



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

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

DAY: TUESDAY
DATE: NOVEMBER 5, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [19-24300](#)-A-13 **IN RE: MARK/CANDY GRAY**
[DPC-3](#)

MOTION TO DISMISS CASE
10-1-2024 [\[84\]](#)

MARY TERRANELLA/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 the debtor

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: October 22, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$7,690.19, which is the amount required to complete the Chapter 13 Plan.

The debtor filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF No. 88, 89, 90. The debtor's declaration states that the debtor tendered \$7,690.19 to the trustee via a cashier's check on October 21, 2024. See Declaration, ECF No. 89. The payment was sent via express mail. A copy of the cashier's check and the postal money receipts are filed as Exhibits A and B to the opposition. Exhibits, ECF No. 90.

The opposition does not fully resolve the grounds for dismissal. The Chapter 13 trustee has not acknowledged receipt of the payment.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On October 29, 2024, the trustee filed a status report, ECF No. 92. The trustee reports that he has received the payment from the debtor in an amount sufficient to complete the plan. The trustee further requests that he be allowed to withdraw his motion to dismiss. *Id.*

The trustee filed a timely request to withdraw his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

2. [23-23300](#)-A-13 **IN RE: ANDREW/JENNETTE FRAZIER**
[MRL-1](#)

CONTINUED MOTION TO MODIFY PLAN
8-9-2024 [[23](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, filed September 4, 2024

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on August 9, 2024, ECF No. 29. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 35.

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 debtors shall submit an order confirming the modified plan, which identifies the plan as indicated above in this ruling. The order confirming the modified plan must be approved by the Chapter 13 trustee.

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

3. [24-23903](#)-A-13 **IN RE: STACI ADAMS**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
10-17-2024 [\[22\]](#)

MICHAEL SALANICK/ATTY. FOR DBT.
JOSEPH DELMOTTE/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to December 17, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Wells Fargo Bank, N.A., objects to confirmation of the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

4. [24-23903](#)-A-13 **IN RE: STACI ADAMS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
10-16-2024 [\[18\]](#)

MICHAEL SALANICK/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 17, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order,

then the trustee shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

5. [24-23006](#)-A-13 **IN RE: STANLEY BERMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-15-2024 [\[53\]](#)

STANLEY BERMAN/ATTY. FOR DBT.
DEBTOR DISMISSED: 10/17/24

Final Ruling

This case was dismissed on October 17, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

6. [24-23006](#)-A-13 **IN RE: STANLEY BERMAN**
[DPC-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID
P. CUSICK
8-29-2024 [\[26\]](#)

STANLEY BERMAN/ATTY. FOR DBT.
DEBTOR DISMISSED: 10/17/24

Final Ruling

This case was dismissed on October 17, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

7. [24-21907](#)-A-13 **IN RE: JOHN/LAURIE HURSH**
[AB-1](#)

OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 6
9-11-2024 [\[18\]](#)

AUGUST BULLOCK/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled without prejudice

Order: Civil minute order

The debtors object to Claim No. 6 filed by the claimant, Quantum3 Group LLC as agent for GoodLeap. The debtors dispute the secured status of the claim under Fed. R. Bankr. 3001(d), contending that the claim should be allowed as an unsecured claim. The court will overrule the objection without prejudice for the reasons discussed.

EVIDENTIARY STANDARDS

Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A claim must be disallowed if it is unenforceable under applicable nonbankruptcy law. See 11 U.S.C. § 502(b)(1); *accord Diamant v. Kasparian (In re S. Cal. Plastics, Inc.)*, 165 F.3d 1243, 1247 (9th Cir. 1999).

Federal Rule of Bankruptcy Procedure 3001(f) prescribes the evidentiary effect of “[a] proof of claim executed and filed in accordance with [the] rules.” Fed. R. Bankr. P. 3001(f). If properly executed and filed under the rules along with all supporting documentation that may be required, see, e.g., Fed. R. Bankr. P. 3001(c), the proof of claim is given an evidentiary presumption of validity. See Fed. R. Bankr. P. 3001(f); *Diamant*, 165 F.3d at 1247-48.

The evidentiary presumption created by Rule 3001(f) “operates to shift the burden of going forward but not the burden of proof.” See *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706 (B.A.P. 9th Cir. 2006) (citing *Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *Diamant*, 165 F.3d at 1248). But this evidentiary presumption is rebuttable. *Id.* at 706. “One rebuts evidence with counter-evidence.” *Id.* at 707; see also *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009) (“[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce ‘substantial evidence’ in opposition to it.”).

The burden of proof, however, always remains on the party who carries the burden under applicable nonbankruptcy law. Because the burden of proof is “a substantive aspect of a claim,” *Raleigh v.*

Ill. Dep't of Revenue, 530 U.S. 15, 20-21 (2000) (internal quotation marks omitted), it is governed by nonbankruptcy law, usually state law, applicable to a claim, see *id.* ("[S]tate law governs the substance of claims [in bankruptcy]." (citing *Butner v. United States*, 440 U.S. 48, 57 (1979))); *Garvida*, 347 B.R. at 705. "That is, the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Raleigh*, 530 U.S. at 21.

