



**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 12, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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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. [23-22101](#)-A-13 **IN RE: JOHN/NIKKI RADULOVICH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-7-2023 [\[29\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained in part; overruled in part and confirmation denied

Order: Civil minute order

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

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

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.

The trustee initially objected to confirmation as the debtors failed to attend the initial meeting of creditors. The court's docket shows that the trustee examined the debtors at the continued meeting of creditors on August 24, 2023, and that the meeting was concluded. The objection for failure to attend the meeting of creditors will be overruled.

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 \$5,043.00 with a further payment of \$5,043.00 due August 25, 2023. The plan cannot be confirmed if the plan payments are not current.

The court will sustain the trustee's feasibility objection.

CIVIL MINUTE ORDER

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

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

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

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

2. [23-21103](#)-A-13 **IN RE: EUGENE NOH**
[DPC-1](#)

MOTION TO DISMISS CASE
7-27-2023 [\[43\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 29, 2023

Opposition Filed: August 29, 2023 - timely

Amended Plan: Not filed - untimely

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 \$7,116.00, with another payment of \$3,558.00 due August 25, 2023.

The trustee also moves to dismiss the case as the debtor has failed to file an amended plan after the court denied confirmation of the debtor's most recently filed plan on June 13, 2023.

UNTIMELY OPPOSITION - MOTION TO CONFIRM

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition is late, the court gives it no weight.

On August 29, 2023, the debtor filed an opposition to the motion to dismiss, ECF No. 51. The opposition includes a declaration by the debtor stating his intention to file another plan prior to the hearing on the instant motion to dismiss. Declaration, ECF No. 52. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

A further amended plan has not yet been filed. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed July 27, 2023, giving the debtor 47 days to resolve the grounds for dismissal or to file a motion to confirm a plan. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of an amended plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

The court is unable to deny the motion given the outstanding delinquency and the debtor's continuing failure to file an amended plan.

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, and has failed to timely file an amended plan. This constitutes cause to

dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

3. [22-21705](#)-A-13 **IN RE: SHAWNA WILLIAMS**
[RK-3](#)

MOTION TO MODIFY PLAN
7-27-2023 [\[57\]](#)

RICHARD KWUN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Modified Chapter 13 Plan, filed July 27, 2023

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(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on May 25, 2023, ECF No. 44. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 63.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d

405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

4. [22-20612](#)-A-13 **IN RE: BRITTANY/STEVEN UREN**
[DPC-4](#)

MOTION TO DISMISS CASE
8-7-2023 [\[74\]](#)

ASHLEY AMERIO/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 29, 2023

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 \$2,236.00 with a further payment. The trustee also moves to dismiss the case because the debtors have failed to file an amended plan after the court sustained the objection to confirmation of the previously proposed plan.

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, and because the debtors failed to file an amended plan in this case. The court hereby dismisses this case.

5. [20-23415](#)-A-13 **IN RE: MICHAEL/CANDACE TODD**
[BLG-6](#)

MOTION TO MODIFY PLAN
7-28-2023 [\[68\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed July 28, 2023

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 approval of the proposed modified Chapter 13 Plan following the death of co-debtor Candace Marie Todd. Schedules I and J were not filed as the plan completes with the sale of real property which is currently pending. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 91.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

6. [20-23415](#)-A-13 **IN RE: MICHAEL/CANDACE TODD**
[BLG-7](#)

MOTION FOR COMPENSATION FOR CHAD M JOHNSON, DEBTORS
ATTORNEY(S)
7-28-2023 [\[74\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Additional Compensation: \$4,970.95

Reimbursement of Expenses: \$83.50

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Bankruptcy Law Group, PC, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,970.95 and reimbursement of expenses in the amount of \$83.50. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

ADJUSTMENT TO INTERIM ORDER

Debtors' counsel requests an adjustment in the final order as it relates to a minor error in the interim order entered on November 20, 2020, ECF No. 33.

The request for adjustment is as follows. The order approved "interim compensation in the amount of \$2,920.30 and reimbursement

of expenses in the amount of \$375.30. The aggregate allowed amount equals \$3,295.60." *Id.*

The order goes on to state: "[a]s of the date of the application, the applicant held a retainer in the amount of \$900.00. The amount of \$2,295.60 shall be allowed as an administrative expense to be paid through the plan." *Id.* This represents an error in the calculation. The correct amount allowed as an administrative expense should be \$2,395.60 (not \$2,295.60 as stated in the order).

The debtor represents that the Chapter 13 trustee and debtors' counsel have conferred regarding the error. Counsel contends that because the interim order is subject to a final order, this error can be corrected and clarified in the Final Order on Compensation. Given the minor change, the court will allow the adjustment in the final order.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs, as adjusted in this ruling, that the court has allowed under § 331 on an interim basis.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,970.95 and reimbursement of expenses in the amount of \$83.50. The aggregate allowed amount equals \$5,054.45. The amount of \$5,054.45 shall be allowed as an administrative expense to be paid through the plan.

IT IS FURTHER ORDERED that the court approves, on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis, as adjusted in this ruling. The amount of \$2,920.30 in compensation and \$375.30 in reimbursement of expenses are allowed under the interim order on a final basis.

IT IS FURTHER ORDERED that the total fees and expenses approved on a final basis in the aggregate amount is \$8,350.05. After deducting the \$900.00 pre-petition retainer held by the applicant, the balance of \$7,450.05 shall be allowed as an administrative expense to be paid through the plan.

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

7. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[CRG-10](#)

MOTION TO MODIFY PLAN
7-26-2023 [\[130\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. The Chapter 13 trustee opposes the motion on multiple bases.

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

PLAN FEASIBILITY

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

530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Schedules I and J

The debtors have not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on March 25, 2022, at the inception of the case, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The debtors have failed to present a prima facie case for modification of the plan. Updated schedules should be filed at the inception of the motion and not in response to filed opposition or the court's ruling. The court will deny the motion to modify on this basis. Accordingly, the court need not reach the remaining issues raised in the trustee's opposition.

TRUSTEE REQUEST FOR CONTINUANCE

On September 6, 2023, the Chapter 13 trustee filed a request for a continued hearing date to allow the debtor to address the trustee's multiple objections, ECF No. 148. Because updated schedules were not filed the court will not accede to the trustee's request. The court will not continue the motion. As the court has previously stated, current budget schedules are part of the debtor's prima facie case for plan confirmation or modification. These schedules are to be filed at the outset of a motion and not in response to the trustee's opposition.

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

IT IS ORDERED that the motion is denied.

8. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[CRG-11](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW,
LLP FOR CARL R GUSTAFSON, DEBTORS ATTORNEY(S)
7-28-2023 [\[136\]](#)

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

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); non opposition filed by the Chapter 13
trustee

Disposition: Denied without prejudice

Order: Civil minute order

COMPENSATION AND EXPENSES

In this Chapter 13 case, Carl R. Gustafson has applied for an allowance of interim compensation and reimbursement of expenses. The court will deny the motion without prejudice because the amounts requested by the applicant are inconsistent in the various pleadings submitted to the court.

