

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

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

DAY: TUESDAY
DATE: SEPTEMBER 14, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-21700](#)-A-13 **IN RE: DARYL TSUTSUI**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[30\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

2. [21-20401](#)-A-13 **IN RE: RAFAEL QUIROZ**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
7-7-2021 [\[65\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The trustee has moved to dismiss debtor's Chapter 13 case. Debtor has opposed dismissal and has attempted to resolve the trustee's concerns by filing a modified plan. See Item #3 below. The court has denied confirmation of the modified plan.

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in plan payments. The original delinquency alleged was \$36.42 with additional payments due July 25, 2021. In response to this motion to dismiss the debtor filed an amended plan.

According to the trustee payments are delinquent under the debtor's proposed amended chapter 13 plan in the amount of \$228.86. See Item #3 below. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$228.86.

Unreasonable Delay Which is Prejudicial to Creditors

Second, the chapter 13 trustee moves to dismiss this case as the debtor has failed to confirm a plan and properly prosecute the bankruptcy case. As the petition was filed on February 3, 2021, the case has been pending for approximately 7 months, yet a plan has not

been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

Each of the trustee's contentions are well-taken. Moreover, the debtor has been unable to address these concerns by confirming an amended plan. Accordingly, the case will be dismissed.

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 considered the motion, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

3. [21-20401](#)-A-13 **IN RE: RAFAEL QUIROZ**
[PGM-2](#)

MOTION TO CONFIRM PLAN
7-30-2021 [\[72\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

The trustee has opposed the modification of the debtor's plan for several reasons. The debtor's attorney has filed a reply (ECF #87), which has been filed without a supporting declaration. The reply contends that the business documents and pay advices have been sent to the trustee, that the plan payments have been brought current, and that the Business Attachment to Schedule I has been filed.

The court gives little weight to the reply as it is unsupported by admissible evidence. However, if the trustee confirms the plan payments are current, that he has received all documents, and that his opposition is resolved, then the court will revisit its ruling.

11 U.S.C. §1325(b) (6)

The debtor is required to prove that his plan is feasible pursuant to 11 U.S.C. §1325(a) (6)

Plan Delinquency

The trustee contends that payments pursuant to the proposed Amended Plan are delinquent in the amount of \$228.86. The plan is not feasible.

Failure to Provide Business Documents

The trustee alleges that the debtor has failed to provide documents regarding a business operated by the debtor's non-filing spouse. These documents include a business examination checklist, bank statements and tax returns. As such, the trustee is unable to assess the feasibility of the proposed plan.

Failure to File Attachment to Amended Schedule I

The trustee opposes the motion because the debtor has failed to file an Attachment to Schedule I indicating the gross income and necessary expenses relating to a business and/or real property. This business and/or real property generates net income of \$1,000.00 per month as shown on the debtor's Amended Schedule I at Line 8a (ECF 78). Without the additional information which would be provided in the Attachment the trustee is unable to assess the feasibility of the proposed plan.

11 U.S.C. § 521

The debtor is required to provide copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor. 11 U.S.C. § 521 (a) (1) (B) (iv).

The trustee contends that the debtor has failed to provide pay stubs for the 60-day period prior to the filing of the petition. As such, the trustee is unable to assess the feasibility of the proposed plan.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:
Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

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

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

4. [19-26205](#)-A-13 **IN RE: PASCAL LAMOTHE**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[23\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

5. [18-27206](#)-A-13 **IN RE: ARLENE DILLARD**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-23-2021 [\[33\]](#)

RICHARD JARE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING

As the trustee agreed to drop this motion to dismiss if the court grants the debtor's Motion to Modify (Item 6), and since the court granted said motion, the court will drop this motion from the calendar as moot.

6. [18-27206](#)-A-13 **IN RE: ARLENE DILLARD**
[RJ-1](#)

MOTION TO MODIFY PLAN
7-28-2021 [\[38\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: 1st Modified Chapter 13 Plan filed July 28, 2021

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). The trustee filed a non-opposition to this motion on August 25, 2021. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CHAPTER 13 PLAN MODIFICATION

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

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is granted.

7. [21-22506](#)-A-13 **IN RE: KEVIN KENNEDY**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID CUSICK, CHAPTER 13 TRUSTEE
8-9-2021 [\[15\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: July 7, 2021

Previous Chapter: 7

Previous Petition Filed: August 23, 2017

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

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge. Here the debtor received a discharge on October 23, 2018.