The claim describes the collateral as "Household Good(s)/Fixture Lien(s)". Section 9, Claim No. 6. Attached to the claim are copies of the financing documents which were signed by the debtors on May 8, 2023. *Id.* The documents show that the debtors have given a purchase money security interest in the collateral securing the loan. The transaction relates to the installment of equipment at the debtor's residence by Gallagher's Plumbing, Heating and Air, Inc. *Id.*

The debtors have provided no evidence in support of the objection. There is no declaration by the debtors indicating that they did not take possession of, or failed to have installed, the collateral securing the loan to Quantum3 Group LLC as agent for GoodLeap.

PERFECTION OF SECURITY INTEREST IN CONSUMER GOODS

The following security interests are *perfected when they attach*:

(1) A purchase money security interest in consumer goods, except as otherwise provided in subdivision (b) of Section 9311 with respect to consumer goods that are subject to a statute or treaty described in subdivision (a) of Section 9311.

. . . .

Cal. Com. Code § 9309(emphasis added).

A purchase-money security interest in consumer goods is perfected upon attachment, without the need to file a financing statement.

Anderson, U.C.C. § 9-309:5 [Rev] (3d. ed.).

Debtors are retired and their sole source of income is Social Security, Schedule I, ECF No. 1. Neither does the Statement of Financial Affairs indicate that the debtors have been engaged in any commercial enterprise during the 3-year period prior to the filing of the petition. Statement of Affairs, ECF No. 1. Accordingly, the court finds that purchase of the household goods and fixtures is a transaction relating to the purchase and installation of consumer goods.

As such there is no requirement for additional documents to perfect the purchase money security interest. Perfection occurred upon attachment, or installation, of the equipment.

CIVIL MINUTE ORDER

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

The debtors' Objection to Claim No. 6 has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled without prejudice.

8. [24-24010](#)-A-13 **IN RE: DENNIS POTOCZNY**

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT
COMPANY LLC
10-17-2024 [\[20\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
JOSEPH DELMOTTE/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to December 17, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Ford Motor Credit Company, LLC, objects to confirmation of the debtor(s) plan.

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

VIOLATION OF LBR 9014-1

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

9. [24-24010](#)-A-13 **IN RE: DENNIS POTOCZNY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-15-2024 [\[16\]](#)

SCOTT JOHNSON/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 17, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and

include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

10. [22-23013](#)-A-13 **IN RE: MARY JONES**
[PSB-4](#)

MOTION TO SELL
10-15-2024 [[44](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

11. [23-23713](#)-A-13 **IN RE: JENNIFER PORE**
[DPC-2](#)

MOTION TO DISMISS CASE
10-8-2024 [\[46\]](#)

CATHERINE KING/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: October 28, 2024 - untimely

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file amended plan and motion to confirm

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for because the debtor failed to file an amended plan and set a confirmation motion after the court denied confirmation of the previously filed plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The court denied confirmation of the previously proposed plan on July 16, 2024, and the debtor has not filed an amended plan.

DEBTOR OPPOSITION

While Untimely, Opposition is Allowed

On October 28, 2024, the debtor filed a declaration and Amended Schedules I and J, ECF No. 50, 52. The declaration explains that due to illness and delayed mail the debtor was unaware of the need to oppose the trustee's motion in writing by October 22, 2024. In this instance the court will allow the late opposition. Fed. R. Bankr. P. 9006(b).

Opposition Fails to Resolve Motion to Dismiss

The opposition references the previous confirmation hearing regarding the Chapter 13 Plan filed on October 19, 2024, ECF No. 4.

The court denied confirmation of the plan twice. The second motion to confirm the plan was held on July 16, 2024. The motion was denied because the plan was not supported by recently filed schedules I and J, and accordingly the court was unable to conclude that the plan was feasible as required by 11 U.S.C. § 1325(a)(6):

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed at the inception of the case on October 19, 2023, approximately 9 months ago, ECF No. 1. Without current income and expense information the court, interested creditors, and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6). The updated schedules are part of the debtor's prima facie case for plan modification and must be filed at the outset of the motion, and not in response to opposition by the trustee or a creditor. This allows the trustee, creditors, and the court, to evaluate the motion in context at the outset. Additionally, it allows sufficient time for opposing parties and the court to evaluate the changes proposed in the debtor's budget. The court will deny the motion.

Civil Minutes, ECF No. 42.

