

**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 19, 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. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[114\]](#)

RICHARD JARE/ATTY. FOR DBT.

Tentative Ruling

Motion: Motion to Dismiss

Notice: 9014-1(f) (1)

Disposition: Continued to December 1, 2021 at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to file an amended plan after the trustee's objection to confirmation of the debtor's previous plan was sustained on August 19, 2021.

A modified plan has been filed in this case. The scheduled hearing on the modification is December 1, 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:

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to December 1, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify the plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating his motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency, if any. The status report shall be **succinct** and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

2. [18-23905](#)-A-13 **IN RE: RICHARD/JULIA WADE**
[DPC-1](#)

MOTION TO DISMISS CASE
9-15-2021 [\[42\]](#)

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

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, 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 \$2,141.40.

The debtor's opposition states that the debtor has paid \$2,141.40 as well as the September 2021 payment after the trustee filed the present motion to dismiss.

Unless the trustee confirms that the plan payments are current at the hearing on this motion the case will be dismissed. Failure to make plan payments is cause for dismissal under 11 U.S.C. § 1307(c)(1), (6).

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 \$2,141.40. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

3. [19-27805](#)-A-13 **IN RE: PHILLIP ROBERTS**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[56\]](#)

ASHLEY AMERIO/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, 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 \$260.00. The trustee states that a further \$250.00 is due on September 25, 2021.

The debtor's opposition states that the debtor has paid a \$510.00 payment on October 5, 2021, after the trustee filed the present motion to dismiss.

Unless the trustee confirms that the plan payments are current at the hearing on this motion the case will be dismissed. Failure to make plan payments is cause for dismissal under 11 U.S.C. § 1307(c)(1), (6).

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 \$260.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

4. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[TLA-3](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
9-23-2021 [[65](#)]

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling

5. [16-25906](#)-A-13 **IN RE: RANDOLPH/TAMARA RILEY**
[DPC-2](#)

MOTION TO DISMISS CASE
9-15-2021 [[55](#)]

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

No Ruling

6. [19-27409](#)-A-13 **IN RE: NIKOLAY/NATALIA AKIMOV**

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-14-2021 [[37](#)]

MARK SHMORGON/ATTY. FOR DBT.
DIANA TARNOPOLSKAYA/ATTY. FOR MV.
IHAR ZUBRYTSKI VS.

No Ruling

7. [19-27615](#)-A-13 **IN RE: MICHAEL/DINAH ABEDANIA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-17-2021 [[21](#)]

PETER MACALUSO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
WELLS FARGO BANK, N.A. VS.

No Ruling

8. [21-21815](#)-A-13 **IN RE: TYLER HARKER**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[27\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

Final Ruling

This motion was withdrawn by the chapter 13 trustee prior to the filing of any opposition. See Notice of Withdrawal, ECF No. 38. The court will drop this matter from the calendar.

9. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[DPC-1](#)

MOTION TO DISMISS CASE
9-15-2021 [\[89\]](#)

MARK WOLFF/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: Continued to November 16, 2021, at 9:00 a.m.

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 \$38,538.18.

A modified plan has been filed in this case. The scheduled hearing on the modification is November 16, 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:

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to November 16, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects not to oppose the debtor's motion to modify the plan, then the court may dismiss this motion to dismiss as moot, without further hearing.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating his motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency, if any. The status report shall be **succinct** and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

10. [20-25016](#)-A-13 **IN RE: FREDERICK BRISBY**
[JV-6](#)

MOTION TO CONFIRM PLAN
8-16-2021 [\[117\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.

Tentative Ruling

Motion: Motion to Confirm Plan

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

Disposition: Denied

Order: Civil minute order

OPPOSITION TO CONFIRMATION

Debtor seeks confirmation of his third amended chapter 13 plan. The chapter 13 trustee opposes confirmation contending that the plan as proposed incorrectly classifies the claim of Sun West Mortgage. The trustee contends that the claim should be provided for in Class 1 of the plan instead of Class 4 as currently proposed in the non-standard provisions of the plan. The trustee contends that the debtor is at least \$34,599.09 in default of the mortgage, (\$28,562.023 pre-petition and \$6,036.76 in post-petition default). The court notes that on October 5, 2021, it granted relief from the automatic stay to Sun West Mortgage as the debtor was delinquent in post-petition mortgage payments.

The trustee also opposes confirmation contending the plan is not feasible. The terms for payment of the debtor's attorney's fees and other administrative expenses are unclear. At Section 3.06, the plan specifies a monthly payment of \$0.00 for administrative expenses. It is impossible for the trustee to pay the balance of the debtor's attorney's fees owed and any other administrative expenses through the plan with a monthly payment specified at \$0.00.

The trustee also opposes confirmation as the plan is overextended. The trustee calculates that the plan will take approximately 110 months to complete.

Improper Mortgage Classification

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

Plan Feasibility

The plan provides \$0 per month payable for administrative expenses. The court notes that the proposed plan calls at Section 3.05 for payment of \$4,000.00 in attorney fees. A \$0 payment on administrative expenses will not fund this amount and therefore the plan is not mathematically feasible.