Second, the prior case must have been filed under Chapters 7, 11, or 12. Here the debtor(s) received a Chapter 7 discharge.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

This Chapter 13 case was filed on July 7, 2021. Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on August 23, 2017, debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

8. [18-21709](#)-A-13 **IN RE: ROBERTO/MARIA LOPEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[30\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

Plan Completion

The debtors' plan must complete within five years. 11 U.S.C. § 1322(d)(1) and (2). The chapter 13 trustee moves to dismiss this chapter 13 case pursuant to Section 6.04 of the Plan because the plan does not complete within five years. The trustee alleges that the case will take 66 months to complete (ECF 30). The debtors have

not filed a modified plan or a motion to modify same, nor have they otherwise responded to the trustee's motion.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. 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 entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtors' plan will not complete in the requisite five years and the debtors have failed to file a modified plan and motion to modify same. The plan over extension constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

9. [18-25810](#)-A-13 **IN RE: HAROLD SEYMOUR**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[28\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

FINAL RULING

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2,028.00. The trustee has indicated that a further \$507.00 was due on August 25, 2021.

CIVIL MINUTE ORDER

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

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

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

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

10. [21-22514](#)-A-13 **IN RE: PATRICK FIELDS**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
8-11-2021 [\[25\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: August 12, 2021

Previous Chapter: 7

Previous Petition Filed: February 25, 2021

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record,

accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge. Here the debtor received a discharge on June 22, 2021.

Second, the prior case must have been filed under Chapters 7, 11, or 12. Here the debtor's received a Chapter 7 discharge.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12

case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

This Chapter 13 case was filed on August 12, 2021. Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on February 25, 2021, debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

11. [19-23120](#)-A-13 **IN RE: SHONTHA BOHANON**
[BLG-5](#)

MOTION TO MODIFY PLAN
8-1-2021 [\[82\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted: approved with changes to the order confirming plan

Order: Prepared by movant, approved by the trustee

Subject: First Modified Plan, filed on August 1, 2021

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

The trustee opposed the proposed modification alleging that the language in the plan was ambiguous as to the amounts paid in and beginning of payments under the modified plan (ECF #93). To resolve the ambiguity, the trustee requested that the following language be included in the order confirming the modified plan: "The debtor has paid a total of \$11,688.00 to the trustee through August 3, 2021. Effective August 25, 2021, the monthly plan payment shall be \$350.00 for the remainder of the plan".

DEBTOR REPLY

The debtor filed a reply (ECF #96) wherein the debtor agreed to place the language the trustee requested in the order confirming the modified plan.

The court approves the modification of the plan and finds that with the inclusion of the trustee's requested language that the debtor has sustained her burden of proof. The court will grant the motion and approve the modification on the condition that the language is included 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 good cause appearing,

IT IS ORDERED that the motion is granted; and

IT IS FURTHER ORDERED that the following language shall be included in the order confirming the modified plan: "The debtor has paid a total of \$11,688.00 to the trustee through August 3, 2021. Effective August 25, 2021, the monthly plan payment shall be \$350.00 for the remainder of the plan".

12. [19-23120](#)-A-13 **IN RE: SHONTHA BOHANON**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-22-2021 [\[75\]](#)

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

FINAL RULING

As the trustee agreed to drop this motion to dismiss if the court grants the debtor's Motion to Modify (BLG-5), and since the court granted said motion, the court will drop this motion from the calendar as moot.

13. [17-20121](#)-A-13 **IN RE: JESUS/OLGA ARROYO**
[DPC-2](#)

MOTION TO DISMISS CASE
8-11-2021 [\[46\]](#)

SCOTT HUGHES/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtors' confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$2,088.27. The trustee has indicated that a further \$2,086.27 is due prior to the hearing on this motion.

Plan Completion

The debtors' plan must complete within five years. 11 U.S.C. § 1322(d)(1) and (2).