The debtor contends that the previously filed plan is the plan which she elects to confirm. And the debtor has filed updated Schedules I and J with the declaration in opposition to the motion to dismiss. However, the debtor has failed to file a motion to confirm the plan. Neither has the debtor indicated in her declaration when she will file such a motion as required by LBR 3015-1(d)(1). Accordingly, the court will grant the motion to dismiss as the debtor has failed to address the trustee's motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

12. [23-24215](#)-A-13 **IN RE: SANDRA LYMOND**
[BRL-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-8-2024 [[106](#)]

MARC VOISENAT/ATTY. FOR DBT.
BENJAMIN LEVINSON/ATTY. FOR MV.
STEVEN DICKS VS.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 18 La Jacque Court, Sacramento, California

Cause: Plan default; delinquency in payment to senior lienholder

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).

Steven P. Dick and Christina S. Dick, Co-Trustees of the Dick Family Living Trust Dated June 30, 1998, seek an order for relief from the automatic stay of 11 U.S.C. § 362(a). The confirmed Chapter 13 Plan provides for this creditor in Class 2. The Chapter 13 trustee reports that: (1) payments under the confirmed Chapter 13 Plan are current; and (2) payments to this creditor are current pursuant to the confirmed plan. Trustee Reply, ECF No. 114. The trustee's opposition to the granting of the motion does not address the plan

default alleged by U.S. Bank, N.A., in its motion for stay relief. U.S. Bank holds the note secured by a senior deed of trust in the subject property. The confirmed Chapter 13 Plan provides for U.S. Bank, N.A.'s claim in Class 1 and in Section 7.1. Section 7.1 states:

Debtor will make post petition monthly payment of \$1,336.69 directly to Select Portfolio for property located at 18 Jacque Ct., Sacramento, Ca.

Fifth Amended Chapter 13 Plan, Section 7.1, ECF No. 84.

Movant argues that cause exists to terminate the stay because the debtor has materially defaulted on the confirmed plan by her failure to make direct post-petition payments to the senior lender as required under the confirmed plan and that lender has filed a motion for relief from stay.

STAY RELIEF

The debtor is obligated to make loan payments to U.S. Bank, N.A. pursuant to a promissory note secured by a deed of trust on the real property described above. The U.S. Bank obligation, which is senior to that of the movant, is provided for in the debtor's confirmed plan. The debtor has defaulted on the loan as postpetition payments are past due.

Accordingly, payments pursuant to the confirmed plan are in default. The debtor has failed to make payments to the senior lienholder as required. As such, despite being current on the payment to the movant, the movant's interest in the subject property is at risk. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

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.

Steven P. Dick and Christina S. Dick, Co-Trustees of the Dick Family Living Trust Dated June 30, 1998'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 18 La Jacque Court, Sacramento, California, as to

all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

13. [23-24215](#)-A-13 **IN RE: SANDRA LYMOND**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-3-2024 [[100](#)]

MARC VOISENAT/ATTY. FOR DBT.
KELLI BROWN/ATTY. FOR MV.
TOWD POINT MORTGAGE TRUST 2019-3,
U.S. BANK NATIONAL ASSOCIATION VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 18 La Jacque Court, Sacramento, California

Cause: delinquent payments 4 months at \$1,325.66 per month

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).

U.S. Bank, N.A. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The confirmed Chapter 13 Plan provides for the movant's claim in Class 1 and in Section 7.1. Section 7.1 states:

Debtor will make post petition monthly payment of \$1,336.69 directly to Select Portfolio for property located at 18 Jacque Ct., Sacramento, Ca.

Fifth Amended Chapter 13 Plan, Section 7.1, ECF No. 84.

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as postpetition payments are past due. Section 362(d)(1) authorizes

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

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.

U.S. Bank, N.A.'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 18 La Jacque Court, Sacramento, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

14. [24-24017](#)-A-13 **IN RE: WARREN/SHANNON ANDERSON**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
10-9-2024 [\[28\]](#)

STANLEY BERMAN/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to December 17, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Lakeview Loan Servicing, LLC, objects to confirmation of
the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued
to December 17, 2024, at 9:00 a.m. The court may rule in this matter
without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the
debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s)
disagrees with the creditor's objection, the debtor(s) shall file
and serve a written response to the objection; the response shall

specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

15. [24-23720](#)-A-13 **IN RE: KANDY TOBIASSEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-10-2024 [\[16\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to December 17, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

16. [24-24120](#)-A-13 **IN RE: KRISTINA FLUETSCH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-11-2024 [\[27\]](#)

10/17/24 FILING FEE PAID \$34

Final Ruling

The \$34 amendment fee was paid October 17, 2024, the order to show cause is discharged. The case will remain pending.

17. [24-21622](#)-A-13 **IN RE: RACHEL KNAPP**
[TLA-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY
FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S)
10-7-2024 [\[29\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The hearing on this motion will be continued to November 19, 2024, at 9:00 a.m. to coincide with the debtor's motion to modify the confirmed plan. No later than November 12, 2024, the trustee shall file an additional response to this motion which specifically indicates whether the proposed modified plan is feasible and passes the liquidation test with the attorney compensation sought in the instant motion.