Compensation

The amount of compensation sought in the motion is unclear to the court. The motion requests the court approve compensation of \$7,757.50. However, the declaration of the applicant in support of the motion states the amount requested is \$7,445.50. Declaration of Carl Gustafson, 1:21-22, ECF No. 139. The declaration also seeks compensation in the amount of \$7,757.50. *Id.*, 2:8. Conversely, the declaration of the debtor states that she supports an award of \$6,858.57. Declaration of Evangelina Hernandez, 2:1-2, ECF No. 138.

Reimbursement of Expenses

Similarly, the expenses requested are inconsistently plead in the motion. The motion seeks reimbursement of expenses in the amount of \$127.07, yet the prayer requests the court approve reimbursement of expenses in the amount of \$107.07.

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.

Carl R. Gustafson's application for allowance of interim compensation and reimbursement of expenses has been presented to the

court. Having considered the motion, oppositions, responses and replies, if any,

IT IS ORDERED that the motion is denied without prejudice.

9. [23-22123](#)-A-13 **IN RE: MARTIN/MIMI MOSELEY**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES,
LLC
8-3-2023 [\[14\]](#)

CATHERINE KING/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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 November 7, 2023, at 9:00 a.m.

Order: Civil minute order

Creditor Pennymac Loan 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, and for this creditor to serve the objection on all parties which have filed a request for special notice.

SERVICE AND NOTICE

Special Notice Creditors

The objection will also be continued to allow the objecting creditor to serve the objection on creditors which have filed a request for special notice.

The following parties filed a request for special notice:
Cornerstone Community Bank, ECF No. 8.

The certificate of service does not indicate that special notice parties were served with the objection. See Certificate of Service, p. 2, No. 5, ECF No. 16. Neither is there an attachment which indicates the special notice creditors were served.

Counsel is reminded that a matrix of special notice creditors is easily compiled using the clerk's feature found on the court's website.

Notice

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

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

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) (emphasis added).

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 November 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than September 26, 2023, the objecting creditor shall file and serve the objection and a notice of continued hearing on all parties which have filed a request for special notice and file a certificate of service indicating compliance with this ruling.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 17, 2023. The response shall specifically address each issue raised in 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 17, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and serve a reply, if any, no later than October 24, 2023. The

evidentiary record will close after October 24, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

10. [23-22123](#)-A-13 **IN RE: MARTIN/MIMI MOSELEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-9-2023 [\[17\]](#)

CATHERINE KING/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 November 7, 2023, 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 November 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 17, 2023. 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 17, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than October 24, 2023. The evidentiary record will close after October 24, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

11. [23-22123](#)-A-13 **IN RE: MARTIN/MIMI MOSELEY**
[GB-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY CORNERSTONE COMMUNITY
BANK
8-10-2023 [\[21\]](#)

CATHERINE KING/ATTY. FOR DBT.
VALERY LOUMBER/ATTY. FOR MV.

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 November 7, 2023, at 9:00 a.m.

Order: Civil minute order

Creditor Cornerstone Community Bank 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 and to allow the objecting creditor to serve the objection and a notice of continued hearing on all interested parties.

SERVICE

The court is unable to determine if the objection and supporting papers were served properly on the debtors or any other parties in interest. A certificate of service has not been filed with this objection as required. LBR 9014-1(e).

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 November 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than September 26, 2023, the objecting creditor shall file and serve a notice of continued hearing, the objection to confirmation, and a certificate of service evidencing compliance with this order, on all interested parties.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 17, 2023. The response shall specifically address each issue raised in objecting 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 17, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and serve a reply, if any, no later than October 24, 2023. The evidentiary record will close after October 24, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

12. [23-22126](#)-A-13 **IN RE: JERRY FARLEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-9-2023 [\[11\]](#)

GARY FRALEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,065.00 with a further payment of \$1,065.00 due August 25, 2023. The plan cannot be confirmed if the plan payments are not current.

DEBTOR OPPOSITION

The debtor opposes the objection contending that plan payments have been tendered and that the plan payments are current. Response and Exhibits, ECF Nos. 15, 16. The Chapter 13 trustee shall be prepared to apprise the court regarding the status of the plan payments. Unless the trustee verifies the plan payments are current 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.

13. [23-20730](#)-A-13 **IN RE: JEREMY BAILEY**
[BLG-2](#)

MOTION TO CONFIRM PLAN
7-21-2023 [\[32\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

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 \$867.00 with a further payment of \$933.00 due August 25, 2023. The plan cannot be confirmed if the plan payments are not current.

DEBTOR REPLY

As a courtesy to the court, the debtor filed a reply and a request to dismiss the motion on September 4, 2023. The request states that the "[d]ebtor is unable to cure the delinquency in the first payment, which is the basis for the Trustee's Opposition." Request to Dismiss Motion, 1:23-25, ECF No. 41.

Given that the trustee has already filed opposition to the motion the court will simply deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

14. [23-21431](#)-A-13 **IN RE: STELLA HERNANDEZ**
[MRL-1](#)

MOTION TO CONFIRM PLAN
8-3-2023 [\[38\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b);

LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

MORTGAGE CLASSIFICATION

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

The Chapter 13 trustee objects to confirmation, contending that as residential home mortgage payments to The Golden One Credit Union, Claim No. 6, were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper. See Chapter 13 Plan, Section 3.10, ECF No. 41.

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 \$1,740.64. Compare Claim No. 6 (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 will deny the motion on this basis and need not reach the remaining issues in the trustee's opposition.

CIVIL MINUTE ORDER

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

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

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

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

15. [23-22232](#)-A-13 **IN RE: MARVIN SINGLETON AND NICOLE SMITH**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF NORTH
AMERICA
7-25-2023 [\[17\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The objection was withdrawn by the moving party on August 23, 2023, ECF No. 35. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

16. [23-22232](#)-A-13 **IN RE: MARVIN SINGLETON AND NICOLE SMITH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-17-2023 [\[23\]](#)

THOMAS AMBERG/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. [23-20838](#)-A-13 **IN RE: PAUL ROCCO**
[TBG-3](#)

MOTION TO CONFIRM PLAN
8-3-2023 [\[64\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition filed by secured creditor

Disposition: Continued to October 17, 2023, at 9:00 a.m.

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). Secured creditor MCLP Asset Company opposes the motion, objecting to confirmation.

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

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 motion will be continued to October 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's opposition to the motion is withdrawn, the debtor(s) shall file and serve a written response to the motion not later than September 26, 2023. The response shall specifically address each issue raised in creditor's opposition to confirmation of the plan, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the secured creditor shall file and serve a reply, if any, no later than October 3, 2023. The evidentiary record will close after October 3, 2023. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without further notice or hearing.

18. [23-20838](#)-A-13 **IN RE: PAUL ROCCO**
[TBG-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE BANKRUPTCY GROUP, P.C. FOR STEPHAN M. BROWN, DEBTORS ATTORNEY(S)
8-3-2023 [\[71\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Continued to October 17, 2023, at 9:00 a.m.

