

**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: OCTOBER 5, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[DPC-3](#)

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

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

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from August 31, 2021; written status report filed by trustee

Disposition: Granted, case re-converted to chapter 7

Order: Civil minute order

BACKGROUND

This case was converted from chapter 7 to chapter 13 on January 22, 2021, ECF No. 16. The chapter 7 trustee applied for compensation, specifically for investigating the value of two vehicles listed on the debtor's schedules. Those vehicles were undervalued, resulting in non-exempt equity exceeding \$12,000. See Declaration of Geoffrey Richards in Support of Application for Compensation, ECF No. 27, 2:1-7.

The debtors have been unable to confirm a chapter 13 plan. The chapter 13 trustee brought the instant motion to dismiss the case for plan delinquency.

At the hearing on August 31, 2021, the court continued this motion and ordered: debtor to file amended Schedules I and J to show a feasible budget; not later than September 21, 2021, the debtor to file, set, and serve a modified plan for confirmation; Mr. Walsh and Ms. Koo to meet and confer regarding the issues of (A) information required by the trustee with respect to the Nissan Pathfinder and (B) whether the debt that should have been described in Schedule E is in fact a prepetition or post-petition debt. Ms. Koo and Mr. Walsh were ordered to file a joint status report addressing these issues not later than September 21, 2021. See Civil Minute Order, ECF No. 112.

The chapter 13 trustee filed a status report on September 23, 2021. ECF No. 115. The trustee indicates that: the debtors are current in plan payments; debtors have failed to file an amended plan or supplemental schedules I and J to reflect their current income and expenses. Debtors' attorney has failed to contact the trustee's attorney to discuss the issues and information required regarding the Nissan Pathfinder and the tax debt listed in Schedule E.

The chapter 13 trustee acknowledges that the IRS has filed a timely proof of claim, Proof of Claim No. 12-1 which does not include the 2020-year tax liability. The trustee no longer wishes to pursue this issue in objecting to confirmation.

The trustee indicates he believes the Nissan Pathfinder is undervalued, and the debtors have not provided additional evidence in support of their valuation. The chapter 13 trustee argues that the vehicle was undervalued and that there could be a dividend for creditors. Without the valuation information the trustee cannot assess whether debtors are complying with the liquidation test. If the chapter 13 trustee were to pursue this matter further, he would need to obtain permission from the court to incur debt on behalf of the estate to have the vehicle appraised.

The chapter 13 trustee contends that the debtors' refusal to supply the additional information and the debtors' inability to confirm a plan since the case was converted eight months ago is evidence that the debtors are not diligently prosecuting this case. The trustee requests that the case be re-converted to Chapter 7 or that the case be dismissed.

Although the court ordered that the debtor do so by September 21, 2021, the docket reflects that the debtors waited until September 28, 2021, to file an amended plan, amended schedules and a motion to confirm the amended plan. This late action by the debtors appears to have been a reaction to the information proffered in the trustee's status report filed on September 23, 2021. The motion to confirm will be heard on November 16, 2021, at 9:00 a.m.

11 U.S.C. § 1307(c) (1)

(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--

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

11 U.S.C. § 1307(c) (1).

The court finds that the debtors have failed to act in proper prosecution of their chapter 13 plan. More than 8 months has passed since this case was converted to chapter 13 and the debtors have yet to confirm a plan. The debtors were to have supplied information to the trustee regarding the value of the Nissan Pathfinder; to file a joint status report advising the court about their chapter 13 plan and the issues raised by the trustee at the hearing on August 31, 2021, to file an amended chapter 13 plan and motion to confirm the plan; and to file amended schedules I and J. The debtors have failed to take any of these actions.

The chapter 7 trustee has provided information showing non-exempt equity in assets which could give rise to a disbursement to unsecured creditors. The debtors' failure to provide information about the Nissan Pathfinder to the chapter 13 trustee gives credence to the chapter 7 trustee's assertion of nonexempt equity in the

vehicle. It appears that the debtors are motivated to delay the chapter 13 confirmation process such that the case might inadvertently be dismissed.

The trustee moves to re-convert this case to chapter 7 or dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to reconvert the case. The debtor has failed to confirm a plan within a reasonable time, failed to provide information to the trustee, failed to file a plan and failed to apprise the court regarding the status of this motion. The case has been pending for approximately 8 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will reconvert the case 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 trustee's motion to dismiss or to reconvert 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 reconverts this case to chapter 7.

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

No Ruling

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

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

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

4. [20-25402](#)-A-13 **IN RE: KIMBERLY GOFORTH**
[MOH-2](#)

MOTION TO SELL
9-21-2021 [[40](#)]

MICHAEL HAYS/ATTY. FOR DBT.