18. [24-22522](#)-A-13 **IN RE: AMRIT LAL**
[AVN-2](#)

MOTION TO CONFIRM PLAN
9-16-2024 [\[35\]](#)

ANH NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v.*

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$10.00. The plan cannot be confirmed if the plan payments are not current.

SCHEDULES I AND J – NO ADMISSIBLE EVIDENCE OF PLAN FEASIBILITY

Rule 1008

On September 16, 2024, the debtor(s) filed Amended Schedules I and J in support of the motion and plan, ECF No. 33, 34.

The schedules were filed without the required amendment cover sheet, EDC 002-015 and are thus unsigned by the debtor. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

In the Eastern District Form EDC 002-015 is required for use in filing both amended and supplemental documents. The form provides the following instructions:

Attach each amended document to this form. If there is a box on the form to indicate that the form is amended or supplemental, check the box. Otherwise, write the word "Amended" or "Supplemental" at the top of the form.

EDC 002-015.

LBR 9004-1(c)

(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the

individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. *Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document.* The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c) (emphasis added).

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are of no evidentiary value and are not properly before the court.

Henceforth, the court requires that all supplemental or amended schedules be filed with the properly executed Form EDC 002-015.

CIVIL MINUTE ORDER

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

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

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

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

19. [23-23524](#)-A-13 **IN RE: LINDA WILKINSON**
[DPC-1](#)

MOTION TO DISMISS CASE
10-8-2024 [\[21\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: October 18, 2024 - timely

Modified Plan Filed: October 30, 2024 - untimely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$3,963.92, with one payment(s) of \$1,496.72 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 26, 27, 30. The debtor's declaration states that the debtor has made the following payments to the trustee since the trustee filed his motion to dismiss: one payment via money order in the amount of \$1,500 on October 11, 2024. The debtor also states that she will modify her plan to cure the opposition. A modified plan, with the required motion to modify was not filed until October 30, 2024.

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

On October 18, 2024, the debtor(s) filed an opposition to the motion to dismiss. The opposition states the debtor's intention to file a modified plan. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). A modified plan was not filed until October 30, 2024. Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed October 8, 2024, giving the debtor only 14 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, Fed. R. Bankr. P. 9006(b), LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

The 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.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

20. [24-21228](#)-A-13 **IN RE: RUBEN DIAZ**
[DPC-1](#)

MOTION TO DISMISS CASE
10-7-2024 [[16](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on October 30, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

21. [23-22129](#)-A-13 **IN RE: HERMINIO/JOAN BERNAS**
[MMM-3](#)

MOTION TO INCUR DEBT
10-22-2024 [[40](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

No Ruling

22. [23-24130](#)-A-13 **IN RE: MARY MURPHY**
[DPC-2](#)

MOTION TO DISMISS CASE
10-8-2024 [\[30\]](#)

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

Opposition Due: October 22, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,075.28 with one payment(s) of \$3,106.78 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

23. [24-23131](#)-A-13 **IN RE: MULUGETA/DEBBIE ATSBAHA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-28-2024 [\[16\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 24, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Scott Shumaker is ordered to appear in this matter at 9:00 a.m. on November 5, 2024, in Department A. The appearance may be made by telephone or Zoom.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from September 24, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; or (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

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

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

LBR 1001-1(g).

On September 25, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

Order, ECF No. 21, (emphasis added).

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

The court's ruling required the debtor to file a pleading in this matter by October 8, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

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

CONFIRMATION

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

MEETING OF CREDITORS

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

11 U.S.C. § 343.

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

Trustee Supplemental Status Report

On October 4, 2024, the Chapter 13 trustee filed a reply as ordered, ECF No. 22.

The trustee reports that debtors and counsel failed to attend the continued meeting of creditors. In his initial objection the trustee stated that the debtors failed to attend the initial meeting of creditors on August 22, 2024. As such the court need not reach the remaining issues in the trustee's objection to confirmation. Accordingly, the court will sustain the trustee's objection because of the failure to attend the meeting.

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.

24. [19-24232](#)-A-13 **IN RE: TIMOTHY/CHRISTINA FRANKS**
[DPC-1](#)

MOTION TO DISMISS CASE
10-1-2024 [\[56\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 trustee filed a notice of withdrawal of his motion on October 15, 2024, ECF No. 60. Fed. R. Civ. P. 41. Accordingly, this matter will be removed from the calendar. No appearances are required.

25. [24-22932](#)-A-13 **IN RE: KENNETH MURRAY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-21-2024 [\[16\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 24, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Patricia Wilson is ordered to appear in this matter at 9:00 a.m. on November 5, 2024, in Department A. The appearance may be made by telephone or Zoom.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from September 24, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; or (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

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

LBR 1001-1(g).