Order: Civil minute order

COMPENSATION AND EXPENSES

In this Chapter 13 case, The Bankruptcy Group has applied for an allowance of interim compensation and reimbursement of expenses.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The hearing on the application will be continued to October 17, 2023, at 9:00 a.m. to coincide with the hearing on plan confirmation.

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 The Bankruptcy Group's motion for approval of compensation will be continued to October 17, 2023, at 9:00 a.m. The evidentiary record is closed.

19. [23-22239](#)-A-13 **IN RE: JEFFREY/DIANNA BAILEY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-16-2023 [[23](#)]

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to October 17, 2023, at 9:00 a.m.

Order: Civil minute order

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

The trustee objects to confirmation contending that the feasibility of the plan relies upon a successful motion to value the collateral of Ally Bank, which has not yet been filed.

The debtors have filed opposition to the trustee's objection to confirmation. In the opposition the debtors contend: 1) that the claim of Ally Bank is provided for in Class 4 of the plan and therefore does not require a motion to value collateral; and 2) that the amended claim of R.C. Wiley does not require a motion to value collateral because the debtors have agreed to pay the creditor's claim as amended. The debtors propose to clarify payment of R.C. Wiley in the order confirming the plan.

The court will continue the hearing on this objection to allow the trustee to respond to the debtors' opposition and for the hearing to coincide with the objection to confirmation filed by NewRez, LLC.

CIVIL MINUTE ORDER

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

The hearing on the objection will be continued to October 17, 2023, at 9:00 a.m. No later than September 26, 2023, the Chapter 13 trustee shall file and serve a reply to the opposition filed by the debtors. The evidentiary record will close on September 26, 2023.

20. [23-22239](#)-A-13 **IN RE: JEFFREY/DIANNA BAILEY**
[SCF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ LLC
8-16-2023 [\[19\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

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 17, 2023, at 9:00 a.m.

Order: Civil minute order

Secured creditor NewRez, LLC, 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).

At the debtors' request 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 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than September 26, 2023. 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and serve a reply, if any, no later than October 3, 2023. The evidentiary record will close after October 3, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

21. [23-22748](#)-A-13 **IN RE: MICHAEL/SUSAN MARASCO**

ORDER TO SHOW CAUSE - FAILURE TO FILE DOCUMENTS RE:
DISCLOSURE OF ATTORNEY COMPENSATION
8-23-2023 [\[16\]](#)

TIMOTHY STEARNS/ATTY. FOR DBT.
DEBTORS DISMISSED: 08/28/23

Final Ruling

Counsel has filed the required Disclosure of Compensation which indicates that he received \$0 prior to the filing of the case. Accordingly, the Order to Show Cause will be discharged. No appearances are required.

22. [22-23053](#)-A-13 **IN RE: VERNICE/LINDA MOORE**
[WLJ-2](#)

MOTION TO VACATE DISMISSAL OF CASE
8-4-2023 [\[43\]](#)

MICHAEL REID/ATTY. FOR DBT.
DEBTORS DISMISSED: 07/28/2023
RESPONSIVE PLEADING

No Ruling

23. [23-22056](#)-A-13 **IN RE: PRISCILLA PAUL
[SKI-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2023 [\[17\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
KINECTA FEDERAL CREDIT UNION VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Kinecta Federal Credit Union seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

MOOTNESS OF REQUEST FOR 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 3. Class 3 secured claims are "secured claims satisfied by the surrender of collateral." 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 . . . terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral"

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.

Kinecta Federal Credit Union's motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

24. [23-20257](#)-A-13 **IN RE: AUSTIN MERRITT**
[TLA-2](#)

MOTION TO MODIFY PLAN
8-7-2023 [\[62\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to October 17, 2023, at 9:00 a.m.

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).

In response to the trustee's opposition the debtor filed a reply supported by a declaration and updated Schedules I and J. The debtor has offered to cure the trustee opposition in the order confirming the modified plan.

The court will continue the matter to allow the parties to meet and confer regarding the debtor's proposed resolution of the trustee's opposition and to file a joint status report.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to October 17, 2023, at 9:00 a.m. No later than October 3, 2023, the Chapter 13 trustee (through counsel) and debtor's counsel shall meet and confer

regarding the status of the trustee's opposition and the debtor's proposed resolution.

IT IS FURTHER ORDERED that no later than October 3, 2023, the parties shall file a joint status report apprising the court of the status of the issues raised in the trustee's opposition, any resolutions agreed upon, and identifying all remaining issues which require determination by the court.

25. [23-21958](#)-A-13 **IN RE: ILSE LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-21-2023 [[19](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
8/23/2023 FINAL INSTALLMENT PAID \$234

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

26. [23-22665](#)-A-13 **IN RE: WILLIAM EISENHOWER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-23-2023 [[13](#)]

DEBTOR DISMISSED: 08/29/23

Final Ruling

This case was dismissed on August 29, 2023. This Order to Show Cause is removed from the calendar as moot. No appearances are required.

27. [23-22167](#)-A-13 **IN RE: ROBERT/SHERYL WILLIAMS**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
7-25-2023 [\[14\]](#)

CATHERINE KING/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

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 17, 2023, at 9:00 a.m.

Order: Civil minute order

Ally Bank 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 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than September 26, 2023. 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and serve a reply, if any, no later than October 3, 2023. The evidentiary record will close after October 3, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

28. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[DPC-2](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER
7
12-19-2022 [[134](#)]

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

Tentative Ruling

Motion: Convert Case to Chapter 7
Notice: Continued from August 8, 2023
Disposition: Granted
Order: Civil minute order

Chapter 12 Petition Filed: July 5, 2022
Case Converted to Chapter 7: August 31, 2023

The hearings on the debtors' motion to dismiss this case (MWB-8) and the Chapter 13 trustee's motion to convert to Chapter 7 (DPC-2) are scheduled to be heard concurrently. The court issues the same ruling in each motion as the factual and legal analysis required is identical.

MOTION TO CONVERT

The hearing on the motion to convert to Chapter 7 was continued to allow the Chapter 13 trustee to amend his motion as follows:

IT IS ORDERED that the motion is continued to September 12, 2023, at 9:00 a.m. No later than August 15, 2023, *the Chapter 13 trustee shall amend his motion to state with particularity the legal authority for his motion*, and to provide additional evidence and/or argument. The trustee shall also apprise the court regarding the status of plan payments.

Order, ECF No. 333(emphasis added).

In its ruling the court observed that the trustee's motion failed to state the applicable subsection of 11 U.S.C. § 1307(c) under which the trustee had brought his motion. The trustee filed a supplement to his motion which indicates his motion is brought pursuant to 11 U.S.C. § 1307(c)(1), unreasonable delay which is prejudicial to creditors. Supplemental Motion to Convert, ECF No. 335.

The chapter 13 trustee moves to convert this case, asserting that cause exists under § 1307(c)(1) contending that the debtors: 1) have failed to prosecute the Chapter 13 plan; 2) have failed to accurately list assets in the bankruptcy schedules and statements; 3) have nonexempt assets which may be liquidated for the benefit of creditors.