Plan Overextension

The trustee calculates that the plan will take 110 months to complete. This exceeds the maximum length of 60 months as provided in 11 U.S.C. § 1322(d)(1).

The court will deny confirmation of the amended 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.

Debtor's Motion to Confirm Third Amended Chapter 13 Plan has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

11. [21-20917](#)-A-13 **IN RE: LORAIN DIXON**
[BPR-3](#)

MOTION FOR EXEMPTION FROM AUTOMATIC STAY, OR ALTERNATIVELY,
FOR RELIEF FROM STAY
9-21-2021 [\[60\]](#)

PETER MACALUSO/ATTY. FOR DBT.
BRENDAN RUDDY/ATTY. FOR MV.
CALIFORNIA DEPARTMENT OF JUSTICE VS.

Final Ruling

This case was transferred to Judge Sargis, Recusal Order, ECF No. 65; the court will drop this matter from the calendar.

12. [20-24519](#)-A-13 **IN RE: PRAKHONG/JENNIFER CHANTHORN**
[DPC-3](#)

MOTION TO DISMISS CASE
9-15-2021 [\[51\]](#)

JAMES KEENAN/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, 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 payments are delinquent in the amount of \$7,300.00. The trustee states that a further \$3,650.00 is due on September 25, 2021.

The debtor's opposition states that the debtors paid \$7,300.00 to the trustee. Debtors have provided copies of cashier's checks totaling \$7,300.00 payable to the chapter 13 trustee, dated September 16, 2021. See ECF No. 56. The opposition further states that the debtors will tender the September payment of \$3,650.00 to the trustee before the hearing on this matter.

Unless the trustee confirms that the plan payments are current at the hearing on this motion the case will be dismissed. Failure to make plan payments is cause for dismissal under 11 U.S.C. § 1307(c)(1), (6).

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 \$7,300.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [19-20621](#)-A-13 **IN RE: MERCEDES MOYA-GRANT**
[DPC-1](#)

MOTION TO DISMISS CASE
9-15-2021 [\[66\]](#)

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

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, 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 \$825.00. The trustee also states that an additional \$275.00 will come due on September 25, 2021.

The debtor's opposition states that the debtor has had difficulty making payments due to the pandemic and that she will bring her plan payments current prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$825.00.

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 \$825.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

14. [21-22222](#)-A-13 **IN RE: ARMAR/MARICELA WALKER**
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-15-2021 [\[22\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.
WOLLEMI ACQUISITIONS, LLC VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Continued to November 16, 2021, at 9:00 a.m.

Order: Civil minute order

Subject: 2013 Ford Explorer XLT Sport Utility 4DR

Wollemi Acquisition, LLC moves for relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Movant contends that the full contractual balance is now due and owing and the balance equals \$4,575.26. ECF No. 22, 2:2-13. Using the replacement value a retail merchant would charge for the vehicle, Movant values the vehicle at \$15,638.00, *id.*, 2:10-11.

Debtors oppose the motion and have filed a modified chapter 13 plan and set it for hearing on November 16, 2021, at 9:00 a.m. Debtors' previously confirmed chapter 13 plan, ECF No. 7 did not provide for the obligation owed to movant. The court notes that while the debtors scheduled the vehicle in Schedule A/B filed at the inception of the case, ECF No. 1, they did not list any obligation owed to movant in Schedule D.

The First Amended Chapter 13 Plan, ECF No. 35, filed on October 6, 2021, provides for Movant's claim in Class 2 of the plan in the amount of \$4,575.00, with interest of 5%, and payable in monthly installments of \$92.95. It appears, based upon the debtors' Exhibit, ECF No. 31, in defense of this motion that they believed the vehicle to have been paid in a prior chapter 13 plan. Regardless, the debtors have offered to pay the balance claimed in Movant's proof of claim, Claim No. 6-1.

STAY RELIEF

Movant acknowledges that there is equity in the property. The court agrees, there is significant equity in the property. While the vehicle is an asset which is declining in value the proposed amended chapter 13 plan offers adequate protection payments to Movant, if confirmed, and the Movant having filed its timely proof of claim will receive payments through the plan each month.

The debtors have requested that this motion be continued to November 16, 2021, to coincide with the motion to modify their chapter 13 plan. According to Movant's valuation, the equity in the vehicle is more than twice the amount owed, (\$15,638.70-\$4,575.26 = \$11,063.44

equity). Thus, the movant's interests are sufficiently protected until the hearing date on the modified plan. The court will continue the motion.

CIVIL MINUTE ORDER

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

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

Wollemi Acquisitions, LLC's motion for relief from the automatic stay has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the hearing on this motion is continued until November 16, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the automatic stay of 11 U.S.C. § 362 shall remain in place until the court fully resolves this matter.

15. [21-21923](#)-A-13 **IN RE: JORGE BARRAGAN**
[DPC-1](#)

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

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 14, 2021

Disposition: Sustained and confirmation denied

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).

This hearing on this motion was continued from September 14, 2021, to allow the debtor to augment the evidentiary record, file amended schedules and respond to the objections raised by the chapter 13 trustee. See Civil Minutes, ECF No. 33.