On September 25, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to November 5, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 8, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 8, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 22, 2024. The evidentiary record will close after October 22, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

Order, ECF No. 22, (emphasis added).

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

The court's ruling required the debtor to file a pleading in this matter by October 8, 2024. The debtor has failed to file any document which would apprise the court of his position regarding the trustee's objection to confirmation.

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

CONFIRMATION

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

PLAN FEASIBILITY

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

Trustee Supplemental Status Report

On October 4, 2024, the Chapter 13 trustee filed a reply as ordered, ECF No. 23.

The trustee reports that the debtor attended the continued meeting of creditors as required, and that this issue raised in the trustee's initial objection is resolved.

Plan Delinquency

However, the trustee indicates that the plan payments are delinquent in the amount of \$3,520. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

The 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.

26. [23-24434](#)-A-13 **IN RE: RYAN/ITATI MARTIN**
[TLA-2](#)

CONTINUED MOTION TO MODIFY PLAN
8-30-2024 [\[35\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from October 8, 2024

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Modified Chapter 13 Plan, filed August 30, 2024

DEFAULT OF RESPONDENT

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

The hearing on this motion was continued to allow the Chapter 13 trustee to state his position regarding the proposed modified plan.

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on August 30, 2024, ECF No. 40. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 48.

CHAPTER 13 PLAN MODIFICATION

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

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

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

27. [24-22935](#)-A-13 **IN RE: STEVEN MAJOURAU**
[RDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , MOTION FOR RELIEF
FROM CO-DEBTOR STAY, MOTION /APPLICATION FOR ADEQUATE
PROTECTION
10-3-2024 [\[41\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
STEPHEN M WARD AND DEBRA L WARD, CO-TRUSTEES UNDER
THE WARD FAMILY LIVING TRUST VS.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 10047 Crooked Stick Drive, Sacramento, California

Cause: delinquent payments; pre-petition - 9 payments totaling
30,753.78; post-petition - 2 payments totaling \$11,654.76

Stephen M Ward and Debra L Ward, Co-Trustees, or their successors in Trust, under the Ward Family Living Trust dated 4/10/04 as to an undivided 56.338% interest and Philip G Bryant and Kim G Bryant as to an undivided 28.169% interest and Douglas Renner and Shelley Renner, Trustees of the Douglas and Shelley Renner Revocable Trust dated 03/12/09 as to an undivided 15.493% interest, their successors and/or assignees, its assignees and/or successors ("Movant") seek an order for relief from the automatic stay of 11 U.S.C. § 362(a).

The subject property is the debtor's residence. Petition, ECF No. 1.

The Chapter 13 trustee filed a non-opposition to the motion, ECF No. 53. The movants' claim is provided for in Class 1 of the plan. The trustee reports that payments under the plan are delinquent in the amount of \$5,016.16. The trustee's motion to dismiss (DPC-2) is to be heard concurrently on this calendar.

The current plan calls for monthly adequate protection payments to the movants in the amount of \$1,225.00. Chapter 13 Plan, Section 7, ECF No. 17. However, the movants report the contractual monthly payment is \$3,552.50. Claim No. 8. The plan does not provide sufficient adequate protection payments to the movant as required. 11 U.S.C. § 1322(b)(2).

Opposition

Opposition to the motion was untimely. LBR 9014-1(f)(1). Written opposition to the motion was due no later than October 22, 2024. Opposition was filed on October 23, 2024. Debtor's counsel

indicates the late filing occurred because of a calendaring error in his office. In this instance the court will allow the late opposition.

The opposition is unsupported by any evidence regarding payments to the movants. The opposition merely states that the debtor will propose an amended plan to sell the subject property immediately and to pay the movants' claim and the Chapter 13 Plan in full.

However, as of October 30, 2024, a modified Chapter 13 Plan has not been filed. While there may be approximately \$280,000 equity in the subject property, and this is not disputed by the movants, the debtor has failed to make payments post-petition to the movants and has failed to propose a plan where adequate protection payments comply with 11 U.S.C. § 1322(b)(2).

STAY RELIEF

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

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.

The motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 10047 Crooked Stick Drive, Sacramento, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

28. [24-22935](#)-A-13 **IN RE: STEVEN MAJOURAU**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-21-2024 [\[29\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 24, 2024

Disposition: Sustained

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 debtor has filed a response to the Chapter 13 trustee's motion to dismiss, (DPC-2) being heard concurrently on this calendar. The response indicates that the debtor intends to file an amended plan. Response, ECF No. 55.

Counsel for the debtor is reminded that a response indicating the debtor's position was due no later than October 8, 2024, as ordered, and was required to be filed under this objection and docket control number. No such response was filed, causing difficulty for the court in analyzing this objection.

Accordingly, the objection will be sustained. The trustee objected because required tax returns were not filed for the 2023 tax year. There is no evidence on the record that the tax returns have been filed as required. 11 U.S.C. §§ 1308 and 1325(a)(9).