The chapter 13 trustee moves to dismiss this chapter 13 case pursuant to Section 6.04 of the Plan because the plan does not complete within five years. The trustee alleges that the case will take 92 months to complete (ECF 46). The debtors have not filed a modified plan or a motion to modify same, nor have they otherwise responded to the trustee's motion.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. 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 entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). Additionally, the debtors' plan will not complete in the requisite five years and the debtors have failed to file a modified plan and motion to modify same. The plan over extension constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

14. [21-20821](#)-A-13 **IN RE: AISHA HAMILTON**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[36\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's currently confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$6,282.57. The trustee also indicates that a further payment of \$3,102.27 was due prior to the hearing on this 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 trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

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

15. [19-21322](#)-A-13 **IN RE: ALAN PURCELL AND KERRY PILLEY-PURCELL**
[DPC-2](#)

MOTION TO DISMISS CASE
8-11-2021 [\[66\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

16. [21-21923](#)-A-13 **IN RE: JORGE BARRAGAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-25-2021 [\[27\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

11 U.S.C. §1325(a)(6)

Ability to Fund Plan

The trustee objects to the plan as it is unclear whether plan payments are feasible. In this case the debtor's ability to make plan payments rests in part on income received from a third party. Schedule I at Line 8h, indicates that income in the amount of \$2,400.00 per month is derived from the debtor's live-in girlfriend (ECF #1). No declaration from debtor's girlfriend has been filed indicating her willingness and ability to make payments into the household in this amount. Without this income the debtor does not have the ability to fund the plan and the plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6).

Payments to Secured Creditors

The trustee objects to the plan as it is uncertain whether payments have been made to secured Class 2 creditors Wells Fargo and GM Financial, or if payments were made in what amounts. This is because the debtor's statements made at the Meeting of Creditors contradicted the provisions of the debtor's proposed plan. The Additional Provisions of the Plan call for payments to be made to Class 2 creditors beginning the 5th month of the plan (ECF It appears that the debtor has made payments to these creditors directly, outside of the plan, and the trustee is uncertain regarding how much

has been paid to each creditor and the impact these payments may have on the proposed plan. With these uncertainties the plan is not feasible pursuant to 11 U.S.C. §1325(a)(6).

Failure to Amend Schedules I and/or J

The trustee objects to confirmation as testimony obtained from the debtor regarding his place of employment and income at the Meeting of Creditors is inconsistent with the information contained in Schedule I. At the Meeting of Creditors, the debtor stated that his place of employment had changed since the filing of the petition and that his income was incorrect as indicated in Schedule I. The trustee requested that Schedule I be amended to accurately reflect debtor's income and place of employment. He further requested that amendment, if appropriate, be made to Schedule J. The debtor has failed to amend the schedules. Without the amended schedules the court cannot determine the plan is feasible pursuant to 11 U.S.C. §1325(a)(6). Moreover, as the trustee asserts, the debtor has an obligation to propose a plan in good faith and to cooperate with the trustee in the performance of his duties as the administrator of the debtor's plan. Debtor's failure to accurately amend his budgetary schedules is a failure to comply with both 11 U.S.C. §1325(a)(3) and §521(a)(3).

11 U.S.C. §1325(a)(1)

The trustee objects to confirmation of the plan as Form 122C-1 (ECF #20) is incomplete. The document contains no information regarding the debtor's income for the past 6 months and the trustee notes that Schedule I (ECF #1, Page 30) states that the debtor has been employed for 12 months at True Value.

ATTORNEY FEES

The trustee objects to the attorney fees in the plan in the amount of \$4,000.00 for services rendered to the debtor in the chapter 13 case as the debtor had previously paid the sum of \$1,642.00 prior to the filing of the petition. The case was originally filed as a chapter 7 and subsequently converted to chapter 13 after only two months. The debtor and his attorney have signed and filed a Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys (EDC 3-096). This document was filed on August 18, 2021 (ECF #25). The debtor agreed to pay, and the attorney agreed to accept the sum of \$4,000.00 for services rendered in the chapter 13 proceeding.

This is a non-business chapter 13 case. The sum of \$4,000.00 represents the maximum amount which can be charged by the attorney in a non-business chapter 13 case, absent an application for attorney fees.

Local Bankruptcy Rule 2016-1(a), provides:

Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party in interest objects or the attorney opts out of

Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.

The trustee has objected to the attorney fees. In this case the Rights and Responsibilities form has been filed which limits the attorney to \$4,000.00 in this nonbusiness chapter 13 case. The \$1642.00 paid by the debtor for the chapter 7 case is subject to a motion to approve attorney fees.

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.

17. [18-21824](#)-A-13 **IN RE: MICHAEL ZENDER**
[DPC-2](#)

MOTION TO DISMISS CASE
8-11-2021 [\[99\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's currently confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$7,810.00.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$7,810.00.

CIVIL MINUTE ORDER

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

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

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

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

18. [18-20026](#)-A-13 **IN RE: BRIAN SHAW**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[78\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's currently confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$960.54.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$960.04.

Plan Completion

The debtors' plan must complete within five years. 11 U.S.C. § 1322(d)(1) and (2).

The chapter 13 trustee moves to dismiss this chapter 13 case pursuant to Section 6.04 of the Plan because the plan does not complete within five years. The trustee alleges that the case will take 70 months to complete (ECF 78). The debtors have not filed a modified plan or a motion to modify same, nor have they otherwise responded to the trustee's motion.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. 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 entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). Moreover, the plan will not complete within 60 months pursuant to 11 U.S.C. § 1322(d). The plan over extension constitutes cause to dismiss this case. The court hereby dismisses this case.

19. [19-21827](#)-A-13 **IN RE: SEDALIA MCFADDEN**
[DPC-2](#)

MOTION TO DISMISS CASE
8-11-2021 [\[63\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

20. [17-25931](#)-A-13 **IN RE: ARSENIO/LEONORA BUCAD**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[24\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

DISCUSSION

Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtors' currently confirmed chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4,097.65.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4097.65.

Plan Completion

The debtors' plan must complete within five years. 11 U.S.C. § 1322(d)(1) and (2).

The chapter 13 trustee moves to dismiss this chapter 13 case pursuant to Section 6.04 of the Plan because the plan does not complete within five years. The trustee alleges that the case will take 79 months to complete (ECF 24). The debtors have not filed a modified plan or a motion to modify same, nor have they otherwise responded to the trustee's motion.

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtors have failed to

make all payments due under the confirmed plan. Payments are delinquent in the amount of \$4097.65. Moreover, the debtors have failed to modify their plan to complete within 60 months.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The debtors have failed to modify their plan to complete within 60 months. This failure to modify plan constitutes cause to dismiss this case. The court hereby dismisses this case.

21. [18-27131](#)-A-13 **IN RE: STEPHEN/SUSAN JOHNSON**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[52\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); Debtor filed opposition to motion

Disposition: Continued to October 19, 2021, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors' plan exceeds the maximum plan length of 60 month pursuant to 11 U.S.C. § 1322(d). The trustee contends that the plan is projected to continue for 90 months.

A modified plan has been filed in this case. The scheduled hearing on the modification is October 19, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is

disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 19, 2021, at 9:00 a.m.

22. [21-22531](#)-A-13 **IN RE: ALTON WALKER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-25-2021 [\[26\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

23. [20-25134](#)-A-13 **IN RE: HELEN CASACLANG**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[34\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$7,462.88.

The debtor's opposition states that the debtor will be current by the hearing. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$7,462.88.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or

before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$7,462.88. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

24. [17-28335](#)-A-13 **IN RE: LISA KOPPLE**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [[150](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

25. [21-21435](#)-A-13 **IN RE: WILLIAM/CHERYL HOKE**
[DPC-2](#)

MOTION TO DISMISS CASE
8-2-2021 [[28](#)]

ROBERT GIMBLIN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 4.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

26. [19-23837](#)-A-13 **IN RE: KIMBERLY BORDEN**
[DPC-1](#)

MOTION TO DISMISS CASE
8-11-2021 [\[37\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

27. [20-21544](#)-A-13 **IN RE: MARCUS WOODFORK AND SHERI TOMKINS**
[DPC-2](#)

MOTION TO DISMISS CASE
8-11-2021 [\[50\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$7,065.76.

The debtor's opposition states that the debtor will become current in time for the hearing. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$7,065.76.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$7,065.76. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

28. [21-21347](#)-A-13 **IN RE: ALSESTER COLEMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-17-2021 [\[50\]](#)

PETER MACALUSO/ATTY. FOR DBT.
8/30/2021 FINAL INSTALLMENT PAID \$7.00

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

29. [19-24749](#)-A-13 **IN RE: KAREN LANDWEHR**
[PSB-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC
FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)
8-19-2021 [\[48\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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, Pauldeep Bains has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,440.00 and reimbursement of expenses in the amount of \$0.00.

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

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation, ECF No. 4. The plan also shows

the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 28. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved. The court allows compensation in the amount of \$1,440.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1,440.00.