The court ordered that not later than September 27, 2021, the debtor shall augment the record and file all documents requested by the trustee. See Civil Minute Order, ECF No. 34.

The court also ordered the chapter 13 trustee to file a further statement of position not later than October 11, 2021.

The debtor has failed to file any documents or amended schedules since the hearing on September 14, 2021. As such the debtor has failed to sustain his burden of proof.

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.

16. [20-24628](#)-A-13 **IN RE: NGOC LIEN NGUYEN**
[PGM-5](#)

MOTION TO CONFIRM PLAN
9-10-2021 [\[93\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed September 10, 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 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.

17. [18-27131](#)-A-13 **IN RE: STEPHEN/SUSAN JOHNSON**
[DPC-1](#)

CONTINUED 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); continued from September 14, 2021

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 plan exceeds the maximum length of 60 months under 11 U.S.C § 1322(d). The trustee contends the plan length is 90 months.

In response to the trustee's motion the debtors filed a modified plan and a motion to confirm the modified plan, MET-3. That motion has been denied as the debtors are delinquent with payments under the proposed modified plan. The trustee contends that the debtors are delinquent in the amount of \$990.00.

The court is unable to deny this motion given that the debtors have been unsuccessful in modifying their plan. The plan exceeds the maximum length of 60 months. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to modify their plan. The existing plan length exceeds 60 months which is the maximum length allowed under 11 U.S.C. § 1322(d). This overextension constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

18. [18-27131](#)-A-13 **IN RE: STEPHEN/SUSAN JOHNSON**
[MET-3](#)

MOTION TO MODIFY PLAN
8-31-2021 [\[56\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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).

PLAN FEASIBILITY

The chapter 13 trustee contends that the debtors are delinquent \$990.00 under the proposed modified plan. This is evidence that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

19. [15-26932](#)-A-13 **IN RE: SALUD PADERNA**
[DPC-1](#)

MOTION TO DISMISS CASE
9-15-2021 [\[34\]](#)

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

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, asserting that cause exists under § 1307(c)(1) and (6) as the plan will take 80 months to complete. The trustee further indicates that the plan is currently in month 72 of a 60-month plan.

The debtor's opposition states that the debtor has paid \$195,487.11 to the trustee, under the 100% plan and that she will file an amended plan, to provide for a slightly reduced percent to the unsecured creditors. Debtor believes the amended plan will resolve the problem and will enable the debtor to obtain a discharge.

MODIFICATION OF THE PLAN

The debtor is currently in month 72 of her plan and proposes to bring a motion to modify the plan to reduce the percentage paid to unsecured creditors, which would resolve the overextension and allow completion of the plan. The debtor has not proffered any legal argument indicating how a modification of her plan at this juncture will comply with 11 U.S.C. § 1329(a) which provides:

(a) At any time after confirmation of the plan *but before the completion of payments under such plan*, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to--

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments;

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

...

11 U.S.C. § 1329(a) (emphasis added).

The opposition does not fully resolve the grounds for dismissal. The debtor's confirmed plan, ECF No. 5, contains a plan term of 60 months, which term has long since expired. The plan is not completed, and the trustee indicates that at the current payment rate the plan will take 80 months to complete as \$4,751.08 remains to be paid. The court is unable to deny the motion under these circumstances.

11 U.S.C. § 1329(d) (1)

In response to the COVID-19 pandemic § 1329 was amended to provide:

(d) (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if--

(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

(B) the modification is approved after notice and a hearing.

(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

11 U.S.C. § 1329(d).

The amendment to § 1329 provides a possible means for extension of a chapter 13 plan beyond a 60-month term. However, in this case the debtor has not made any argument that a modification pursuant to § 1329 is appropriate.

Neither has the debtor argued that a late curative payment can be made to complete the plan. See *In re Klaas*, 858 F.3d 820 (3rd Cir. 2017).

Without any additional argument by the debtors the court is unable to deny the trustee's motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to complete her plan in the maximum plan length of 60 months under 11 U.S.C. § 1322(d) and is unable to modify her plan under 11 U.S.C. § 1329. This constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

20. [19-23837](#)-A-13 **IN RE: KIMBERLY BORDEN**
[DPC-1](#)

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

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

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); continued from September 14, 2021

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 plan exceeds the maximum length of 60 months under 11 U.S.C § 1322(d). The trustee contends the plan length is 1,381 months. In response, the debtors filed a modified plan and a motion to confirm the modified plan, EJS-1. That motion has been denied as the debtor is delinquent with payments under the proposed modified plan and because the proposed modified plan does not resolve the overextension of the plan. The proposed plan term is 64 months. The trustee contends that the debtor is delinquent in the amount of \$100.00.

The court is unable to deny this motion given that the debtor has been unsuccessful in modifying her plan. The plan exceeds the maximum length of 60 months and payments are delinquent under the proposed plan. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtors have failed to modify their plan. The existing plan length exceeds 60 months which is the maximum length allowed under 11 U.S.C. § 1322(d). This overextension constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

21. [19-23837](#)-A-13 **IN RE: KIMBERLY BORDEN**
[EJS-1](#)

MOTION TO MODIFY PLAN
9-13-2021 [\[43\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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).

The chapter 13 trustee contends that the plan is not feasible under 11 U.S.C. § 1325(a)(6) because: the payments are delinquent \$100.00 under the proposed modified plan; and the debtor failed to submit amended schedules I and J. The trustee further contends that the plan exceeds the maximum length of 60 months under 11 U.S.C. § 1322(d).

The debtor filed the required supplemental schedules I and J on September 20, 2021, ECF No. 51. The schedules show the debtor's ability to make the plan payments.

The failure of the plan to complete within the maximum 60 months under 11 U.S.C. § 1322(d) and the plan delinquency both show that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

22. [17-25038](#)-A-13 **IN RE: ANDRES/CARISSA TOVAR**
[DPC-2](#)

MOTION TO DISMISS CASE
9-15-2021 [\[48\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

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 \$2,880.00 and that a further \$1,440.00 was due on September 25, 2021.

The debtors' opposition states that the debtors will do everything they can to make the payments by the hearing date on this motion. In effect, the debtors' statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$2,880.00.

The debtors' 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.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the chapter 13 trustee - a motion to dismiss filed on June 21, 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 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 \$2,880.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

23. [21-20739](#)-A-13 **IN RE: JANET CLARK**
[DPC-2](#)

MOTION TO DISMISS CASE
9-15-2021 [[42](#)]

MARK SHMORGON/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 confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,370.00.

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

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

24. [18-27246](#)-A-13 **IN RE: WANDA MOORE**
[DPC-4](#)

MOTION TO DISMISS CASE
9-15-2021 [[146](#)]

PETER MACALUSO/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 confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,816.03.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

25. [19-21347](#)-A-13 **IN RE: FELICIA HUDSON**
[DPC-1](#)

MOTION TO DISMISS CASE
9-15-2021 [[100](#)]

PETER MACALUSO/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 debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$2,463.00 with an additional payment of \$2,284.78 due on September 25, 2021.

The debtor's opposition states that the debtor the delinquent payments will be paid prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$2,463.00.

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 \$2,463.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

26. [19-26448](#)-A-13 **IN RE: DUANE OTT**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-9-2021 [\[41\]](#)

MARC VOISENAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); continued from August 17, 2021

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1), (6) as the plan payments are delinquent in the amount of \$13,100.61. In response the debtor filed a modified plan and a motion to confirm the modified plan, MEV-3. That motion has been denied as the debtor is delinquent with payments under the proposed modified plan in the amount of \$7,706.92, and the debtor has failed to provide pay stubs for his new employment. Thus, the proposed modified plan is not feasible.

The court is unable to deny this motion given that the debtor has been unsuccessful in modifying his plan. The plan payments remain delinquent. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to modify his plan. The payments in the existing plan are delinquent. The delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

27. [19-26448](#)-A-13 **IN RE: DUANE OTT**
[MEV-3](#)

MOTION TO MODIFY PLAN
8-30-2021 [\[63\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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).

PLAN FEASIBILITY

The trustee objects to the plan as the debtor is delinquent in the amount of \$7,706.92 under the proposed modified plan. This shows that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court finds the plan is not feasible.

PLAN LENGTH

In response to the COVID-19 pandemic § 1329 was amended to provide:

(d) (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if--

(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

(B) the modification is approved after notice and a hearing.

(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

11 U.S.C. § 1329(d) (emphasis added).

The trustee objects to the modified plan because the income and expense evidence in the supplemental Schedules I and J is inconsistent with the declaration of the debtor in support of the motion to modify. The declaration states that the debtor is pledging all of his disposable income to fund the modified plan, ECF. No. 65, 2:13. The trustee observes that the schedules show a surplus of \$6,974.67, while the plan payment is \$3,675.00. Because of the surplus the trustee contends that the plan may not need to be extended to the 79 months as proposed. The trustee cites no legal authority for this objection.

The court notes that the proposed plan pays unsecured creditors 100%, and that the debtor proposes to extend the plan length from 73 to 79 months. The debtor's declaration also states that his income was diminished because he could not work full time because of COVID-19 restrictions at his employment, ECF No. 65, 2:1-4. Debtor further states that he has recently returned to work full time, *id.*, 2:7. Debtor also states that while he previously applied for unemployment to make up for a reduction in income, he did not receive any unemployment. *Id.*, 2:5-6. Considering the totality of the circumstances, the court concludes that the debtor's recent return to work and his previous reduction in income due to COVID-19, coupled with the proposal to pay unsecured creditors 100% satisfies the requirement that the plan is proposed in good faith under 11 U.S.C. § 1325(a) (3).

EVIDENCE OF INCOME

The debtor bears the burden of proving that his plan is feasible, and the trustee has asked to see proof of the debtor's income, which the debtor has not yet provided.

The trustee also reports that he has not been provided with copies of the paystubs from the debtor's new employment. Without this information the trustee cannot determine if the plan is feasible under 11 U.S.C. § 1325(a) (6).

The court agrees with the trustee on this point and finds the debtor has not proven his plan is feasible.

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.

28. [20-20851](#)-A-13 **IN RE: ROBERT RISPOLI**
[DPC-1](#)

MOTION TO DISMISS CASE
9-21-2021 [[60](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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 payments are delinquent in the amount of \$960.00. The trustee states that a further \$480.00 is due prior to the hearing on this motion.

The debtor's opposition, and declaration of the debtor states that the debtor paid \$1,440.00 on September 30, 2021, and sent the payment overnight to the chapter 13 trustee. The debtor also acknowledges the plan payments were delinquent.

On October 12, 2021, the chapter 13 trustee filed an ex-parte motion to dismiss this motion to dismiss, ECF No. 67. In that pleading the trustee indicates the debtor has brought all plan payments current through September 2021. As the plan payments are current, the court will deny 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 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 denied.

29. [19-27056](#)-A-13 **IN RE: BONITA MELENDEZ**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
7-12-2021 [\[26\]](#)

RICK MORIN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); continued from August 17, 2021

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1), (6) as the plan payments are delinquent in the amount of \$7,228.05. In response the debtor filed a modified plan and a motion to confirm the modified plan, RJM-2.

The motion to modify has been denied because the debtor is delinquent with payments under the proposed modified plan in the amount of \$5,029.00, the plan lacks clarity regarding the treatment of secured creditor SMUD and provides for post-petition arrears to secured creditors Bank of America and SMUD, where the chapter 13 trustee contends no post-petition arrears are owed. Thus, the proposed modified plan is not feasible.

The court is unable to deny this motion to dismiss given that the debtor has been unsuccessful in modifying her plan. The plan payments remain delinquent. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to modify her plan. The payments in the existing plan are delinquent. The delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

30. [19-27056](#)-A-13 **IN RE: BONITA MELENDEZ**
[RJM-2](#)

MOTION TO MODIFY PLAN
8-27-2021 [\[36\]](#)

RICK MORIN/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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).

PLAN DELINQUENCY

The trustee opposes the modification contending that the payments under the proposed modified plan are delinquent in the amount of \$5,029.00. As such, the court finds the plan is not feasible under 11 U.S.C. § 1325(a)(6).

SECURED CLAIMS

Post-Petition Arrears

The trustee indicates that post-petition payments to secured creditors Bank of America and SMUD are current, but that the modified plan calls for payments to be made on post-petition arrears for each of these creditors. Thus, the plan calls for payments which are not necessary, and in the case of SMUD in an amount which

does not comply with Fed. R. Bankr. P. 3010(b). Rule 3010(b) does not allow monthly payments in a chapter 13 plan of less than \$15.00, absent an order of the court.

SMUD Claim

The trustee contends that the SMUD claim is misclassified in the proposed plan. SMUD filed a secured claim on 11-21-19, Claim No. 1-3 in the amount of \$3,877.00. The Mortgage Proof of Claim Attachment to the claim shows the entire claim is for arrears.

Absent a successful objection to SMUD's claim it is properly provided for in Class 2 of the plan. "Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." ECF No. 39, Section 3.08.

The modified plan provisions at Section 7.02 are unclear and uncertain regarding the amounts to be paid to SMUD. To correct this problem and clarify SMUD's treatment in the plan the trustee suggests the following language be included in an order: "no ongoing payments are accruing to SMUD, and the Trustee is to pay SMUD only a total of \$3,877.00 plus interest, and no more." Without this clarification the trustee fears SMUD's claim will be overpaid. The trustee's proposal essentially treats the SMUD claim as a Class 2 claim with this language. However, notice to SMUD has been made with the existing plan provisions. Without SMUD's agreement to the change the court will require a further modified plan.

CIVIL MINUTE ORDER

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

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

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

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

31. [19-21258](#)-A-13 **IN RE: TROY EMRY**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[117\]](#)

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

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, 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 \$4,125.00.

The debtor's opposition states that prior to the hearing on this motion the debtor will file a modified plan. In effect, the debtor's statements regarding the need for a modified plan admits the existence of a delinquency in the amount of \$4,125.00.

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 \$4,125.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

32. [18-20559](#)-A-13 **IN RE: DANIEL/GUILLERMINA CASTANEDA**
[DPC-1](#)

MOTION TO DISMISS CASE
9-21-2021 [\[78\]](#)

BRIAN BARBOZA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

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 payments are delinquent in the amount of \$6,325.02.

The debtors' opposition, and declaration of the debtor states that the debtors initiated a payment of \$3,257.26 on September 14, 2021, via TFS, and a second payment of \$3,257.26 on October 1, 2021, also via TFS. The debtor also acknowledges the plan payments were delinquent.

Unless the trustee confirms that the plan payments are current at the hearing on this motion the case will be dismissed. Failure to make plan payments is cause for dismissal under 11 U.S.C. § 1307(c)(1), (6).

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 make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$6,325.02.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

33. [18-23961](#)-A-13 **IN RE: LISA XIONG**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [\[32\]](#)

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

Final Ruling

Matter: Motion to Dismiss Case
Notice: Continued from September 21, 2021
Disposition: Denied
Order: Civil minute order

The chapter 13 trustee's motion to dismiss has been continued from September 21, 2021. At the prior hearing in this matter the chapter 13 trustee consented to the court's denial of this motion if the debtor's motion to modify the plan was granted. The debtor's motion to modify plan, MS-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 is denied.

34. [18-23961](#)-A-13 **IN RE: LISA XIONG**
[MS-2](#)

MOTION TO MODIFY PLAN
9-1-2021 [\[41\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed September 1, 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 TRUSTEE NON-OPPOSITION

The chapter 13 trustee filed a non-opposition to the debtor's motion to modify. See ECF No. 50. In his non-opposition the trustee requested that the following clarification be included in the order approving the modified plan: "The Trustee's records reflect Debtor has paid a total of \$21,122.88 through month 39, September 2021." The court will grant the motion with the inclusion of the trustee's language. The debtor shall include this in the order confirming the modified plan.

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).

MAILING MATRIX

The court notes that the mailing matrix used by the debtor for service to all creditors in this case was not dated, ECF No. 46.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. *The copy of the master address list should indicate a date near in time to the date of service of the notice.*

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification. The debtor shall include the trustee's language in the order confirming the modified plan.

35. [21-22261](#)-A-13 **IN RE: AMANDA VASCONCELLOS**
[MWB-1](#)

MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS
ATTORNEY(S)
9-15-2021 [\[24\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Motion: Motion for Compensation

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

Disposition: Granted

Order: Civil minute order

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. Any opposition to the relief sought has been waived. *See id.* ("Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.").

ATTORNEY COMPENSATION

Applicant, Mark Briden, seeks approval of his attorney fees in this chapter 13 proceeding pursuant to LBR-2016(c). The amount requested totals \$4,000.00 of which \$1,500.00 was paid prior to the filing of the bankruptcy petition. Applicant is owed the balance of \$2,500.00 and has requested that this amount be paid through the plan at the rate of \$320.00 per month.

The applicant and the debtor filed a signed 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. See ECF No. 4.

The plan failed to check the box at section 3.05 allowing payment to the attorney. The chapter 13 trustee would not approve payment of the attorney fees absent either a fee application or an amended plan. The court will grant the motion.

CIVIL MINUTE ORDER

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

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

Mark Briden's application for allowance of compensation 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 pursuant to LBR-2016-1 in the amount of \$4,000.00.

IT IS FURTHER ORDERED that the \$1,500.00 received prior to the filing of the petition is confirmed to the applicant.

IT IS FURTHER ORDERED that chapter 13 trustee is authorized without further order of this court to pay the applicant the balance of \$2,500.00 through the chapter 13 plan at the rate of \$320.00 per month.

36. [19-26163](#)-A-13 **IN RE: JOSE PADILLA CARDONA AND VANESSA**
PADILLA
[DPC-1](#)

MOTION TO DISMISS CASE
9-21-2021 [\[42\]](#)

PAULDEEP BAINS/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, asserting that cause exists under 11 U.S.C. 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 \$7,900.40.

The debtor's opposition states that prior to the hearing on this motion the debtor will file a modified plan. In effect, the debtor's statements regarding the need for a modified plan admits the existence of a delinquency in the amount of \$7,900.40.

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 \$7,900.40. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

37. [19-21764](#)-A-13 **IN RE: SHEMILA JOHNSON**
[DPC-1](#)

MOTION TO DISMISS CASE
9-21-2021 [\[53\]](#)

MICHELE POTERACKE/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

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, asserting that cause exists under 11 U.S.C. 1307(c)(6) as the plan exceeds the maximum length of 60 months under 11 U.S.C. § 1322(d). The trustee contends that the plan will take 66 months to complete.

The debtor's opposition states that she intends to modify her plan to resolve the trustee's motion. In effect, the debtor's statements regarding the need for a modified plan admits the plan exceeds 60 months.

The debtor's opposition does not fully resolve the grounds for dismissal. A statement of intent to file a modified plan is not equivalent to filing same. The court is unable to deny the motion given the overextension of the current chapter 13 plan.

CIVIL MINUTE ORDER

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

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

The 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 chapter 13 plan will not complete within 60 months. This constitutes cause to dismiss this case. 11 U.S.C. §§ 1307(c)(6), 1322(d). The court hereby dismisses this case.

38. [19-27469](#)-A-13 **IN RE: AARON/JESSICA MEAUX**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-28-2021 [[105](#)]

PETER MACALUSO/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
WILSHIRE CONSUMER CREDIT VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2007 Honda CR-V

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

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The vehicle was impounded on or about September 1, 2021. Movant received a notice from Central Valley Towing informing it that the Vehicle had been impounded. Attorney for the debtors informed Movant that the debtors did not wish to retain the vehicle. On or about September 13, 2021, Movant paid \$1,680 in impound and repossession fees in order to obtain possession of the vehicle. See Declaration of Elizabeth Qian in support of Motion for Relief from Automatic Stay, ECF No. 108.

Movant also seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) as the debtors have failed to make required payments, and that there is insufficient equity present in the subject personal property to justify the continuance of the Automatic Stay.

The retail value of the Vehicle is \$2,300.00 and the total amount owing on the subject loan is \$8,281.29.

As the vehicle has been impounded and the movant has been informed by counsel for the debtors that they no longer wish to keep the vehicle, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(1) and (d)(2) as well.

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

CIVIL MINUTE ORDER

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

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

Wilshire Consumer Credit's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2007 Honda CR-V, 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.

39. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[89\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

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, 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 \$4,303.00.

The debtor's opposition states that prior to the hearing on this motion the debtor will file a modified plan or bring the plan

payments current. In effect, the debtor's statements regarding the need for a modified plan admits the existence of a delinquency in the amount of \$4,303.00.

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 or modify the plan 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 \$4,303.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

40. [16-20573](#)-A-13 **IN RE: FELICIANO RIOS**
[DPC-1](#)

MOTION TO DISMISS CASE
9-21-2021 [[117](#)]

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

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, 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 \$2,855.00.

The debtor's opposition states that prior to the hearing on this motion the debtor will bring the plan payments current. In effect,

the debtor's statements admit the existence of a delinquency in the amount of \$2,855.00.

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 \$2,855.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

41. [21-21779](#)-A-13 **IN RE: NANCY BUONLAMPERTI**
[DPC-1](#)

MOTION TO DISMISS CASE
9-21-2021 [\[24\]](#)

DAVID RITZINGER/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 confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$448.12.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the chapter 13 trustee - an objection to the debtor's discharge, ECF No. 13, filed on June 21, 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 this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

42. [20-20084](#)-A-13 **IN RE: BERNADETTE TEDING**
[DPC-3](#)

MOTION TO DISMISS CASE
9-21-2021 [\[124\]](#)

RICHARD JARE/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 confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$19,761.88.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

43. [21-22885](#)-A-13 **IN RE: FAITH KNAPPENBERGER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-22-2021 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to December 7, 2021, at 9:00 a.m.

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).

SERVICE OF OBJECTION

This matter will be continued until December 7, 2021, to allow for proper service of the objection on the debtor. The Proof of Service, ECF No. 17, shows that the debtor was served at 5520 Cavitt Stallman Road, Granite Bay, California, 95746, on September 22, 2021.

On September 20, 2021, the debtor filed a change of address, ECF No. 17, indicating a new address located at 7328 Holiday Lane, North Richland Hills, Texas, 76182.

Because the debtor was not served at her new address service was not proper under Fed. R. Bankr. P. 7004(b)(1).

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on the trustee's objection to confirmation will be continued to December 7, 2021, at 9:00 a.m. to allow for proper service of the objection on the debtor.

IT IS FURTHER ORDERED that not later than October 26, 2021, the trustee shall file and serve a notice of continued hearing on all interested parties.

IT IS FURTHER ORDERED that not later than November 16, 2021, the chapter 13 trustee shall file and serve a status report apprising the court of any changes to his objection, or any agreements reached by the parties regarding the issues raised in the objection to confirmation.

44. [19-26686](#)-A-13 **IN RE: TRACEY TURRUBIATE**
[PGM-3](#)

MOTION TO REFINANCE
9-29-2021 [[63](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Approve New Debt - Refinance Mortgage Loan

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

Disposition: Granted

Order: Prepared by moving party, approved by the chapter 13 trustee

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

The debtor seeks to incur new debt to refinance an existing mortgage loan. The purpose of the loan is to pay off the chapter 13 plan with 100% paid to unsecured creditors, ECF No. 63, 2:8-11.

The chapter 13 trustee has filed a non-opposition to the motion. He asks that the proceeds from the refinance be disbursed directly to the chapter 13 trustee in an amount sufficient to pay all creditors in full pursuant to the trustee's demand based on debtor's confirmed plan.

The court will grant the motion and approve the debtor's incurring of this new debt, as long as the order includes the trustee's requested language, and the order is approved by the chapter 13 trustee.

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

MOTION TO EMPLOY KELLER WILLIAMS REALTY AS REALTOR(S)
9-16-2021 [\[36\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

46. [17-24490](#)-A-13 **IN RE: RAYMOND/ELIZABETH CAMPBELL**
[DPC-2](#)

MOTION TO DISMISS CASE
9-21-2021 [\[132\]](#)

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

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, 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 \$7,695.01.

The debtor's opposition states that prior to the hearing on this motion the debtor will file a modified plan and a motion to confirm a modified plan. In effect, the debtor's statements admit the existence of a delinquency in the amount of \$7,695.01.

The debtor's opposition does not fully resolve the grounds for dismissal. A statement of intent to file a modified plan to cure 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 \$7,695.01. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

47. [21-23290](#)-A-7 **IN RE: STEPHEN WACHIRA**
[JMC-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-30-2021 [\[12\]](#)

JOSEPH CANNING/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no 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). 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).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only “after notice and a hearing *completed* before the expiration of the 30-day period” after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

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.

A motion to extend the automatic stay has been presented to the court in this case. 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, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

48. [21-20791](#)-A-13 **IN RE: ELIZABETH ROHDE**
[ROH-2](#)

MOTION TO CONFIRM PLAN
9-8-2021 [\[55\]](#)

YASHA RAHIMZADEH/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Chapter 13 Plan, filed September 8, 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 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.

49. [21-22391](#)-A-13 **IN RE: JOYCE DAHLGREN**
[KMM-1](#)

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

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

No Ruling

50. [20-23193](#)-A-13 **IN RE: JOE/PATRICIA TAMARIT**
[DPC-1](#)

OBJECTION TO CLAIM OF PORTFOLIO RECOVERY ASSOCIATES, CLAIM
NUMBER 27 AND/OR OBJECTION TO CLAIM OF PORTFOLIO RECOVERY
ASSOCIATES, CLAIM NUMBER 28
8-23-2021 [\[26\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Motion: Objection to Claim No. 27 and No. 28

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

Disposition: Continued to December 7, 2021, at 9:00 a.m.

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).

BACKGROUND

The chapter 13 trustee objects to Claim No. 27 and Claim No. 28 filed in this case. The claims were each filed by the debtors on behalf of creditor Portfolio Recovery Associates, LLC.

On June 19, 2021, the debtors filed a notice of withdrawal of Claim 27, attempting to withdraw the claim which they filed on behalf of Portfolio. Similarly, on June 19, 2021, the debtors filed a withdrawal of Claim 28, attempting to withdraw the other claim which they filed on behalf of Portfolio.

The court agrees with the chapter 13 trustee. Rule 3006 does not extend the right to withdraw a proof of claim to the debtor. "A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule." Fed. R. Bankr. P.

3006, (emphasis added). Therefore, debtors' attempts to withdraw Claims 27 and 28 were ineffectual.

RULE 9013

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

...

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

The chapter 13 trustee's objection to Claims 27 and 28 is unclear on its face. The court is unable to determine from the *motion* the legal basis for the trustee's objection to the claims.

An examination of the exhibits filed by the trustee did not clarify the issue as Exhibit No. 4 (which purported to be a Withdrawal of Claim No. 28 filed by the debtor) was instead a Withdrawal of Proof of Claim filed by Portfolio Recovery Associates, LLC. See ECF #28, page 16. The Withdrawal filed by Portfolio did not pertain to the claims to which the trustee objects.

CLAIM NO. 28

Upon examining the remaining exhibits, it appears a possible basis for the trustee's objection is that Claim No. 28, filed by the debtor in the amount of \$4,150.00, might be a duplicate of Claim No. 24 which was filed by Portfolio Recovery Associates, LLC, in the amount of \$4,141.75. But the motion does not state this as a basis for the objection.

The court notes that an additional claim, Claim No. 12 filed in a like amount (\$4,067.18) was also withdrawn by Portfolio Recovery Associates, LLC, shortly after the debtor filed Claim No. 28. But this claim is not addressed in the trustee's motion.

CLAIM NO. 27

Claim No. 27 was filed by the debtors but failed to state an amount due. The court is uncertain of the legal basis for the objection to this claim.

The court will continue the trustee's objection to the claims of Portfolio Recovery Associates, LLC to allow the trustee to augment the record to clearly reflect the legal and factual bases for his objections.

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 hearing on the trustee's Objection to Claims 27 and 28 will be continued to December 7, 2021, at 9:00 a.m. to allow the trustee to augment the record.

IT IS FURTHER ORDERED that not later than October 26, 2021, the trustee shall file and serve a notice of continued hearing on all interested parties.

IT IS FURTHER ORDERED that not later than November 2, 2021, the chapter 13 trustee shall file and serve his additional pleadings upon all interested parties.

51. [20-22794](#)-A-13 **IN RE: WILLIAM LOPEZ AND GEIZOL VILANOVA**
[BLG-2](#)

CONTINUED MOTION TO MODIFY PLAN
7-12-2021 [\[51\]](#)

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 filed by trustee

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, July 12, 2021

BACKGROUND

This case was continued from September 21, 2021, to allow for resolution of the issues raised by the chapter 13 trustee in his opposition to the motion to modify.

The chapter 13 trustee has filed a status report, ECF No. 70. The trustee indicates that the plan payments are current under the proposed modified plan and that he no longer opposes the motion.

The court will grant the debtors' motion to modify the plan.

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 debtors have sustained this burden of proof. The court will grant the motion and approve the modification.

52. [20-22794](#)-A-13 **IN RE: WILLIAM LOPEZ AND GEIZOL VILANOVA**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-9-2021 [\[44\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Matter: Motion to Dismiss
Notice: Continued from September 21, 2021
Disposition: Denied
Order: Civil minute order

The chapter 13 trustee filed this motion to dismiss for plan delinquency. The debtors opposed the motion indicating that they intended to file a modified chapter 13 plan.

The court granted the debtors' motion to modify their chapter 13 plan, BLG-2. The trustee filed a status report in support of the debtors' motion to modify indicating that the plan payments were current under the modified plan.

The court will deny the trustee's motion to dismiss.

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 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 is denied.

53. [19-22396](#)-A-13 **IN RE: RUMMY SANDHU**
[DPC-4](#)

MOTION TO DISMISS CASE
9-21-2021 [[133](#)]

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$6,598.82.

The debtor has filed opposition to the motion, ECF No. 137. The opposition is supported by a declaration from the debtor and states that payment of \$9,898.23 has been paid to the chapter 13 trustee.

Unless the trustee confirms that the plan payments are current at the hearing on this motion the case will be dismissed. Failure to make plan payments is cause for dismissal under 11 U.S.C. § 1307(c)(1), (6).

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 together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.