No Ruling

5. [21-22706](#)-A-13 **IN RE: TIFFIANY SCHAFER**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
9-3-2021 [[14](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

No Ruling

6. [21-22308](#)-A-13 **IN RE: MILTON MANZANARES AND EVA ROJAS**
[DPC-1](#)

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

MICHAEL BENAVIDES/ATTY. FOR DBT.

Tentative Ruling

Motion: Objection to Confirmation

Notice: 9014-1(f)(2); written opposition not required

Disposition: Sustained

Order: Civil minute order

This chapter 13 trustee has objected to confirmation of the debtor's plan. The objection was continued from the August 31, 2021, calendar for the parties to address the remaining issues of plan delinquency and liquidation in the trustee's objection. The trustee has filed a status report. The debtors have filed no written opposition to the objection with the court.

The trustee filed a status report on September 28, 2021, ECF No. 25. The trustee reports that the plan payments are current. The status report also indicates that the debtors and the trustee agree that \$2,387.00 of unprotected equity exists in the 2016 Nissan Frontier. The trustee estimates the plan term should extend to 40 months at the current plan payment. Alternatively, the trustee suggests that the debtors could increase the plan payments to \$2,395.04 per month to complete within the 36-month plan term currently proposed. To resolve his objection, the trustee recommends that the following language be inserted in the order confirming the plan: "No less than \$2,387.00 shall be paid to unsecured creditors". He also recommends the length of the plan be increased to 40 months.

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

11 U.S.C. § 1325(a)(4)

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1325(a)(4).

The plan as currently proposed fails to provide sufficient funding to pass the liquidation test. The trustee estimates the shortfall to unsecured creditors is approximately \$1,116.00. See ECF No. 25. The debtors have failed to respond to the trustee's status report or file any written opposition to the trustee's objection. The court will sustain the objection to confirmation.

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 objection to confirmation 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 objection is sustained.

7. [19-22513](#)-A-13 **IN RE: ELVIRA/JOSE LOPEZ**
[PSB-2](#)

MOTION TO AVOID LIEN OF ASSET CAPITAL RECOVERY GROUP, LLC
8-24-2021 [\[38\]](#)

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

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Property Address: 2009 Promenade Drive, Woodland, CA

Judicial Lien Avoided: \$6,287.69 - Asset Capital Recovery Group, LLC

All Other Liens:

- First Deed of Trust, Shellpoint Mortgage Servicing \$834,781.43

- Second Deed of Trust, Real Time Resolutions \$64,211.34

Exemption: \$1.00

Value of Property: \$610,000.00

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 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

8. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[ALG-1](#)

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

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

Tentative Ruling

Motion: Stay Relief

Notice: Continued from August 31, 2021, written opposition filed by debtor

Disposition: Granted

Order: Civil minute order

Subject: 1012 Glenwood St., Vallejo, California

This matter was continued from August 31, 2021, to allow the parties to meet and confer. The court ordered the parties to file a joint status report after meeting. Movant filed a status report indicating that the parties had met, failed to reach an agreement, and request that the court render its decision. ECF No. 129, 1:25-28.

Movant brings this motion for relief from the automatic stay under 11 U.S.C. § 362(d)(1) on the grounds that its interest in the subject property is not adequately protected as debtor has failed to make payments. Additionally, movant requests a waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as post-petition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

Movant contends that payments are delinquent from the period of May 2021 through July 2021, with additional payments due on the first day of each month thereafter. The payments are \$3,018.38 per month. The payments are currently scheduled in Class 1 of the debtor's Chapter 13 Plan, meaning payments are made directly to the movant by the chapter 13 trustee.

This case was filed on September 30, 2020, but after one year the debtor has yet to confirm a plan. The most recently filed plan, the Third Amended Chapter 13 Plan was filed on August 16, 2021, ECF. No. 121. This plan provides for payments of \$655.00 per month. *Id.*, page 1, Section 2.01. The plan also schedules the movant's claim in Class 1 with a monthly payment of \$3,018.38. *Id.*, page 3. The plan is defective on its face. It is impossible for the chapter 13 trustee to tender a mortgage payment of \$3,018.38 each month when the plan payment is only \$655.00 per month.

The debtor argues that the motion should be denied as the movant has equity in the subject property. The court disregards these allegations in the reply as they are not supported by admissible evidence in the form of a declaration under oath. The reply consists only of allegations by the debtor's attorney.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Sun West Mortgage Company, Inc.'s motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 1012 Glenwood St., Vallejo, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

9. [21-22816](#)-A-13 **IN RE: BEVERLY BROWN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-15-2021 [\[17\]](#)

SUSAN TERRADO/ATTY. FOR DBT.

