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed August 6, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 33. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 36.

CHAPTER 13 PLAN CONFIRMATION

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

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

34. [24-22181](#)-A-7 **IN RE: AHMED ALI**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-3-2024 [[28](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CASE CONVERTED: 08/06/24

Final Ruling

This case was converted to Chapter 7 on August 6, 2024.
Accordingly, this objection will be removed from the calendar as
moot. No appearances are required.

35. [24-22181](#)-A-7 **IN RE: AHMED ALI**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FIRSTKEY
MASTER FUNDING 2021-A COLLATERAL TRUST
6-26-2024 [[22](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
CASE CONVERTED: 08/06/24

Final Ruling

This case was converted to Chapter 7 on August 6, 2024.
Accordingly, this objection will be removed from the calendar as
moot. No appearances are required.

36. [24-22687](#)-A-13 **IN RE: DANIEL/ANN KRAMER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-7-2024 [\[28\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to October 22, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to October 22, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 24, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than September 24, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue

is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 8, 2024. The evidentiary record will close after October 8, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than September 24, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

37. [24-23592](#)-A-13 **IN RE: TRINIDAD SANCHEZ**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-26-2024 [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

38. [24-22193](#)-A-13 **IN RE: KENNETH WILKINSON**
[DPC-2](#)

MOTION TO DISMISS CASE
8-2-2024 [\[32\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 27, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Failure to provide documents, identification information; failure to file correct plan or amended plan; failure to amend petition.

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for the following reasons: (1) failure to provide required documents under 11 U.S.C. § 521, Fed. R. Bankr. P. 4002; (2) failure to provide Social Security and identification information as required by Fed. R. Bankr. P. 4002; (3) failure to propose a plan on the required form, LBR 3015-1(a), EDC 003-080; (4) failure to file an amended Chapter 13 plan after the court denied confirmation of the previously filed plan and (5) failure to list previous bankruptcy filings in his petition. The trustee contends that for the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

The debtor has failed to defend the motion. Accordingly, the court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

TRUSTEE VIOLATION OF LBR-9014-1(c)

(c) Docket Control Number.

1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions.

2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.

3) The Docket Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

Example: The first Docket Control Number assigned to attorney John D. Doe would be DCN JDD-1, the second DCN JDD-2, the third DCN JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.

4) Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.

LBR 9014-1(c) (emphasis added).

Because this unique docket control number is the method by which the court locates items on its docket, the re-use of a docket control number makes it difficult for the court to locate documents associated with the motion.

Here, "DPC-2" has been used for both the Chapter 13 Trustee's instant motion and his Objection to Exemptions, filed July 9, 2024, ECF No. 22.

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

39. [24-22793](#)-A-13 **IN RE: JERYL/KATHERINE CHASE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-8-2024 [\[16\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to October 22, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to October 22, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 24, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than September 24, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 8, 2024. The evidentiary record will close after October 8, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than September 24, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

40. [24-21795](#)-A-13 **IN RE: VINCENT GONZALES**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-14-2024 [\[14\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from July 16, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor has complied with the court's order and filed opposition, ECF No. 22.

The sole basis for the trustee's objection was that the debtor failed to attend the originally scheduled meeting of creditors. The opposition contends that the debtor attended the continued meeting. Although the Chapter 13 trustee has not filed a reply as ordered, a review of the court's docket shows that the debtor attended the continued meeting on July 25, 2024, and that the meeting has been concluded.

CONFIRMATION

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

The court finds that the debtor has met this burden and will confirm the plan. Accordingly, the debtor shall submit an order confirming the plan which has been signed by the Chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled. The debtor shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.