30. [18-27654](#)-A-13 **IN RE: JASON/MOLLY ZYSMAN**
[DEF-7](#)

MOTION TO MODIFY PLAN
7-6-2021 [\[69\]](#)

DAVID FOYIL/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

31. [18-24855](#)-A-13 **IN RE: ELIZABETH PISANO**
[TBG-2](#)

MOTION TO SET ASIDE DISMISSAL OF CASE
8-27-2021 [\[30\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DEBTOR DISMISSED: 07/23/2021

No Ruling

32. [20-24756](#)-A-13 **IN RE: EDGAR MANDAP**
[MS-1](#)

MOTION TO MODIFY PLAN
8-10-2021 [\[58\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, August 11, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1);

see also *In re Powers*, 202 B.R. at 622 (“[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan.”); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

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

33. [16-26158](#)-A-13 **IN RE: HELEN GUNKEL**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-23-2021 [\[48\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Since the trustee requests that the court drop this motion if the court grants the debtor’s Motion to Modify Plan, ECF No. 69, and since the said Motion to Modify was granted, the court will drop this matter from the hearing as moot.

34. [16-26158](#)-A-13 **IN RE: HELEN GUNKEL**
[MET-1](#)

MOTION TO MODIFY PLAN
7-21-2021 [\[57\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1)

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, July 21, 2021

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. The Order Modifying Plan shall include the corrective language regarding plan payments made and attorney fees in the Proposed Order Modifying Plan, ECF No. 74.

35. [19-21063](#)-A-13 **IN RE: ANGELA BOOTH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-23-2021 [\[70\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Since the trustee requests that the court drop this motion if the court grants the debtor's Motion to Modify Plan, ECF No. 87, and since the said Motion to Modify was granted, the court will drop this matter from the hearing as moot.

36. [19-21063](#)-A-13 **IN RE: ANGELA BOOTH**
[EJS-2](#)

MOTION TO MODIFY PLAN
7-30-2021 [\[76\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1)

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, July 30, 2021

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. It is further ordered that the correct plan payments under the plan shall reflect the plan payment statements in the debtor’s Addendum to Motion to Modify Plan, ECF No. 85 (\$375.00 a month beginning in August 2021).

37. [17-25168](#)-A-13 **IN RE: THOMAS/JEANNINE HOFFMAN**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-23-2021 [\[34\]](#)

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

No Ruling

38. [17-25168](#)-A-13 **IN RE: THOMAS/JEANNINE HOFFMAN**
[LBG-2](#)

MOTION TO MODIFY PLAN
7-29-2021 [\[41\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires a debtor to demonstrate a feasible chapter 13 plan and ability to comply with its terms. Here the debtor hasn’t filed updated Schedules I and J since April 20, 2020. The schedules I and J the debtor attached in the exhibit, ECF No. 44, were effective on April 20, 2020. The court deems these schedules to be too out of date to consider for when determining the debtor’s *current* financial conditions. Without updated schedules I and J, the court cannot assess feasibility.

11 U.S.C. § 1325(a)(3)

11 U.S.C. § 1325(a)(3) requires that a chapter 13 debtor propose a chapter 13 plan in good faith. The April 20, 2020 schedules I and J include a \$261.00 expense for a niece stranded in Turkey and an \$446.00 vet expense. These are increases in expense from the last-filed Schedules (ECF No. 1). The court deems it appropriate for the debtor to file new schedules I and J which substantiate these increased expenses to show this modified plan is being proposed in good faith.

CIVIL MINUTE ORDER

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

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

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

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

39. [19-20882](#)-A-13 **IN RE: HENRY RODRIGUEZ**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-22-2021 [\[63\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

40. [19-20882](#)-A-13 **IN RE: HENRY RODRIGUEZ**
[PGM-2](#)

MOTION TO MODIFY PLAN
7-30-2021 [\[70\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

41. [21-22384](#)-A-13 **IN RE: NORMAN MASTERS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-16-2021 [\[35\]](#)

ROBERT MCCANN/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: 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).

NON-COMPLIANCE WITH LOCAL RULES

Local Rule 3015-1(c) requires the use of this district's form chapter 13 plan. This district's form chapter 13 plan, Form EDC 3-080, has undergone revisions over the years. The most recent revision is the form that debtors are required to use.

In this case, the debtor has not proposed a chapter 13 plan on the correct form plan, ECF No. 26 (using Official Form 113). The court will deny the motion on this ground.

11 U.S.C. § 341

The debtor has failed to appear at a § 341 meeting of creditors on August 12, 2021. See 11 U.S.C. §§ 341, 343. The next hearing had been continued to September 16, 2021, at 1:00 p.m.