Final Ruling

Motion: Trustee's Objection to Confirmation of Chapter 13 Plan

Notice: 9014-1(f)(2)

Disposition: Overruled as moot

Order: Civil minute order

The chapter 13 trustee has objected to confirmation of the debtor's plan. On September 27, 2021, the debtor filed an amended plan, ECF No. 25. The debtor has also filed a motion to confirm her amended plan and set it for hearing on November 16, 2021, at 9:00 a.m.

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

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 and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. Because a modified plan has superseded the plan to be confirmed by this motion, the court will overrule the trustee's objection to confirmation 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 trustee's objection to confirmation of plan is overruled as moot.

10. [21-20928](#)-A-13 **IN RE: MARK KAYLOR**
[DPC-2](#)

MOTION TO DISMISS CASE
8-30-2021 [\[41\]](#)

ERIC SCHWAB/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 \$400.00. The trustee further contends that the debtor is not properly prosecuting his bankruptcy case as there is currently no chapter 13 plan pending. The court sustained the Trustee's Objection to Confirmation held on June 15, 2021, and issued its order on June 16, 2021, ECF No. 37. The Debtor has failed to file an amended Plan and set it for confirmation.

The debtor's opposition states that the plan payments will be brought current prior to the hearing on this motion and that an amended plan and motion to confirm the plan will be filed before the hearing date. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$400.00 as well as the need for an amended plan.

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. Moreover, an amended plan has not yet been filed.

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 \$400.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C.

§ 1307(c)(1), (6). The debtor has also failed to file an amended plan. The court hereby dismisses this case.

11. [21-22531](#)-A-13 **IN RE: ALTON WALKER**
[DPC-1](#)

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

MARK SHMORGON/ATTY. FOR DBT.
DEBTOR DISMISSED: 9/20/2021

Final Ruling

The case was dismissed September 20, 2021; the matter is dropped as moot. ECF No. 48.

12. [21-22531](#)-A-13 **IN RE: ALTON WALKER**
[MS-1](#)

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 1
8-19-2021 [[18](#)]

MARK SHMORGON/ATTY. FOR DBT.
DEBTOR DISMISSED: 9/20/2021

Final Ruling

The case was dismissed September 20, 2021; the matter is dropped as moot. ECF No. 48.

13. [21-22531](#)-A-13 **IN RE: ALTON WALKER**
[MS-2](#)

OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 2
8-19-2021 [[22](#)]

MARK SHMORGON/ATTY. FOR DBT.
DEBTOR DISMISSED: 9/20/2021

Final Ruling

The case was dismissed September 20, 2021; the matter is dropped as moot. ECF No. 48.

14. [21-22138](#)-A-13 **IN RE: VICTOR GARCIA MONJARAZ AND RUTH
BERROTERAN GARCIA**
[DPC-1](#)

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

CARL GUSTAFSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Resolved by Stipulation

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).

DISCUSSION

The chapter 13 trustee objects to confirmation of the debtor's plan contending that the plan terms violate 11 U.S.C. §§ 1325(a)(4) and 1325(a)(6). At the prior hearing on the motion the parties indicated a desire to settle the matters in contention and the court ordered "that not later than September 21, 2021, the parties may file a stipulation and submit an appropriate order for plan confirmation if all issues have been resolved." See Civil Minute Order, ECF No. 27.

The trustee filed a status report on September 21, 2021, ECF No. 28. In the report the trustee indicates that all matters have been resolved by agreement of the parties and that the debtors have submitted an order confirming the plan, containing the following terms, to the trustee: the debtors have agreed to increase plan payments to \$420 per month, beginning with the September 25, 2021, payment; and to increase the plan length to 44 months. Debtors have further agreed to pay to unsecured creditors no less than 17.88% for a total of \$12,657.00.

The court approves the proposed changes and will confirm the plan upon the presentation of a properly prepared order confirming the plan signed by the chapter 13 trustee.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is resolved by stipulation. The court will confirm the plan upon presentation of a properly prepared order confirming plan signed by the chapter 13 trustee.

15. [21-21742](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[DPC-2](#)

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

JENNIFER LEE/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) as the debtors have failed to properly prosecute their bankruptcy case. There is currently no chapter 13 plan pending. The court sustained the chapter 13 trustee's objection to confirmation held on July 20, 2021, and the court issued its order on July 22, 2021. ECF No. 27.

The debtors' opposition states that they will file an amended plan and motion to confirm same by September 24, 2021. ECF No. 34. The debtors have failed to file an amended plan.