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is sustained.

29. [24-22935](#)-A-13 **IN RE: STEVEN MAJOURAU**
[DPC-2](#)

MOTION TO DISMISS CASE
10-8-2024 [\[49\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

No Ruling

30. [24-22935](#)-A-13 **IN RE: STEVEN MAJOURAU**
[RDW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY STEPHEN &
DEBRA WARD, CO-TRUSTEES UNDER THE WARD FAMILY LIVING TRUST,
DOUGLAS & SHELLEY RENNER, TRUSTEES OF THE DOUGLAS & SHELLEY
RENNER REVOCABLE TRUST, PHILIP & KIM BRYANT
8-19-2024 [\[26\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from September 24, 2024

Disposition: Overruled as moot

Order: Civil minute order

The hearing on the objecting creditor's objection to confirmation was continued to allow the parties to augment the evidentiary record.

The court sustained the Chapter 13 trustee's objection to confirmation (DPC-1). Accordingly, the court will overrule this objection as moot.

Counsel for the debtor is reminded that a response indicating the debtor's position was due no later than October 8, 2024, as ordered, and was required to be filed under this objection and docket control number. No such response was filed, causing difficulty for the court in analyzing this objection.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled as moot.

31. [19-23338](#)-A-13 **IN RE: KEVIN/BRANDEE MCCANN**
[DPC-3](#)

MOTION TO DISMISS CASE
10-1-2024 [\[65\]](#)

DAVID FOYIL/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 the debtor

Disposition: Granted

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: October 22, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,095.00, with one payment(s) of \$365.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 69, 70. The debtor's declaration states that the debtor will bring the plan payment current and pay the plan in full by October 31, 2024. See Declaration, ECF No. 70.

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

Trustee Reply

On October 29, 2024, the trustee filed a status report, ECF No. 73. The trustee reports that he has received a payment in the amount of \$6,346.33 and that a \$1,500 electronic payment is pending.

Under these circumstances the court will consider a conditional order.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

32. [24-20244](#)-A-13 **IN RE: SINA SOLTANI AND ASHLEY KEARNEY**
[DPC-1](#)

MOTION TO DISMISS CASE
10-7-2024 [\[42\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,090.00 with one payment(s) of \$545.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

33. [23-20350](#)-A-13 **IN RE: TIFFANY TOTTEN-JACKSON**
[DPC-1](#)

MOTION TO DISMISS CASE
10-7-2024 [[27](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on October 29, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

34. [23-23553](#)-A-13 **IN RE: SANJEEV DAS**
[MC-3](#)

MOTION TO INCUR DEBT
10-8-2024 [[36](#)]

MUOI CHEA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

35. [24-24053](#)-A-13 **IN RE: BOUGNAVETH/KHAMPHOUVY PHOMMARATH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
10-15-2024 [\[15\]](#)

SCOTT JOHNSON/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 17, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order,

then the trustee shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

36. [23-24054](#)-A-13 **IN RE: TEODULFO/ANNALYN DELA CRUZ**
[DPC-1](#)

MOTION TO DISMISS CASE
10-8-2024 [\[36\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to December 3, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: October 22, 2024 - timely

Motion to Modify Plan Filed: October 22, 2024 - timely

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.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is December 3, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan 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 3, 2024, at 9:00 a.m.

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 this 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. 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.

37. [24-20154](#)-A-13 **IN RE: RICHARD/ANGELA PARRISH**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-24-2024 [\[79\]](#)

PETER MACALUSO/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
CARMAX BUSINESS SERVICES, LLC VS.
RESPONSIVE PLEADING

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

No Ruling

38. [24-20754](#)-A-13 **IN RE: SUSAN OLIVER**
[MOH-2](#)

CONTINUED AMENDED MOTION TO CONFIRM PLAN
8-8-2024 [\[75\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan
Notice: Continued from September 24, 2024
Disposition: Denied
Order: Civil minute order

Subject: Amended Chapter 13 Plan, filed August 8, 2024

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 77. The plan is supported by Schedules I and J filed, August 8, 2024, ECF No. 79, 80. The hearing on this matter was continued to allow the parties to provide additional evidence and argument.

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).

Secured creditor Global Finance Group, Inc., (Global) opposes the motion contending that the proposed plan: (1) fails the liquidation test of 11 U.S.C. § 1325(a)(4); (2) is not proposed in good faith; (3) fails to provide sufficient interest on the creditor's secured claim, Claim No. 7; and (4) is not feasible.

The Chapter 13 trustee supports confirmation of the proposed plan. Response, ECF No. 85; Statement of Position, ECF No. 99.