Creditor Nicholas Loper has appeared in this matter and supports the trustee's motion for conversion contending that: 1) conversion is appropriate because the debtors have failed to confirm a plan; 2) the debtors have failed to file any plan since the court denied confirmation of the most recently filed plan on February 24, 2023; 3) a Chapter 7 trustee is necessary to preserve assets of the estate for appropriate liquidation and distribution to creditors; 4) the debtors have dissipated assets in the approximate amount of \$163,102.88 since the filing of the case; 5) in addition to the dissipation of assets the debtors have transferred \$525,000 of the debtors' cash assets to their child's own UTMA account during the pendency of the case; and 6) assets are available to pay creditors.

The debtors oppose the motion to convert contending that they have sufficient assets to pay all liquidated claims in full and for this reason conversion is unnecessary. Additionally, and for the same reasons the debtors move to dismiss (MWB-8) the case.

On September 6, 2023, an additional opposition was filed on behalf of the debtors. The opposition was filed by attorney Peter Macaluso who is not counsel of record for the debtors. No substitution of attorneys or request for substitution was filed with the opposition. The additional opposition consists of an unsworn statement by Attorney Macaluso and is unsupported by any evidence. Additionally, the opposition only addresses the need for an amended plan and states that a plan will be filed prior to the hearing on this motion. The court finds the opposition to be unpersuasive as it is unsupported by any evidence, and it fails to address any of the remaining issues before the court. Finally, even if an amended plan is filed, the opposition does not explain the debtors' delay in filing and moving for confirmation of a plan.

11 U.S.C. § 1307(c) (1)

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—*

(1) unreasonable delay by the debtor that is prejudicial to creditors;

...

11 U.S.C. § 1307(c) (1) (emphasis added).

Failure to Prosecute Chapter 13 Plan

The debtors have not confirmed a Chapter 13 plan since the conversion of the case from Chapter 12 on August 31, 2022.

The court notes that the debtors' initial opposition to this motion indicated that the debtors had filed an amended plan which would pay

100% to unsecured creditors. Opposition, ECF No. 141. Confirmation of the plan to which the debtors referred was denied on February 24, 2023. Order, ECF No. 180. Since that time the debtors have failed to file any further Chapter 13 plan.

Because the debtors have failed to file a plan it is impossible to determine if regular monthly plan payments are being made as required, and how payments, if any, to secured creditors should be disbursed. Meanwhile, the debtors continue to enjoy the benefits of the automatic stay, and as discussed below, have transferred assets and expended estate funds to the detriment of creditors.

Although the debtors have filed multiple documents in opposition to the motion to convert none specifically address the reasons for the debtors' failure to propose an amended plan. See ECF Nos. 141, 282, 296, 341, 343, 350.

The court finds the debtors' failure to file an amended Chapter 13 plan constitutes unreasonable delay which is prejudicial to creditors.

Transfer of Assets

The debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor shall comply with LBR 3015-1(i).

LBR 3015-1(b)(1).

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--
(1) that occurs after the commencement of the case; and
(2) (A) that is authorized only under section 303(f) or 542(c) of this title; or
(B) that is not authorized under this title or by the court.

11 U.S.C. § 549(a).

The court's docket does not reflect any motion by the debtors to approve a transfer of any asset.

This case was converted from a Chapter 12 to a Chapter 13 case on August 31, 2022.

Creditor Nicholas Loper argues that the case should be converted to a Chapter 7 so that a trustee can be appointed which would: 1) prevent further transfers of assets; and 2) prevent further dissipation of assets. Loper contends that the debtors have transferred assets during the pendency of the Chapter 13 case.

At the inception of the case the debtors acknowledged monies in deposit accounts at U.S. Bank of approximately \$607,000.00 in a checking account, and approximately \$1,619.00 in a savings account. Schedules A/B, ECF No. 1. Amended Schedules A/B, filed on August 24, 2022, show that the balances in these accounts were unchanged. Amended Schedules A/B, ECF No. 31.

Loper subpoenaed bank records from the financial institutions where the debtors' accounts are held. The bank records show that on or about November 2, 2022, the debtors transferred \$525,000.00 from their personal U.S. Bank checking account ending in 6075 to a Uniform Minors Trust Account in the name of their son. See U.S. Bank Statement (account 6075), Exhibit C, page 57, ECF No. 292. The statement shows the transfer of \$525,000.00 to an account at U.S. Bank ending in 9998.

The statements from the U.S Bank account ending in 9998 show that it is a bank account held for the benefit of the debtors' son (a third party) under the Uniform Transfers to Minors Act (UTMA). See U.S Bank Statement, Exhibit D, page 145, ECF No. 292. This statement shows a deposit in the amount of \$525,000.00, transferred from the account held by the debtors (6075) on November 2, 2022, *id.* Additionally, the same statement shows a \$5,000.00 transfer back to the debtor's account ending in 6075 on November 14, 2022, *id.*

The debtors admit they transferred the funds. Debtor, Lindsay John Brakel, filed a declaration which states:

I transferred the \$525,000.00 into the UTMA savings account on the advise (sic) of U.S. Bank. The bank advised the funds in a checking account could be easily hacked and advised the funds be (sic) transferred to a savings account which I did.

Declaration of Lindsay John Brakel, 1:28, 2:4-5, ECF No. 308.

The declaration does not sufficiently explain the reasons for the transfer of funds to a third party and into the UTMA account. Had the debtors wished to protect the funds from "hacking" they could have moved the funds from their checking account into their own savings account already open at U.S. Bank. The debtors offer no explanation regarding: 1) transfer of the funds to a third party and into the UTMA account as opposed to their own savings account; 2) why they subsequently transferred monies from the UTMA account into their own account ending in 6075; or 3) why they failed to seek court authorization as required prior to transferring the monies.

Moreover, the debtors have not provided any evidence that they have attempted to recoup the monies which they transferred. Accordingly, the court finds that the appointment of a Chapter 7 trustee to be in the best interests of the creditors and the bankruptcy estate. The Chapter 7 trustee will have the authority to seek the avoidance of the post-petition transfer.

Dissipation of Assets

Loper contends that in addition to the unauthorized transfer of \$525,000.00 to the debtors' son that assets have been dissipated since the filing of the case.

The U.S. Bank statements for the UTMA account ending in 9998 show a significant decrease in the balance since the transfer of \$525,000.00 to this account on November 2, 2022. The balance in the UTMA account on November 25, 2022, was \$521,063.46. See Exhibit D, page 145, ECF No. 293. Yet the ending balance in this account on May 23, 2023, is \$422,633.90. See Exhibit D, page 131, ECF No. 293. A review of the account statements from November 2022 through May 2023 shows numerous transfers of funds from the UTMA account ending in 9998 to the debtors' personal account ending in 6075.

The debtors have provided an accounting of funds spent Exhibit A, ECF No. 311. The exhibit is a list of expenditures totaling \$259,973.00. However, the exhibit does not: 1) list the expenditures by date; 2) or clearly identify the source of the funds expended, although \$126,109.00 appear to have been paid from funds derived from the sale of the debtors' house. Thus, it is unclear to the court how the funds from the UTMA account have been spent.