The debtor's opposition does not fully resolve the grounds for dismissal. A statement of intent to act is not equivalent to curing the raised objection. The court is unable to deny the motion given the debtors' failure to file an amended plan and set it for hearing.

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 debtors have failed to file an amended plan and set it for hearing. The failure to file an amended plan constitutes unreasonable delay and is cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

16. [17-27445](#)-A-13 **IN RE: BRIAN/WENDY NICKLE**
[DPC-1](#)

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

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

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 debtors have failed to make all payments due under the plan. The trustee contends that the debtors are delinquent in the amount of \$9,900.00.

The debtors' opposition states that the debtors need to modify their plan as they have experienced reduction in income due to the Covid-19 pandemic. On August 31, 2021, at the prior hearing on this motion the court ordered as follows: "The matter will be continued to October 5, 2021, at 9:00 a.m. The debtor will file, set, and serve a modified plan for confirmation not later than September 21, 2021. Also, not later than September 21, 2021, the debtor will file amended Schedules I and J." See Civil Minute Order, ECF No. 110.

Debtors have failed to file the documents as ordered by the court. The plan payments remain delinquent. This is cause under 11 U.S.C. § 1307 (c)(1) and (6) to 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 confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$9,900.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

17. [21-21347](#)-A-13 **IN RE: ALSESTER COLEMAN**
[PGM-1](#)

MOTION TO CONFIRM PLAN
8-30-2021 [\[57\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed August 30, 2021

The debtor seeks confirmation of his First Amended Chapter 13 Plan, filed on August 30, 2021. The chapter 13 trustee has filed a statement of non-opposition to confirmation of the plan. ECF No. 71.

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN CONFIRMATION

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation.

In re Andrews, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

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

18. [21-23051](#)-A-7 **IN RE: NICHOLAS/JENNIFER WILLIAMS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-10-2021 [[11](#)]

DAVID FOYIL/ATTY. FOR DBT.

Final Ruling

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

19. [18-27055](#)-A-13 **IN RE: JEFFREY/LISA PURCELL**
[MRL-4](#)

MOTION FOR ENTRY OF DISCHARGE PURSUANT TO SECTION 1328(I)
9-20-2021 [[78](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

20. [21-21155](#)-A-13 **IN RE: CURTIS/CHRYSTAL ASH**
[CK-4](#)

MOTION TO CONFIRM PLAN
8-25-2021 [[60](#)]

CATHERINE KING/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: Chapter 13 Plan - Amended, filed August 25, 2021

The debtors seek confirmation of their First Amended Chapter 13 Plan, filed on August 30, 2021. The chapter 13 trustee has filed a statement of non-opposition to the plan's confirmation. ECF No. 70.

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN CONFIRMATION

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

The court finds that the debtors have sustained that burden, and the court will approve confirmation of the plan.

21. [21-22357](#)-A-7 **IN RE: LOREE WOODS-BOWMAN**
[ALG-1](#)

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

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
CASE CONVERTED TO CHAPTER 7; 9/7/2021

Final Ruling

The case has been converted to Chapter 7; the objection is dropped as moot.

22. [21-22357](#)-A-7 **IN RE: LOREE WOODS-BOWMAN**
[DPC-1](#)

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

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CASE CONVERTED TO CHAPTER 7; 9/7/2021

Final Ruling

The case has been converted to Chapter 7; the objection is dropped as moot.

23. [21-23157](#)-A-13 **IN RE: MARSHAUN TATE**
[MRL-1](#)

MOTION TO VALUE COLLATERAL OF AMERICAN CREDIT ACCEPTANCE,
LLC
9-3-2021 [\[10\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITOIN

Final Ruling

Motion: Value Collateral [2014 Chrysler 300 SRT]

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

Disposition: Granted

Order: Civil minute order

The debtor seeks an order valuing his 2014 Chrysler 300 SRT vehicle at \$19,000.00.

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

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property

acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2014 Chrysler 300 SRT. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition. The court values the vehicle at \$19,000.00.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion to value collateral is granted. The personal property collateral described as a 2014 Chrysler 300 SRT has a value of \$19,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$19,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

24. [21-22259](#)-A-13 **IN RE: PHILLIP GARCIA AND GEORGIANNE**
MAHONEY-GARCIA
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

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: Withdrawn

Order: Civil minute order

Chapter 13 trustee David P. Cusick filed an objection to the
debtor(s)' Chapter 13 plan. LBR 3015-1(c)(4). The debtor(s)
responded to the trustee's objection.

At the prior hearing on the motion the court ordered in part:

Not later than September 21, 2021, the parties will meet
and confer on the four issues raised by the trustee.
Also, not later than September 21, 2021, the parties will
file a joint status report indicating any remaining
issues. If all issues are resolved, the parties may
upload an appropriate confirmation order.

Civil Minute Order, ECF No. 25.

On September 21, 2021, the chapter 13 trustee filed a status report.
The status report states that the trustee has reviewed evidence
provided by the debtors and determined that the plan is ready for
confirmation. The trustee further states that he is withdrawing his
objection to confirmation of the plan. Trustee's Status Report on
the Trustee's Objection to Confirmation, ECF No. 27.

DISCUSSION

Federal Rule of Civil Procedure 41 governs the circumstances where a
party may withdraw a motion or objection. Fed. R. Civ. P. 41,
incorporated by Fed. R. Bankr. P. 7041, 9014(c) (applying rule
dismissal of adversary proceedings to contested matters). A motion
or objection may be withdrawn without a court order only if it has
not been opposed or by stipulation "signed by all parties who have
appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a
motion or objection may be withdrawn "only by court order, on terms
that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here,
the Chapter 13 trustee has signaled his abandonment of his
objection. Neither the debtor(s), nor any creditor, has expressed
opposition to the withdrawal of the trustee's objection. No unfair

prejudice will result from withdrawal of the objection and the court will accede to the trustee's request.

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 objection is withdrawn.

25. [21-22570](#)-A-13 **IN RE: NENITA ANTONIO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-8-2021 [\[17\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Tentative Ruling

Motion: Objection to Confirmation of Plan

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

Disposition: Sustained

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).

The chapter 13 trustee objects to confirmation of the debtor's plan as the debtor has failed to provide the required social security information under Fed. R. Bankr. P. 4002(b)(1)(B) at the 341 Meeting of Creditors. The trustee also objects to the plan contending it incorrectly classifies the claim of Specialized Loan Servicing.

Fed. R. Bankr. P. 4002(b)(1)(B)

Debtors are required to provide proof of their social security numbers at the meeting of creditors.

b) Individual debtor's duty to provide documentation

(1) Personal identification

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

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

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

Fed. R. Bankr. P. 4002.

The debtor failed to present this information to the trustee at the 341 meeting of creditors as required, thereby prevented the trustee from carrying out his duties.

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

The Chapter 13 trustee objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

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

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$4,482.64. Compare Claim No. 8-1 (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.

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 of plan has been presented to the court. Having considered the objection, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the chapter 13 trustee's objection to confirmation of plan is sustained.

26. [21-22570](#)-A-13 **IN RE: NENITA ANTONIO**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
8-11-2021 [[13](#)]

TIMOTHY WALSH/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Tentative Ruling

Motion: Objection to Confirmation of Plan

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

Disposition: Sustained

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).

Creditor, HSBC Bank USA, National Association objects to confirmation of the debtor's plan contending that the plan as proposed incorrectly classifies its claim. Creditor contends that its claim should be provided for in Class 1 of the plan instead of Class 4 as currently proposed in the plan. Creditor further contends that the plan is not feasible because the debtor does not have sufficient income to fund a plan, and pay the arrearages due, if the creditor's claim is provided for in Class 1.

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

Creditor objects to confirmation, contending that since the debtor was delinquent on her residential home mortgage payment on the date of the petition that her classification of that claim in Class 4 (direct payment) is improper.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment

distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

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

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$4,482.64. Compare Claim No. 8-1 (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

11 U.S.C. § 1325(a)(6)

The debtor is required to prove that she will be able to make all payments due under the plan. Under the current plan, debtor will make monthly payments of \$740.00 for 60 months. The debtor's Schedules I and J support this payment with a net monthly income of only \$746.34. This amount will be insufficient to fund the Plan once the arrears on the creditor's claim, an additional \$4,482.64, is fully provided for, absent the Debtor amending their Plan and related schedules.

The court will sustain the creditor's objection to confirmation of the plan.

CIVIL MINUTE ORDER

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

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

HSBC Bank USA, National Association's objection to confirmation of plan has been presented to the court. Having considered the objection, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that HSBC Bank USA, National Association's objection to confirmation of plan is sustained.

27. [21-22773](#)-A-13 **IN RE: RICHARD/SARAH DEATHERAGE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-13-2021 [\[17\]](#)

DAVID FOYIL/ATTY. FOR DBT.

Tentative Ruling

Motion: Objection to Confirmation of Plan

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

Disposition: Sustained

Order: Civil minute order

The trustee has objected to confirmation of the debtors' plan as the debtors and their attorney failed to attend the section 341 meeting of creditors on September 9, 2021. The trustee was advised by Equal Justice Law Group that Mr. Foyil, attorney for the debtors, was unable to attend the meeting. The trustee continued the meeting of creditors until September 23, 2021, at 1:00 p.m. The docket reflects that the 341 meeting was not held on September 23, 2021, as the debtors and their attorney failed to attend the continued meeting. The 341 meeting of creditors has been continued again until October 14, 2021, at 1:00 p.m.

11 U.S.C. § 343

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 debtors are required to attend the 341 meeting of creditors. The debtors have failed to attend two 341 meetings. The court will sustain the trustee's objection to confirmation of the debtors' plan.

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 objection to confirmation of plan is sustained.

28. [18-24875](#)-A-13 **IN RE: REGINA WIDICK**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [[62](#)]

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

29. [18-24875](#)-A-13 **IN RE: REGINA WIDICK**
[TLA-1](#)

MOTION TO MODIFY PLAN
8-31-2021 [[66](#)]

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

30. [18-25175](#)-A-13 **IN RE: AFFONSO LOPEZ AND LEILA ANDRADA-LOPEZ**
[MET-2](#)

MOTION TO MODIFY PLAN
8-16-2021 [[33](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

31. [21-22675](#)-A-13 **IN RE: DEDAN KIMANI**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-8-2021 [\[24\]](#)

STEVEN ALPERT/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).

The chapter 13 trustee objects to confirmation of the debtor's plan on numerous grounds.

LBR-3015-1(i) MOTION TO VALUE COLLATERAL

(i) Valuation and Lien Avoidance Motions. If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan.

LBR-3015-1(i).

The trustee contends that feasibility of the plan depends on the granting of a motion to value collateral for Green Trucks Financial. The debtor has failed to file, serve, and set for hearing a motion to value the collateral of Green Trucks Financial.

11 U.S.C. § 1322(d)

11 U.S.C. § 1322(d) does not allow a plan to exceed five years in length. The chapter 13 trustee contends that the IRS filed a claim in an amount higher than anticipated in the debtor's schedules. The higher claim causes the plan payments to extend to 73 months.

11 U.S.C. 521; 11 U.S.C. § 1325(a) (6)

The debtor has not provided the trustee with pay advices, or other evidence of income received within the 60-day period prior to the filing of the petition. 11 U.S.C. § 521 requires the debtor to provide these documents to the trustee prior to the meeting of creditors. Without the documents the trustee is unable to assess the feasibility of the plan under 11 U.S.C. § 1325(a) (6) which requires that the debtor will be able to make all payments under the plan. The debtor's pay advices are essential for the trustee to perform this analysis of the debtor's fiscal abilities.

LBR 9004-1(c)

(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c).

The debtor has filed and proposed a plan. ECF No. 3. The plan is not signed or dated by either the debtor or debtor's attorney.

11 U.S.C. § 1308(a)

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a) [11 USCS § 341(a)], if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The trustee reports that the debtor testified under oath at the meeting of creditors that he had not filed all income tax returns for the four-year period preceding the filing of the petition, including the tax year ending 2020. Pursuant to § 1308(a) the debtor is required to file tax returns prior to the 341 meeting.

The court will sustain the trustee's objections to confirmation.

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.

32. [21-22775](#)-A-13 **IN RE: ELIZABETH GONZALEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-15-2021 [\[14\]](#)

BRUCE DWIGGINS/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).

The chapter 13 trustee has objected to confirmation of the debtor's plan.

ATTENDANCE AT 341 MEETING OF CREDITORS

The trustee filed his objection asserting that the debtor had failed to attend the 341 meeting of creditors on September 9, 2021. The trustee continued the meeting until September 23, 2021. The court notes that the debtor and her attorney both attended the continued meeting and that the trustee has concluded the meeting.

11 U.S.C. § 1322(d)

11 U.S.C. § 1322(d) does not allow a plan to exceed five years in length. The chapter 13 trustee calculates that it will take approximately 66 months to complete the plan as it is currently proposed, which exceeds the maximum amount of time allowed under 11 U.S.C. §1322(d).

The court will sustain the trustee's objection to confirmation.

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.

33. [17-21377](#)-A-13 **IN RE: RICHARD/JENNIFER LARSON**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [\[54\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Matter: Motion to Dismiss Case
Notice: Continued from August 24, 2021
Disposition: Denied
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 \$1,699.39. The trustee further alleges that the chapter 13 plan exceeds 60 months which violates 11 U. S. C. § 1322(d). The trustee contends the plan will take 68 months to complete.

A modified plan has been filed in this case and a motion to modify the plan has been set for hearing on this calendar, TLA-2.