FACTS

Chapter 13 Plan

The proposed plan provides for the objecting creditor's secured claim in Class 2(B). The value of the collateral securing the creditor's loan is provided for in the amount of \$64,000, with scheduled interest on the claim to be paid at 10%. Amended Chapter 13 Plan, § 3.08, ECF No. 77. The ongoing monthly plan payment is \$2,783.00 commencing August 25, 2024. *Id.*, § 7.

Debtor's Income

The debtor's monthly income of \$6,383 is derived from multiple sources: (1) Social Security - \$1,780; (2) In Home Health Care Service - \$1,790 (net); (3) Retirement - \$469; (4) Bookkeeping Employment - \$1,711; and (5) Income from operation of Brush Masters Business (net) - \$911. Schedule I, ECF No. 79.

Value of Global's Collateral

The value of the secured creditor's collateral is \$64,000. Order Valuing Collateral, ECF No. 71.

GOOD FAITH

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

Failure to Amend Bankruptcy Documents

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith.

At the heart of Global's opposition to the proposed plan are the inconsistent representations by the debtor regarding the nature, and value, of the debtor's business in Brush Masters.

The court continued this hearing, in part, to allow the debtor to correct the record regarding her interest in Brush Masters.

Neither the debtor's declaration in support of the motion, nor her response to the opposition contain any admissible evidence regarding the type of business the debtor owns and operates. Neither does the most recently filed Schedule A/B identify the type of business the debtor owns and operates. Amended Schedule A/B, ECF No. 43.

Civil Minutes, ECF No. 91.

Despite the court's continuance of this hearing the debtor's evidence regarding the nature of the business, and the debtor's interest in the business, remains inconsistent.

The Statement of Financial Affairs identifies the debtor as an *officer, director, or managing executive* of Brush Masters, Inc., Statement of Financial Affairs, No. 27, ECF No. 25. While the statement may be accurate, the debtor's ownership interest is not indicated as required at No. 27, *id.*

Moreover, the debtor states that she does *not* own stock or an interest in any non-publicly traded incorporated or unincorporated business in Schedule A/B. Schedule A/B, No. 19, ECF No. 43. Accordingly, the nature and extent of the debtor's ownership interest in Brush Masters Inc. is unclear to the court. This makes it impossible for the court, the trustee, or the opposing creditor to evaluate the proposed plan's compliance with 11 U.S.C. §§ 1325(a)(3), (4), (6).

The debtor submitted a supplemental declaration in support of this motion which states:

SUSAN MARIE OLIVER is a "sole proprietor" or sole owner of Brush Masters which was incorporated with the California Secretary of State on 1/17/2022.

Declaration, ECF No. 96.

However, the debtor failed to amend Schedule A/B and the Statement of Financial Affairs to be consistent with this declaration. Moreover, the declaration is also unclear as the debtor states that she is both a sole proprietor and sole owner of a corporation without further explanation. The use of the term sole proprietor is confusing as it implies that the debtor operates a non-corporate business.

The motion will be denied as the debtor has failed to sustain her burden of proving the plan is proposed in good faith. As such the court need not address the remaining issues raised in Global's opposition.

CIVIL MINUTE ORDER

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

The debtor's motion to confirm plan 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.

39. [24-23860](#)-A-13 **IN RE: DANNY MENZIES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
10-16-2024 [\[25\]](#)

SCOTT SHUMAKER/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 17, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and

serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

40. [24-23860](#)-A-13 **IN RE: DANNY MENZIES**
[JCW-1](#)

MOTION TO APPROVE LOAN MODIFICATION
10-4-2024 [[20](#)]

SCOTT SHUMAKER/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

41. [22-21267](#)-A-13 **IN RE: ARNEL CATACUTAN**
[DPC-1](#)

MOTION TO DISMISS CASE
10-1-2024 [[29](#)]

CANDACE BROOKS/ATTY. FOR DBT.
DEBTOR DISMISSED: 10/18/24

Final Ruling

This case was dismissed on October 18, 2024. Accordingly, the court will remove this matter from the calendar as moot. No appearances are required.

42. [24-20872](#)-A-13 **IN RE: LINDA OLKOWSKI**
[CK-1](#)

CONTINUED MOTION TO MODIFY PLAN
8-22-2024 [\[19\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Incorrect Payments in Plan

The trustee opposes the plan because the plan states that an incorrect amount has been paid into the plan. The trustee requests that the debtor clarify that the actual amount paid in through month 6, (September 2024), is \$5,347.00.

The debtor filed a reply on October 22, 2024, ECF No. 39. The debtor agrees to provide the requested amount in any order confirming the modified plan.

Sale Date Not Provided

There are approximately 31 months remaining in the plan term. The modified plan calls for the sale of the debtor's residence, however, a sale date has not been specified. While employment of a real estate agent has been approved by the court the property has not yet been sold, nor has a motion to sell been filed. Without a proposed sale date, the feasibility of the proposed plan cannot be determined. While the debtor opines that the property will be sold in 3-4 months a timeframe for sale of the property has not been proposed in the plan.