11 U.S.C. § 521

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4). The debtor did not provide the trustee with his pay advices from 60 days prior to filing. The debtor also has failed to provide the trustee with a required tax return (for the most recent tax year ending immediately before the commencement of the case and for which a Federal income

tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

11 U.S.C. § 1325(a)(6)

11 U.S.C. § 1325(a)(6) requires a chapter 13 debtor to demonstrate a feasible plan and ability to comply with its terms.

Delinquency

The plan proposes to pay creditors \$150.00 per month for 60 months, ECF No. 26. The debtor is delinquent \$150.00.

Incomplete Chapter 13 documents

The debtor's Chapter 13 documents are also incomplete. Schedule A/B, ECF No. 18, says the debtor has no interest in real property or in automobiles. Schedule D states that the debtor has no creditors holding any secured claims, *id.*, and Schedule E/F states there are no unsecured creditors, *id.* However, Dana Dean was listed with a priority amount of \$114,551.00, and Part 2 lists Lori Barns with a priority amount of \$100,000.00, *id.* Schedule I/J also state that the debtor is receiving an unemployment income of \$1,846.00, *id.* There is however no indication of whether either of the debtor's two adult sons are contributing to the income.

The debtor also failed to file a Statement of Rights and Responsibilities for the attorney.

Plan Does Not Call for Proper Distribution

The plan does not propose any dividend to the creditors or for trustee fees or attorney fees. No priority claims are estimated.

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.

42. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-9-2021 [\[50\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Since the trustee requests the court to drop this motion if the court grants the debtor's motion to modify plan (Item 43), ECF No. 69, and since the court granted said motion to modify, the court will drop this matter from the calendar as moot.

43. [20-21786](#)-A-13 **IN RE: MONNALISSA O'DELL**
[SMJ-3](#)

MOTION TO MODIFY PLAN
8-2-2021 [\[59\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, August 2, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in

reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

44. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-24-2021 [\[20\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

45. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[WSS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CHARLEY SMITH
8-24-2021 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.
W. SHUMWAY/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor’s Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

11 U.S.C. § 1325(a) (6)

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

Plan payments

Courts have historically found balloon payments or otherwise that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they are contingent on a speculative event to take place during the life of the plan, *See In Re Gavia* 24 BR 573, 574 (9th Cir. BAP 1982).

The debtor's plan calls for a lump sum payment (via sale of homestead "within 30 days") estimated at \$620,000.00 within six months and payments of \$545.00 for 60 months, ECF No. 12. The plan does not specify the date they will pay the lump sum. The case has been open for more than 30 days and no motion to sell nor employ broker have been filed and there is no evidence that the property has been listed for sale. The court deems the lump sum payment as a speculative event on which the plan relies and therefore cannot grant it as is.

Also, the debtor scheduled \$813,443.72 of secured debt on the property with \$93,340.07 disputed, ECF No. 13, which will not receive sufficient funds to be paid by the sale.

Missing/Contradictory Information

The debtor filed this bankruptcy claiming to be a California resident. However, other information in the schedules contradict this notion. On July 28, 2020, Debtor filed a petition for bankruptcy in Oregon (Case No. 20-61812) claiming to be a resident of Oregon. On December 11, 2020, Debtor filed a change of address in her Oregon bankruptcy case listing her address as 94166 11th Street, Golds Beach, Oregon (the debtor's bed-and-breakfast business that the debtor informed the trustee that she owns but is not listed in her schedules). On March 5, 2021, the debtor filed a Request for Civil Harassment Restraining Order in Placer County California Superior Court (Case No. SCV-0046319). In her request she stated that her address was 537 Thompson Creek Road, Applegate Oregon.

The debtor states that she owns the real property located at 6020 McCourtney Road, Lincoln, California. However, she only has a contract for deed, which by its terms states that the deed to the property will not be conveyed to her until she makes all payments under the contract. Therefore, the debtor appears to have falsely claimed a homestead exemption on the McCourtney Property, which she has not shown that she owns or resides in.

The debtor shows no income from her bed-and-breakfast business in her schedules nor her Statement of Financial Affairs. But the trustee stated) that a review of the debtor's retirement statement shows personal checks of \$30,000.00 and \$23,000.00 made on July 2021.

Schedule J does not list any property taxes or insurance expenses.

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.

Charley Smith'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.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).