On September 21, 2021, at the prior hearing on this motion the court continued the hearing on this motion to dismiss to coincide with the hearing on the modification of the plan. At the prior hearing the court stated that 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. See Civil Minute Order, ECF No. 71. The trustee has consented to the court denying the dismissal motion without further notice or hearing if the motion to modify is granted. See Civil Minutes, ECF No. 71.

As the motion to modify (TMA-2) has been granted the court will deny this motion.

CIVIL MINUTE ORDER

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

The chapter 13 trustee's motion to dismiss case has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion to dismiss case is denied.

34. [17-21377](#)-A-13 **IN RE: RICHARD/JENNIFER LARSON**
[TLA-2](#)

MOTION TO MODIFY PLAN
8-31-2021 [\[58\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Motion to Modify Plan

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

Disposition: Granted

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 debtors seek an order modifying their chapter 13 plan. The chapter 13 trustee has objected to the plan.

The trustee opposed the motion as the debtors have not filed a change of address with the court. The court notes that a change of address has been filed on behalf of Richard Larsen, ECF No. 72, which resolves this portion of the trustee's opposition.

11 U.S.C. § 1325(a)(6), 11 U.S.C. § 1322(d)

The chapter 13 trustee also opposes debtors' motion to modify their chapter 13 plan contending that the proposed plan is not mathematically feasible and that the plan will take 63 months to complete. The trustee calculates that the plan payment will need to be increased to \$3,219.00 for the remaining 7 months of the plan to be feasible and satisfy the requirement of 11 U.S.C. § 1322(d) which forbids a plan which continues for longer than 60 months. See ECF No. 68.

The debtors have filed a reply, ECF No. 73, and Amended Schedules I and J in response to the trustee's opposition. The debtors agree to increase the plan payment to \$3,219.00 for the remainder of the plan. The debtors explain that they have cut all discretionary expenses to make the higher plan payment. See Supplemental Declaration of Richard L Larson and Jennifer Lynn Larson in Support of Motion to Modify Plan, ECF No. 74. The court notes the debtors have only 7 months remaining to complete their plan.

The court will grant the debtors' 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 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 debtors' motion to modify chapter 13 plan is granted.

35. [21-22778](#)-A-13 **IN RE: JOHN BLAS AND RACHEL SILGUERO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-13-2021 [\[16\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Tentative Ruling

Motion: Objection to Confirmation

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

Disposition: Continued to November 2, 2021, 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 chapter 13 trustee objects to confirmation of the debtors' plan. The sole basis for the objection is that debtor Rachel Silguero failed to provide proof of her social security number at the first meeting of creditors held on September 9, 2021. Fed. R. Bankr. P. 4002(b)(1)(B) requires that the debtor provide proof of the social security number at the meeting of creditors. The trustee has continued the meeting of creditors until October 21, 2021. He requests that this matter be continued until November 2, 2021, at 9:00 a.m. to allow the debtor to produce the required information at the meeting of creditors. The court will continue the hearing on the objection to confirmation.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the trustee's objection to confirmation is continued to November 2, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than October 19, 2021, the trustee shall file and serve a status report detailing the results of the meeting of creditors.

36. [21-21279](#)-A-13 **IN RE: SUSAN STRAUB**
[DPC-1](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Motion: Objection to Confirmation

Notice: 9014-1(f)(2); written opposition filed by the debtor

Disposition: Overruled

Order: Civil minute order

This chapter 13 trustee objects to confirmation of the debtor's plan. The objection was continued from the August 31, 2021, calendar for the parties to address the remaining issues in the trustee's objection.

The trustee filed a status report on September 13, 2021, ECF No.39. The trustee indicates that the debtor has provided copies of the Internal Revenue Service and Franchise Tax Board returns for years 2015, 2016, 2017, 2018, 2019, and 2020. The trustee further indicates that his objections to confirmation are now resolved regarding the tax returns. However, the trustee still requests that the order confirming plan require any non-exempt funds obtained by the debtor from the personal injury lawsuit against Kaiser to be contributed to the plan. The trustee argues this is required so that that the plan will pass the liquidation test of 11 U.S.C. § 1325(a)(4).

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

11 U.S.C. § 1325(a) (4)

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1325(a) (4) .

The trustee contends that there may be some exempt funds from the Kaiser personal injury litigation and requests that those funds be paid into the plan. He proposes that this provision be included in the order confirming the plan.

The debtor has previously proposed such a provision in her Opposition to Objection to Confirmation, ECF No. 19, and Exhibit in Support of Opposition to Objection to Confirmation, ECF No. 20. The debtor has proposed the following language be included in the order confirming the plan: "Any non-exempt funds resultant from debtor's possible personal injury claim(s) against Kaiser Hospital shall be submitted to the Trustee."

The court finds that the liquidation test is satisfied with the inclusion of this provision in the order confirming the plan.

CIVIL MINUTE ORDER

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

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

The trustee's objection to confirmation 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 objection is overruled. The court will confirm the chapter 13 plan.

IT IS FURTHER ORDERED that the following provision shall be included in the order confirming the plan: "Any non-exempt funds resultant from debtor's possible personal injury claim(s) against Kaiser Hospital shall be submitted to the Trustee."

37. [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

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

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's motion to dismiss this chapter 13 case was continued from September 14, 2021. At that hearing the trustee agreed that:

If the motion to value collateral of Persolve, LLC is granted on September 21, 2021, the trustee consents to confirmation of the debtor's plan and to denial of the trustee's motion to dismiss without further notice or hearing.

Civil Minute Order, ECF No. 100.

The Motion to Value the Collateral of Persolve, LLC, (PGM-3) was heard and granted on September 21, 2021, ECF No. 103.

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 denied.

38. [19-20882](#)-A-13 **IN RE: HENRY RODRIGUEZ**
[PGM-2](#)

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

PETER MACALUSO/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 trustee

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan - Covid 19 Plan, filed July 30, 2021

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).

This motion to modify was continued from September 14, 2021. At that hearing the trustee agreed that:

If the motion to value collateral of Persolve, LLC is granted on September 21, 2021, the trustee consents to confirmation of the debtor's plan and to denial of the trustee's motion to dismiss without further notice or hearing.

Civil Minute Order, ECF No. 99.

The Motion to Value the Collateral of Persolve, LLC, (PGM-3) was heard and granted on September 21, 2021, ECF No. 103.

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

39. [21-20488](#)-A-13 **IN RE: KARL/PAULA LEET**
[JSO-2](#)

MOTION TO SELL
9-16-2021 [\[31\]](#)

JEFFREY OGILVIE/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

40. [20-23991](#)-A-13 **IN RE: VINCENT/NORMA CAMPISI**
[SLE-3](#)

MOTION TO MODIFY PLAN
8-26-2021 [\[64\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed August 26, 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.

41. [21-22494](#)-A-13 **IN RE: MAURICE PRINGLE**
[DPC-1](#)

MOTION TO DISMISS CASE
9-7-2021 [\[21\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case for the following reasons: plan delinquency; failure to serve the plan and properly prosecute the case; failure to provide tax returns; and failure to complete and provide a domestic obligation support checklist.

DISCUSSION

Plan Delinquency

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 \$2,968.00.

The debtor's opposition states that the debtor has made plan payments and will be current before the hearing.

Failure to Prosecute Bankruptcy Case

The trustee further contends that the debtor is not properly prosecuting his bankruptcy case as the debtor has failed to serve and set his plan for hearing.

Debtor states in his opposition that although he did serve the chapter 13 plan on September 26, 2021, that he needs to file an amended plan. The court notes that an amended plan has not yet been filed.

11 U.S.C. § 521(e) (2) (A)

11 U.S.C. § 521(e) (2) (A) requires that the debtor provide the trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. The trustee contends the debtor has failed to supply any such document.

Debtor's opposition indicates that the debtor will provide the tax returns prior to the hearing.

Domestic Support Obligation Checklist

Pursuant to Local Bankruptcy Rule 3015-1(b) (6), the debtor is required to serve upon the trustee no later than fourteen (14) days after the filing of the petition a Domestic Support Obligation Checklist. The trustee observes that the debtor's Schedule I, ECF No. 18, page 15 shows the debtor owes a domestic support obligation. Yet the debtor has failed to provide the trustee with the required checklist.

Debtor's opposition indicates that the debtor will provide the completed Domestic Support Obligation Checklist prior to the hearing.

The trustee also indicates that the debtor failed to attend the 341 meeting of creditors and that the meeting has been continued to September 23, 2021.

The debtor indicates that he attended the continued 341 meeting of creditors. This cannot be verified as there is not yet a docket entry indicating the meeting was held.

In effect, the debtor's statements regarding amounts remaining to be paid, and documents to be submitted admits both the existence of a delinquency in plan payments and an admission that the debtor is not performing his required duties in proper prosecution of his bankruptcy case.

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 debtor's statements that he intends to provide documents prior to the hearing is not equivalent to a cure of the issues raised in the trustee's motion. Finally, while the debtor admits the need for an amended plan in this case, he has yet to file a new 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 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. Payments are delinquent in the amount of \$2,968.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The debtor has also failed to file an amended plan, provide tax returns or a domestic support obligation checklist to the trustee. The court hereby dismisses this case.