Assets are Available to Pay Creditors

The debtors' scheduled assets aggregate approximately \$2,491,209.03, and appear to be subject to secured claims aggregating \$384,997.78. See Summary of Assets and Liabilities, ECF No. 31. There are significant assets to be administered for the benefit of the creditors.

The debtors do not dispute the availability of assets for the benefit of creditors. In support of the motion to dismiss the debtors submitted a list of assets indicating the estimated equity in each, which included: 1) real estate with values exceeding \$1,505,000.00; 2) bank deposits totaling \$612,526.00; 3) vehicles valued at \$90,300.00; and 4) livestock valued at \$36,000.00. See Response, ECF No. 283.

As the court has indicated secured claims aggregate \$384,997.78 and the debtors have not claimed an exemption in most of the assets, including the funds on deposit in the U.S. Bank checking account which were subsequently transferred to the debtors' son in his UTMA account.

The court concludes that conversion to Chapter 7 is in the best interests of the creditors and the estate and is necessary to preserve the estate for the benefit of all creditors including those whose claims have not yet been liquidated.

DEBTORS' MOTION TO DISMISS

The debtors filed a motion to dismiss the Chapter 13 case (MWB-8). The debtors contend that they have sufficient liquid assets to pay all liquidated debts in full. See Declaration of Lindsay Brakel and Lisa Brakel, 2:3-4, ECF No. 227.

Two claims in this case are unliquidated. The claim of Nicholas Loper, Claim No. 10, in the amount of \$15,100,000.00 and the claim of Lori Lester, Claim No. 5, in the amount of \$922,666.97. The claimants have each obtained relief from the automatic stay to litigate the claims in state court. The state court proceedings have not yet been concluded.

The debtors argue that the case should be dismissed because if the debtors successfully defend these proceedings, then they will be able to pay all liquidated creditors. See Motion to Dismiss, 3:21-24, ECF No. 283. The motion fails to explain how the debtors will pay the claims of Loper and Lester should the state court proceedings result in judgments in favor of the claimants. It is not certain that the debtors will successfully defend the state court lawsuits.

Given the transfers of assets and the additional dissipation of liquid funds the court concludes that the case should be converted so that a Chapter 7 trustee can liquidate assets and preserve them for the benefit of all claimants including those with contingent claims.

The court will deny the motion to dismiss.

The court finds that conversion to Chapter 7 is in the best interests of the creditors and the estate.

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 convert 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 to convert to Chapter 7 is granted. The court denies the debtors' motion to dismiss. The court finds that the dissipation of estate property by the debtors, the unauthorized transfer of estate property by the debtors, and the debtors' failure to prosecute the Chapter 13 case constitute cause to convert this case to Chapter 7 under 11 U.S.C. § 1307(c)(1). The court hereby converts this case to Chapter 7.

29. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[FEC-2](#)

CONTINUED ORDER TO SHOW CAUSE
1-23-2023 [[155](#)]

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

The hearing on the Order to Show Cause will be continued to October 17, 2023, at 9:00 a.m. to coincide with the continued hearing on the respondent's Motion for Compensation (MWB-10).

30. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-10](#)

MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS
ATTORNEY(S)
8-1-2023 [[325](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Continued to October 17, 2023, at 9:00 a.m.

Order: Civil minute order

COMPENSATION AND EXPENSES

In this Chapter 13 case, Mark Briden has applied for an allowance of final compensation and reimbursement of expenses. The amounts requested are unclear to the court as the prayer of the motion requests an amount which is inconsistent with the amounts requested in the notice and the body of the motion.

The Chapter 13 trustee opposes the motion contending: 1) the applicant has not proven that the applicant's hourly pay rate of \$350.00 is reasonable; 2) that the amount of time allotted for performance of certain tasks is excessive, although the trustee does not specifically state which tasks/billing he contests; 3) the tasks performed are not listed in chronological order making it difficult to review and to determine whether the entries are accurate; 4) billing for certain tasks were duplicated; 5) the debtors have not filed a declaration in support of the application; and 6) the applicant has not proven that services rendered benefitted the debtors or the estate.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's

attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court will continue the hearing on this matter to allow the applicant to address the issues raised in the trustee's opposition and to clarify the amounts requested.

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 application will be continued to October 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that the applicant shall file and serve a written response to the trustee's opposition not later than October 3, 2023. The response shall at a minimum specifically address each issue raised in the trustee's opposition, and shall include admissible evidence in support of the applicant's position.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than October 10, 2023. The evidentiary record will close after October 10, 2023. The court may rule in this matter without further notice or hearing.

31. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-5](#)

CONTINUED OBJECTION TO CLAIM OF NICOLAS LOPER, CLAIM NUMBER
10
1-4-2023 [\[143\]](#)

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

32. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-8](#)

CONTINUED MOTION TO DISMISS CASE
3-28-2023 [[225](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from August 8, 2023

Disposition: Denied

Order: Civil minute order

Chapter 12 Petition Filed: July 5, 2022

Case Converted to Chapter 7: August 31, 2023

The hearings on the debtors' motion to dismiss this case (MWB-8) and the Chapter 13 trustee's motion to convert to Chapter 7 (DPC-2) are scheduled to be heard concurrently. The court issues the same ruling in each motion as the factual and legal analysis required is identical.

MOTION TO CONVERT

The hearing on the motion to convert to Chapter 7 was continued to allow the Chapter 13 trustee to amend his motion as follows:

IT IS ORDERED that the motion is continued to September 12, 2023, at 9:00 a.m. No later than August 15, 2023, *the Chapter 13 trustee shall amend his motion to state with particularity the legal authority for his motion*, and to provide additional evidence and/or argument. The trustee shall also apprise the court regarding the status of plan payments.

Order, ECF No. 333(emphasis added).

In its ruling the court observed that the trustee's motion failed to state the applicable subsection of 11 U.S.C. § 1307(c) under which the trustee had brought his motion. The trustee filed a supplement to his motion which indicates his motion is brought pursuant to 11 U.S.C. § 1307(c)(1), unreasonable delay which is prejudicial to creditors. Supplemental Motion to Convert, ECF No. 335.

The chapter 13 trustee moves to convert this case, asserting that cause exists under § 1307(c)(1) contending that the debtors: 1) have failed to prosecute the Chapter 13 plan; 2) have failed to accurately list assets in the bankruptcy schedules and statements; 3) have nonexempt assets which may be liquidated for the benefit of creditors.

Creditor Nicholas Loper has appeared in this matter and supports the trustee's motion for conversion contending that: 1) conversion is

appropriate because the debtors have failed to confirm a plan; 2) the debtors have failed to file any plan since the court denied confirmation of the most recently filed plan on February 24, 2023; 3) a Chapter 7 trustee is necessary to preserve assets of the estate for appropriate liquidation and distribution to creditors; 4) the debtors have dissipated assets in the approximate amount of \$163,102.88 since the filing of the case; 5) in addition to the dissipation of assets the debtors have transferred \$525,000 of the debtors' cash assets to their child's own UTMA account during the pendency of the case; and 6) assets are available to pay creditors.

The debtors oppose the motion contending that they have sufficient assets to pay all liquidated claims in full and for this reason conversion is unnecessary. Additionally, and for the same reasons the debtors move to dismiss (MWB-8) the case.

On September 6, 2023, an additional opposition to the motion to convert was filed on behalf of the debtors. The opposition was filed by attorney Peter Macaluso who is not counsel of record for the debtors. No substitution of attorneys or request for substitution was filed with the opposition. The additional opposition consists of an unsworn statement by Attorney Macaluso and is unsupported by any evidence. Additionally, the opposition only addresses the need for an amended plan and states that a plan will be filed prior to the hearing on this motion. The court finds the opposition to be unpersuasive as it is unsupported by any evidence, and it fails to address any of the remaining issues before the court. Finally, even if an amended plan is filed, the opposition does not explain the debtors' delay in filing and moving for confirmation of a plan.

11 U.S.C. § 1307(c) (1)

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—*

(1) unreasonable delay by the debtor that is prejudicial to creditors;

...

11 U.S.C. § 1307(c) (1) (emphasis added).

Failure to Prosecute Chapter 13 Plan

The debtors have not confirmed a Chapter 13 plan since the conversion of the case from Chapter 12 on August 31, 2022.

The court notes that the debtors' initial opposition to this motion indicated that the debtors had filed an amended plan which would pay 100% to unsecured creditors. Opposition, ECF No. 141. Confirmation

of the plan to which the debtors referred was denied on February 24, 2023. Order, ECF No. 180. Since that time the debtors have failed to file any further Chapter 13 plan.

Because the debtors have failed to file a plan it is impossible to determine if regular monthly plan payments are being made as required, and how payments, if any, to secured creditors should be disbursed. Meanwhile, the debtors continue to enjoy the benefits of the automatic stay, and as discussed below, have transferred assets and expended estate funds to the detriment of creditors.

Although the debtors have filed multiple documents in opposition to the motion to convert none specifically address the reasons for the debtors' failure to propose an amended plan. See ECF Nos. 141, 282, 296, 341, 343, 350.

The court finds the debtors' failure to file an amended Chapter 13 plan constitutes unreasonable delay which is prejudicial to creditors.

Transfer of Assets

The debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor shall comply with LBR 3015-1(i).

LBR 3015-1(b)(1).

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--
(1) that occurs after the commencement of the case; and
(2) (A) that is authorized only under section 303(f) or 542(c) of this title; or
(B) that is not authorized under this title or by the court.

11 U.S.C. § 549(a).

The court's docket does not reflect any motion by the debtors to approve a transfer of any asset.

This case was converted from a Chapter 12 to a Chapter 13 case on August 31, 2022.

Creditor Nicholas Loper argues that the case should be converted to a Chapter 7 so that a trustee can be appointed which would: 1) prevent further transfers of assets; and 2) prevent further dissipation of assets. Loper contends that the debtors have transferred assets during the pendency of the Chapter 13 case.

At the inception of the case the debtors acknowledged monies in deposit accounts at U.S. Bank of approximately \$607,000.00 in a checking account, and approximately \$1,619.00 in a savings account. Schedules A/B, ECF No. 1. Amended Schedules A/B, filed on August 24, 2022, show that the balances in these accounts were unchanged. Amended Schedules A/B, ECF No. 31.

Loper subpoenaed bank records from the financial institutions where the debtors' accounts are held. The bank records show that on or about November 2, 2022, the debtors transferred \$525,000.00 from their personal U.S. Bank checking account ending in 6075 to a Uniform Minors Trust Account in the name of their son. See U.S. Bank Statement (account 6075), Exhibit C, page 57, ECF No. 292. The statement shows the transfer of \$525,000.00 to an account at U.S. Bank ending in 9998.

The statements from the U.S Bank account ending in 9998 show that it is a bank account held for the benefit of the debtors' son (a third party) under the Uniform Transfers to Minors Act (UTMA). See U.S Bank Statement, Exhibit D, page 145, ECF No. 292. This statement shows a deposit in the amount of \$525,000.00, transferred from the account held by the debtors (6075) on November 2, 2022, *id.* Additionally, the same statement shows a \$5,000.00 transfer back to the debtor's account ending in 6075 on November 14, 2022, *id.*

The debtors admit they transferred the funds. Debtor, Lindsay John Brakel, filed a declaration which states:

I transferred the \$525,000.00 into the UTMA savings account on the advise (sic) of U.S. Bank. The bank advised the funds in a checking account could be easily hacked and advised the funds be (sic) transferred to a savings account which I did.

Declaration of Lindsay John Brakel, 1:28, 2:4-5, ECF No. 308.

The declaration does not sufficiently explain the reasons for the transfer of funds to a third party and into the UTMA account. Had the debtors wished to protect the funds from "hacking" they could have moved the funds from their checking account into their own savings account already open at U.S. Bank. The debtors offer no explanation regarding: 1) transfer of the funds to a third party and into the UTMA account as opposed to their own savings account; 2) why they subsequently transferred monies from the UTMA account into their own account ending in 6075; or 3) why they failed to seek court authorization as required prior to transferring the monies.

Moreover, the debtors have not provided any evidence that they have attempted to recoup the monies which they transferred. Accordingly, the court finds that the appointment of a Chapter 7 trustee to be in the best interests of the creditors and the bankruptcy estate. The Chapter 7 trustee will have the authority to seek the avoidance of the post-petition transfer.

Dissipation of Assets

Loper contends that in addition to the unauthorized transfer of \$525,000.00 to the debtors' son that assets have been dissipated since the filing of the case.

The U.S. Bank statements for the UTMA account ending in 9998 show a significant decrease in the balance since the transfer of \$525,000.00 to this account on November 2, 2022. The balance in the UTMA account on November 25, 2022, was \$521,063.46. See Exhibit D, page 145, ECF No. 293. Yet the ending balance in this account on May 23, 2023, is \$422,633.90. See Exhibit D, page 131, ECF No. 293. A review of the account statements from November 2022 through May 2023 shows numerous transfers of funds from the UTMA account ending in 9998 to the debtors' personal account ending in 6075.

The debtors have provided an accounting of funds spent, Exhibit A, ECF No. 311. The exhibit is a list of expenditures totaling \$259,973.00. However, the exhibit does not: 1) list the expenditures by date; 2) or clearly identify the source of the funds expended, although \$126,109.00 appears to have been paid from funds derived from the sale of the debtors' house. Thus, it is unclear to the court how the funds from the UTMA account have been spent.

Assets are Available to Pay Creditors

The debtors' scheduled assets aggregate approximately \$2,491,209.03, and appear to be subject to secured claims aggregating \$384,997.78. See Summary of Assets and Liabilities, ECF No. 31. There are significant assets to be administered for the benefit of the creditors.

The debtors do not dispute the availability of assets for the benefit of creditors. In support of the motion to dismiss the debtors submitted a list of assets indicating the estimated equity in each, which included: 1) real estate with values exceeding \$1,505,000.00; 2) bank deposits totaling \$612,526.00; 3) vehicles valued at \$90,300.00; and 4) livestock valued at \$36,000.00. See Response, ECF No. 283.

As the court has indicated secured claims aggregate \$384,997.78 and the debtors have not claimed an exemption in most of the assets including the funds on deposit in the U.S. Bank checking account which were subsequently transferred to the debtors' son in his UTMA account.

The court concludes that conversion to Chapter 7 is in the best interests of the creditors and the estate and is necessary to preserve the estate for the benefit of all creditors including those whose claims have not yet been liquidated.

DEBTORS' MOTION TO DISMISS

The debtors filed a motion to dismiss the Chapter 13 case (MWB-8). The debtors contend that they have sufficient liquid assets to pay all liquidated debts in full. See Declaration of Lindsay Brakel and Lisa Brakel, 2:3-4, ECF No. 227.

Two claims in this case are unliquidated. The claim of Nicholas Loper, Claim No. 10, in the amount of \$15,100,000.00 and the claim of Lori Lester, Claim No. 5, in the amount of \$922,666.97. The claimants have each obtained relief from the automatic stay to litigate the claims in state court. The state court proceedings have not yet been concluded.

The debtors argue that the case should be dismissed because if the debtors successfully defend these proceedings, then they will be able to pay all liquidated creditors. See Motion to Dismiss, 3:21-24, ECF No. 283. The motion fails to explain how the debtors will pay the claims of Loper and Lester should the state court proceedings result in judgments in favor of the claimants. It is not certain that the debtors will successfully defend the state court proceedings.

Given the transfers of assets and the additional dissipation of liquid funds the court concludes that the case should be converted so that a Chapter 7 trustee can liquidate assets and preserve them for the benefit of all claimants including the contingent claimants.

The court will deny the motion to dismiss.

The court finds that conversion to Chapter 7 is in the best interests of the creditors and the estate.

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 debtors' 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 to dismiss the case is denied. The Chapter 13 trustee's motion to convert to Chapter 7 is granted. The court finds that the dissipation of estate property by the debtors, the unauthorized transfer of estate property by the debtors, and the debtors' failure to prosecute the Chapter 13 case constitutes cause to convert this case to Chapter 7 under 11 U.S.C. § 1307(c)(1). The court hereby converts this case to Chapter 7.

33. [23-22072](#)-A-13 **IN RE: RODNEY ANDREWS**
[CLH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PETER SCHLATTER
8-17-2023 [\[29\]](#)

PETER MACALUSO/ATTY. FOR DBT.
CHARLES HASTINGS/ATTY. FOR MV.

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 17, 2023, at 9:00 a.m.

Order: Civil minute order

Peter Schlatter 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 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than September 26, 2023. 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and serve a reply, if any, no later than October 3, 2023. The evidentiary record will close after October 3, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

34. [23-22072](#)-A-13 **IN RE: RODNEY ANDREWS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-15-2023 [\[25\]](#)

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 17, 2023, 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 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than September 26, 2023. 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than October 3, 2023. The evidentiary record will close after October 3, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

35. [23-22072](#)-A-13 **IN RE: RODNEY ANDREWS**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ABFC 2002-WF2 TRUST,
ABFC MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES
2002-WF2, U.S. BANK NATIONAL ASSOCIATION
7-20-2023 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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 17, 2023, at 9:00 a.m.

Order: Civil minute order

ABFC 2002-WF2 Trust, ABFC Mortgage Loan Asset-Backed Certificates,
Series 2002-WF2, U.S. Bank National Association 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 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted
to chapter 7, dismissed, or the creditor's objection to confirmation
is withdrawn, the debtor(s) shall file and serve a written response
to the objection not later than September 26, 2023. 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 debtors elect to file a modified plan in
lieu of filing a response, then a modified plan shall be filed,
served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and
serve a reply, if any, no later than October 3, 2023. The
evidentiary record will close after October 3, 2023. If the debtors
do not timely file a modified plan or a written response, this

objection will be sustained on the grounds stated in the objection without further notice or hearing.

36. [22-20175](#)-A-13 **IN RE: DARRIN/KRISTINA DEMELLO**
[DRE-5](#)

CONTINUED MOTION TO DISMISS CASE
7-25-2023 [\[102\]](#)

D. ENSMINGER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Prepared by the movant

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

Section 1307(b) of the Bankruptcy Code provides that “[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.” 11 U.S.C. § 1307(b).

Section 707(a) authorizes dismissal of a chapter 7 case for cause. See 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether “cause” exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result). This subsection provides examples of cause. “The grounds that § 707(a) lists as providing “cause” for dismissal are illustrative and not exhaustive.” *In re Padilla*, 222 F.3d 1184, 1191 (9th Cir. 2000) (citing 11 U.S.C. § 102(3)).

This case was converted from a Chapter 7 case on October 17, 2022.

The debtors seek dismissal of the case because their financial position has changed since the conversion of the case. Debtor Kristina Demello suffered medical conditions which required that she cease working for several weeks. Subsequently, the debtor was forced to take several additional weeks of family disability leave to care for her elderly mother. The reduction of pay has made it impossible for the debtors to continue to make the monthly plan payments. See Motion to Dismiss, ECF No. 102.

The hearing on this motion was continued to allow the Chapter 13 trustee to indicate whether he contends that dismissal or reconversion of the case, is in the best interests of the creditors and the estate. The court ordered the trustee to file a response as follows:

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

Civil Minutes, ECF No. 106.

The trustee filed his response and indicated in part: 1) at the time of the motion to convert to Chapter 13, the US Trustee had filed a §707(b) motion requesting dismissal of the case; 2) there are no non-exempt assets; 3) the liquidation analysis prepared by the trustee's office shows that no monies are required to be paid to the unsecured creditors; 4) to date, the Chapter 13 trustee has not disbursed any money to the general, unsecured creditors; and 5) the previous Chapter 7 trustee filed a report of no distribution and had indicated this case a "no-asset" case after concluding the §341 meeting of creditors. Trustee Reply, ECF No. 109

Given the Chapter 13 trustee's response and no additional opposition by any party to the motion the court will grant the motion. The court finds that it is in the best interests of the creditors that the case be dismissed as opposed to converted to 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 debtor's motion to dismiss this case has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. This bankruptcy case is hereby dismissed.

37. [19-26277](#)-A-13 **IN RE: JUAN MONGALO AND MILAGROS MONGALO**
ROBLETO
[MMN-12](#)

MOTION TO MODIFY PLAN
7-17-2023 [\[244\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Eighth Amended 13 Plan, filed July 17, 2023

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on July 17, 2023, ECF No. 249. The Chapter 13 trustee opposes the motion, ECF No. 252.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

TRUSTEE OPPOSITION

11 U.S.C. § 1325(b) Best Effort

Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title

apply to any modification under subsection (a) of this section.

11 U.S.C. § 1329(b) (1) (emphasis added).

The trustee's opposition states:

II. BEST EFFORT. *The Debtors' Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b) or in the alternative the Plan has not been proposed in good faith under 11 U.S.C. § 1325(a) (3).*

Opposition, 1:23-25, ECF No. 252 (emphasis added).

The trustee cites 11 U.S.C. § 1325(b) as a basis to oppose this motion to modify. Section 1325(b) is inapplicable in motions to modify under 11 U.S.C. § 1329(b) (1).

Going forward the trustee shall comply with Fed. R. Bankr. P. 9013, LBR 9014-1(d) (3) (A), and shall not cite authority which is inapplicable as indicated in this court's ruling.

1325(a) (3) Good Faith

The trustee contends that while the proposed plan calls for a 0% distribution to unsecured creditors, he calculates the plan will fund a 4% distribution. The trustee further requests that the debtors provide for a 4% distribution to unsecured creditors in the order confirming the modified plan, allowing the trustee to disburse funds to creditors.

If the debtors agree to add a provision in the order confirming the modified plan which pays 4% to unsecured creditors the court will grant the motion.

Service of Special Notice Creditors

The trustee contends that special notice parties Select Portfolio Inc., Tidewater Finance Company, Synchrony Bank, and New Rez, LLC, were not served with the motion and supporting documents.

The certificate of service filed with the motion states that all creditors and parties in interest were served with the motion. Certificate of Service, Section 5, ECF No. 250. Attached to the certificate is the clerk's mailing matrix, which was downloaded on July 12, 2023, in compliance with LBR 7005-1. *Id.* The matrix is a complete matrix which includes all the special notice parties. In such a case the separate matrix of special notice creditors is not required.

The court finds service of the motion was sufficient.

DEBTOR REPLY

The debtors have filed a reply to the trustee's opposition. In the reply the debtors agree to add language to the confirmation order

which requires payment of 4% to the unsecured creditors. The court will grant the motion with this change in the order.

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. The debtor shall prepare and submit an order confirming the modified plan, approved by the Chapter 13 trustee, and in accordance with this ruling.

38. [23-20978](#)-A-13 **IN RE: SUZZETTEE LAWSON**
[BLG-3](#)

MOTION TO CONFIRM PLAN
7-18-2023 [\[42\]](#)

CHAD JOHNSON/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 18, 2023

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. 46. The plan is supported by Schedules I and J filed April

10, 2023, ECF No. 12. The Chapter 13 trustee has filed a non-opposition to the motion, 53.

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.

39. [23-22080](#)-A-13 **IN RE: MICHAEL/ANGELIQUE VALERA**
[RAS-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
8-10-2023 [\[23\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

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 17, 2023, at 9:00 a.m.

Order: Civil minute order

Secured creditor U.S. Bank Trust National Association 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 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than September 26, 2023. 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than September 26, 2023.

IT IS FURTHER ORDERED that the objecting creditor shall file and serve a reply, if any, no later than October 3, 2023. The evidentiary record will close after October 3, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

40. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[PGM-6](#)

MOTION TO MODIFY PLAN
7-31-2023 [[193](#)]

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Fifth Modified Chapter 13 Plan, filed July 31, 2023

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(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on July 31, 2023, ECF No. 192. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 199.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

41. [23-20883](#)-A-13 **IN RE: MELISSA CHAVEZ**
[PLC-3](#)

MOTION TO CONFIRM PLAN
7-28-2023 [\[31\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2).

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 motion will be denied without prejudice for the following reasons.

SERVICE

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, *the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*

LBR 7005-1(a) (emphasis added).

The debtors filed a certificate of service evidencing service of the motion to modify and supporting documents. Certificate of Service, ECF No. 35.

Attached to the certificate is a custom matrix instead of the clerk's matrix. Eleven parties are listed on the matrix.

Because more than six parties were required to be served a custom service list may not be used as an attachment to the Certificate of Service. Counsel has not affixed the Clerk of the Court's Matrix to the certificate of service. This is not in compliance with LBR 7-005.

The court notes that although the certificate provides that the Chapter 13 trustee and the U.S. Trustee were served with the motion, there is no matrix which indicate the addresses where these parties were served, and they are not included in the custom matrix. Certificate of Service, Section 5, ECF No. 35.

CIVIL MINUTE ORDER

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

The debtor's motion to confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

42. [23-21485](#)-A-13 **IN RE: JAMES WELLE**
[EJS-1](#)

MOTION TO CONFIRM PLAN
7-14-2023 [\[22\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$5,317.00 with another payment of \$2,75.00 due September 25, 2023. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

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

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

43. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-8](#)

MOTION TO CONFIRM PLAN
8-1-2023 [\[342\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument).

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 as follows: the plan calls for monthly payments of \$3,125.00 beginning August 25, 2023, and the debtor has paid only \$545.00 in August 2023. The plan cannot be confirmed if the plan payments are not current.

Plan Provisions Regarding Creditor Charley Smith Trust

The proposed plan calls for payments to Charley Smith Family Trust as follows:

DEBTOR HAS MADE DIRECT PAYMENTS TO CLASS 2 CREDITOR,
CHARLEY SMITH FAMILY TRUST, OF \$2,366.60 PER MONTH FOR
(22) POST-PETITION PAYMENTS, AUGUST 2021 THRU MAY 2023

Third Amended Chapter 13 Plan, Section 7, ECF No. 344.

The court granted relief from stay to Charley Smith Trust on August 11, 2023, because the debtor had defaulted in making post-petition adequate protection payments to the movant for the months of June and July 2023. See Civil Minutes, ECF No. 350.

The plan does not provide for payments to be made to Charley Smith Family Trust either outside the plan or by the trustee for the months of June and July 2023. As such the proposed plan is not feasible under 11 U.S.C. § 1325(a)(6).

Refinance to Complete Plan

The proposed plan provides:

*DEBTOR SHALL REFINANCE REAL PROPERTY WITHIN (60) DAYS OF COMPLETION OF APPEAL AND RESOLUTION OF THE OBJECTION TO CLAIM PGM-6

Third Amended Chapter 13 Plan, Section 7, ECF No. 344.

The trustee argues that the debtor has not met the burden of proof regarding her ability to refinance the real property located at 6010 -6020 McCourtney Road. Lincoln California.

The declaration and the motion do not address the feasibility of the plan in this context. There is no evidence provided regarding the amount the debtor anticipates she will require to pay the claims as proposed in the plan, and there is no analysis regarding the current value of the property. The court notes that the case was filed July 6, 2021, over two years ago, and no new evidence has been provided regarding the value of the property and the amounts which the debtor would likely obtain from a refinance of the property.

The court finds that the debtor has failed to present a prima facie case for confirmation of the plan. The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

44. [23-21989](#)-A-13 **IN RE: CATHRYN KINGSBURY**
[DPC-2](#)

MOTION TO DISMISS CASE
8-15-2023 [\[19\]](#)

BRUCE DWIGGINS/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 29, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$1,898.65 with a further payment of \$1,898.65 due August 25, 2023.

The trustee also reports that the debtor is deceased. The court's docket does not show that any successor of the debtor has asked to succeed the debtor in performing the plan.

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 court hereby dismisses this case.

45. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[TBG-4](#)

MOTION TO MODIFY PLAN
8-8-2023 [\[70\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DEBTOR DISMISSED: 08/11/23; TRUSTEE NON-OPPOSITION

No Ruling

46. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[TBG-6](#)

MOTION TO SET ASIDE DISMISSAL OF CASE
8-18-2023 [\[86\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DEBTOR DISMISSED: 08/11/2023

No Ruling