The court will deny the motion to modify the plan.

Modified Plan Changes Classification of Mortgage Payments

The Chapter 13 trustee objects to the plan modification, because the proposed plan reclassifies the claim of Coastal Community Bank from Class 1 to Class 4. Coastal Community Bank filed a proof of claim in the amount of \$41,950.00, and the amount necessary to cure any default as of the date of the petition is \$2,399.00. Claim No. 9. The confirmed Chapter 13 Plan currently provides for the secured claim in Class 1. The trustee does not report the arrears have been satisfied through the plan to date.

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 modified 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 \$2,399.00. Compare Claim No. 9 (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 modified plan does not comply with § 1325(a)(5) and will not be approved.

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.

43. [24-23175](#)-A-13 **IN RE: DAVID FRIAS**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN
CHASE BANK, NATIONAL ASSOCIATION
8-13-2024 [\[14\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: LBR 3015-1(c)(4); no written opposition required

Disposition: Overruled as moot

Order: Civil minute order

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

CIVIL MINUTE ORDER

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

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

44. [24-23175](#)-A-13 **IN RE: DAVID FRIAS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-28-2024 [\[19\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

45. [23-23778](#)-A-13 **IN RE: SYBILLE WASSNER**
[DPC-3](#)

MOTION TO DISMISS CASE
10-2-2024 [\[79\]](#)

KEVIN TANG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to December 3, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: October 22, 2024

Opposition Filed: October 21, 2024 - timely

Motion to Modify Plan Filed: October 22, 2024 - timely

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.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is December 3, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan 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 3, 2024, at 9:00 a.m.

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 this 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. 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.

46. [24-24078](#)-A-13 **IN RE: ANGELA TINSELY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-18-2024 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

47. [23-24379](#)-A-13 **IN RE: GRACE LEE**
[JLK-2](#)

MOTION TO CONFIRM PLAN
9-9-2024 [\[54\]](#)

JAMES KEENAN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no

disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.").” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Schedules I and J

The debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on December 21, 2023, nearly 11 months ago, ECF No. 17. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

Accurate budget schedules are essential for the court's determination of plan feasibility under 11 U.S.C. § 1325(a)(6). Current, accurate Schedules I and J are part of a debtor's prima facie case for plan confirmation or modification and must be filed at the outset of the debtor's motion, and not in response to opposition by the trustee. Accordingly, the debtor has not met the burden of proof required for plan confirmation. A significant portion of the household income is derived from the operation of a business (\$1,900 per month) and the debtor's declaration in support of the motion is silent regarding her income.

The trustee's non-opposition fails to address this aspect of plan feasibility.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

48. [24-23479](#)-A-13 **IN RE: EVELYN DOMONDON**
[DPC-2](#)

MOTION TO DISMISS CASE
9-26-2024 [\[38\]](#)

DEBTOR DISMISSED: 10/10/24

Final Ruling

This case was dismissed on October 10, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

49. [24-23779](#)-A-13 **IN RE: JUDITH DUPONT**
[DPC-1](#)

MOTION TO DISMISS CASE
10-8-2024 [\[40\]](#)

DEBTOR DISMISSED: 10/17/24

Final Ruling

This case was dismissed on October 17, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

50. [24-23779](#)-A-13 **IN RE: JUDITH DUPONT**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-9-2024 [\[44\]](#)

DEBTOR DISMISSED: 10/17/24

Final Ruling

This case was dismissed on October 17, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

51. [24-23779](#)-A-13 **IN RE: JUDITH DUPONT**
[EMD-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EVAN DAILEY
10-10-2024 [\[50\]](#)

DEBTOR DISMISSED: 10/17/24

Final Ruling

This case was dismissed on October 17, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

52. [24-22983](#)-A-13 **IN RE: AMELIA ALLEN**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-21-2024 [\[30\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from September 24, 2024
Disposition: Overruled
Order: Civil minute order

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

CONFIRMATION

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

The trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved with the granting of the debtor's Motion to Avoid Lien of Capital One Bank (PGM-2); and the filing of amended schedules. The trustee also states the plan payments are current. Reply, ECF No. 53. Finally, the trustee requests that his objection be overruled.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled.

53. [24-22485](#)-A-13 **IN RE: RICARDO VEGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-9-2024 [\[45\]](#)

PETER MACALUSO/ATTY. FOR DBT.
10/22/24 FINAL INSTALLMENT FEE PAID \$78

Final Ruling

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending.

54. [24-23799](#)-A-13 **IN RE: RYAN DEVRIEND**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-9-2024 [\[15\]](#)

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 17, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 17, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 26, 2024. The evidentiary record will close after November 26, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

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

55. [24-20914](#)-A-13 **IN RE: JANA E COOK**
[TLA-2](#)

MOTION TO INCUR DEBT O.S.T.
10-30-2024 [[21](#)]

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling