

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

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

DAY: TUESDAY
DATE: NOVEMBER 16, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [17-25500](#)-A-13 **IN RE: CANDIE SIMMONS**
[DPC-2](#)

MOTION TO DISMISS CASE
10-18-2021 [\[86\]](#)

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

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2,891.21.

The debtor's opposition states that the debtor has paid \$6,108.34 through the TFS system after the trustee filed the present motion to dismiss. The debtor contends this brings the plan current with all payments due up to the date of the hearing on this motion.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,891.21. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

2. [20-25101](#)-A-13 **IN RE: WILLIAM/JANELL WHITE**
[TJW-2](#)

MOTION TO CONFIRM PLAN
9-28-2021 [\[119\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

Subject: Second Amended Chapter 13 Plan, filed September 28, 2021

The motion requests confirmation of the Second Amended 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, contending that the plan is not mathematically feasible as it will take 66 months to pay the unsecured creditors the 14.55% called for in the proposed plan. The trustee also objects to the plan contending that the plan may fail the liquidation requirements of 11 U.S.C. § 1325(b)(4). The trustee has filed an objection to the exemptions claimed by the debtors, DPC-5. The objection to exemptions will be heard on December 1, 2021, at 9:00 a.m.

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 LENGTH

Pursuant to 11 U.S.C. § 1322(d) a chapter 13 plan may not provide for payments over a period that is longer than 5 years. The debtor's plan does not mathematically fund such that the plan will complete in 60 months. The plan is overextended and will take 66 months to complete. The court will sustain the trustee's objection to confirmation.

LIQUIDATION

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

...

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

11 U.S.C. § 1325(a)(4).

The trustee has objected to the debtors' claim of exemptions in amounts deposited in bank accounts. This trustee's objection will be heard on December 1, 2021, at 9:00 a.m. If the trustee's objection is sustained, then the proposed plan will not pass the liquidation test.

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.

3. [20-24902](#)-A-13 **IN RE: ISIDRO FLORES**
[DPC-3](#)

MOTION TO DISMISS CASE
10-18-2021 [[90](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$410.00.

CIVIL MINUTE ORDER

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

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

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

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

4. [21-23202](#)-A-13 **IN RE: NATHANIEL JONES**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR DEUTSCHE BANK
NATIONAL TRUST COMPANY
10-28-2021 [\[30\]](#)

PETER MACALUSO/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Creditor Deutsche Bank National Trust Company objects to the confirmation of debtor's plan as follows: the plan contravenes 11 U.S.C. §§ 1325(a)(5)(B)(ii) and 1322(b)(5) as it fails to provide for any payment on the arrears owed to creditor. Creditor further asserts that the plan is not feasible under 11 U.S.C. § 1325(a)(6) because the debtors schedules I and J do not evidence the debtor's ability to pay the additional \$1,867.00 each month to cure the arrears which are owed.

FAILURE TO PROVIDE FOR PAYMENT OF ARREARS

The debtor asserts in the Additional Provisions appended to his plan that the loan has been modified but the creditor has filed a proof of claim, Claim No. 2. The claim lists prepetition mortgage arrears in the amount of \$112,063.28.

In the absence of an objection to creditor's claim the court presumes the arrears owed are correct. The plan does not provide for any payment of the arrears. This violates the provisions of 11 U.S.C. §§ 1322(b)(5) and 1325(a)(5)(B)(ii). The debtor is not permitted to modify the rights of creditors holding a secured interest in the debtor's residence.

FEASIBILITY

The debtor must prove that the plan is 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).

Creditor calculates that the plan payment will need to increase by an additional \$1,867.00 per month to satisfy the arrears owed on its

claim. The debtor's schedules show that he has excess income of \$3,270.00. The current plan payment is \$3,270.00. Thus, the debtor will not be able to make a higher payment and the plan is not feasible under 11 U.S.C. § 1326(a)(6).

CIVIL MINUTE ORDER

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

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

Deutsche Bank National Trust Company'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 to confirmation is sustained and confirmation is denied.

5. [21-23202](#)-A-13 **IN RE: NATHANIEL JONES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE TO DAVID P.
CUSICK
10-25-2021 [[21](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

The chapter 13 trustee objects to the confirmation of the debtor's plan as follows: 1) the debtor, for reasons of health, has not

attended the meeting of creditors; 2) the plan fails liquidation; and 3) the plan may not be feasible given the treatment it proposes to secured mortgage lenders.

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. As the debtor has been unable to attend, and the trustee unable to examine the debtor regarding the issues raised in this motion the court will sustain the objection

11 U.S.C. § 1325(a) (4)

The trustee contends that the plan fails the liquidation test. Based upon his analysis the plan must pay 100% to unsecured creditors. The plan proposes to pay 0% to unsecured creditors

FEASIBILITY

The plan calls for treatment of secured lender Mr. Cooper in Class 1 but provides no payment for arrears. The plan in Section 7 indicates that the loan to Mr. Cooper has been modified and that the modified loan is the operative loan.

The plan calls for the treatment of RealTime Resolutions in Class 1 with no monthly payment indicated. The plan at Section 7 states that this obligation is not owed but the debtor has yet to prove these assertions.

The trustee correctly questions the feasibility of the plan given the treatment of the secured creditors. The debtor has failed to meet his burden of proof.

The court will sustain the objection to confirmation.

CIVIL MINUTE ORDER

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

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

The 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.

6. [21-23202](#)-A-13 **IN RE: NATHANIEL JONES**
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR REAL TIME
RESOLUTIONS, INC.

10-25-2021 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RENEE PARKER/ATTY. FOR MV.

No Ruling

7. [18-25604](#)-A-13 **IN RE: RHONDA SMITH**
[DPC-1](#)

MOTION TO DISMISS CASE
10-18-2021 [\[58\]](#)

JAMES SHEPHERD/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,075.00.

The trustee has filed a status report, ECF No. 62. In his report the trustee indicates that the plan payments have been brought current and that he no longer wishes to pursue the motion to dismiss the case. The debtor has not filed an opposition to the motion.

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

IT IS ORDERED that the motion is denied.

8. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[DPC-2](#)

MOTION TO DISMISS CASE
10-18-2021 [\[80\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,808.00.

The debtor has filed a reply, ECF No. 95, indicating the unavailability of counsel for hearing on November 16, 2021, and requesting a continuance until December 1, 2021. The court notes that the debtor also has a motion to modify the plan set for hearing on December 1, 2021.

A modified plan has been filed in this case. The scheduled hearing on the modification is December 1, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is

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

CIVIL MINUTE ORDER

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

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

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

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating 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.

9. [21-23206](#)-A-13 **IN RE: JULIEANNE/RANDY PRICE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-25-2021 [\[29\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

Order: Civil minute order

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

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

DISCUSSION

The chapter 13 trustee objects to confirmation of the debtor's plan because the plan contains nonstandard provisions regarding SWR Management's claim, ECF No. 13, page 7. The plan calls for deferral of the mortgage until the conclusion of the plan. The trustee argues that the provision regarding SWR's loan appears contrary to 11 U.S.C. §1322(b)(5) unless the creditor should accept the plan.

SWR Management filed a proof of claim, Claim No. 7, on October 12, 2021. The attachments to the proof of claim show that the loan was fully matured in 2015. Thus, the full amount of the loan is due at this time and the claim is properly provided for in the plan in Class 2. The proof of claim indicates that the loan is secured by property located at 9 Donnie Lane, Willows, California, Claim No. 7, Part 2, No. 9.

The debtors have indicated in the Petition that they reside at 9 Donnie Lane, Willows, California, ECF No. 1. Debtors have listed the property on their Schedule A/B and described it as their residence, ECF No. 24.

11 U.S.C. § 1322(b)(2) provides that the plan may not modify the rights of holders of claims secured by the debtor's principal residence. As the loan is fully matured the entire balance of the loan, \$72,423.50, is now due. The plan makes no provision to make payments to SWR Management until after the conclusion of the plan.

Because the provisions regarding SWR Management's loan contravene 11 U.S.C. § 1322(b)(2) the court will not confirm the plan without the written consent of SWR Management.

The debtors have filed a reply, ECF No. 39, to the trustee's objection. In their reply debtors request a two-week continuance to obtain SWR Management's written consent to the terms proposed in the plan should the court require written consent. The court will continue the matter until December 7, 2021, at 9:00 a.m. to allow the debtors to obtain the necessary written consent.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on the trustee's objection to confirmation is continued until December 7, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtors shall file and serve any additional evidence in this matter not later than November 30, 2021.denied.

10. [21-23510](#)-A-13 **IN RE: MUSTAPHA CHAM**

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-1-2021 [\[24\]](#)

ANH NGUYEN/ATTY. FOR DBT.
CALVIN CLEMENTS/ATTY. FOR MV.
OP ELEVEN HUNDRED OWNER, LLC VS.

Final Ruling

This case will be continued to November 23, 2021, at 1:30 p.m. in Department E, Courtroom 33, before the Honorable Ronald H. Sargis.

11. [19-21111](#)-A-13 **IN RE: JOSELITO HALLARE**
[DPC-1](#)

MOTION TO DISMISS CASE
10-18-2021 [\[65\]](#)

ARASTO FARSAAD/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,940.00.

While the debtor has never filed opposition the trustee has filed a status report, ECF No. 69. In his report the trustee states that the plan payments have been brought current and that the trustee no longer wishes to pursue his motion to dismiss.

Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

12. [19-27111](#)-A-13 **IN RE: MICHAEL/SHANON BENNETT**
[DPC-4](#)

MOTION TO DISMISS CASE
10-18-2021 [[98](#)]

RICHARD KWUN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$4,250.00. The trustee also indicates that another payment of \$2,125.00 will come due prior to the hearing on this motion.

The debtor's opposition states that \$4,250.00 will be paid prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$4,250.00.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the

opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

The court notes that the debtor's opposition fails to address the payment of the additional \$2,125.00 plan payment which will come due prior to the hearing on this motion.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$4,250.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

13. [19-23812](#)-A-13 **IN RE: JINA HALE**
[DPC-1](#)

MOTION TO DISMISS CASE
10-18-2021 [\[65\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$4,131.45.

The debtor's late filed opposition, ECF No. 69, states that the debtor will pay plan payments such that the plan will be brought current. The debtor acknowledged the plan delinquency, in her declaration, ECF. No. 70.

The trustee has filed a status report, ECF No. 73. In his report the trustee indicates that the plan payments have been brought current and that he no longer wishes to proceed with the motion to dismiss.

DISCUSSION

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

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

IT IS ORDERED that the motion is denied.

14. [19-27815](#)-A-13 **IN RE: IYANAH FLETCHER**
[DPC-2](#)

MOTION TO DISMISS CASE
10-18-2021 [[61](#)]

RICHARD JARE/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$700.00.

The debtor's late filed opposition, ECF No. 65, states that the debtor will pay plan payments such that the plan will be brought current or might file a modified plan.

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

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.

15. [21-21815](#)-A-13 **IN RE: TYLER HARKER**
[WLG-1](#)

MOTION TO CONFIRM PLAN
9-29-2021 [\[31\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

Subject: Chapter 13 Plan filed September 29, 2021

The debtor requests confirmation of his chapter 13 plan filed September 29, 2021. The trustee has filed a non-opposition to the plan. The most recently filed Schedules I and J were filed on May 18, 2021.

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).

FEASIBILITY

The debtor must prove that the plan is 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).

Here, the debtor has not carried that burden. In this case, the movant's Schedules I and J were filed on May 18, 2021.

Consequently, they are not recent enough to be probative of the debtor's ability to perform the plan.

The debtor has not supported the plan by filing recently amended Schedules I and J. Without those documents, the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The court will continue this matter to allow the debtor to provide the amended Schedules I and J.

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 debtor's motion to confirm is continued to December 17, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that on or before November 30, 2021, the debtor shall file and serve Amended Schedules I and J, and any other evidence in support of this motion, on all interested parties. If the debtor fails to file the schedules by this date the court may deny this motion without further hearing.

16. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[DPC-1](#)

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

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

Final Ruling

Motion: Dismiss Case

Notice: Continued from September 15, 2021

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

This motion to dismiss was continued from September 15, 2021, to coincide with the debtor's motion to modify the plan, WW-7.

The scheduled hearing on the modification has been continued to allow the debtor to correct a service defect. The continued hearing date is January 5, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to January 5, 2022, at 9:00 a.m.

17. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-7](#)

MOTION TO MODIFY PLAN
10-5-2021 [\[95\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

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

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

The debtor moves for an order modifying his chapter 13 plan. The chapter 13 trustee has opposed the motion pointing out that the declaration in support of the motion to modify, ECF No. 98, was not served with the other moving papers. See Proof of Service, ECF No. 100.

The court will continue the hearing in this matter to allow debtor's counsel an opportunity to correct this defect in service and provide notice to creditors of the continued hearing date.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on the debtor's motion to modify plan is continued to January 5, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that on or before December 8, 2021, the debtor shall serve the declaration and a notice of continued hearing on all interested parties;

IT IS FURTHER ORDERED that the notice on continued hearing shall state that any opposition to the motion to modify shall be filed and served not later than 14 days prior to the hearing on the continued motion.

18. [21-22816](#)-A-13 **IN RE: BEVERLY BROWN**
[SBT-1](#)

MOTION TO CONFIRM PLAN
9-27-2021 [[22](#)]

SUSAN TERRADO/ATTY. FOR DBT.
NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed September 21, 2021

DEFAULT OF RESPONDENT

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

CHAPTER 13 PLAN CONFIRMATION

Debtor seeks confirmation of her chapter 13 plan filed September 21, 2021. The plan is supported by amended Schedules I and J filed on

the same date which support the debtor's ability to perform the proposed 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 finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

19. [16-20118](#)-A-13 **IN RE: LESTHER GASTELUM AND ALMA SAQUELARES**
[PGM-5](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
10-11-2021 [\[204\]](#)

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

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,200.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully modified the chapter 13 plan extending the plan length to 84 months as the debtor was impacted by the COVID-19 pandemic. The complications created by the pandemic were unanticipated at the time the case was filed and the extension of the plan to 84 months represents substantial work.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,200.00.

CIVIL MINUTE ORDER

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

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

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$1,200.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

20. [21-22222](#)-A-13 **IN RE: ARMAR/MARICELA WALKER**
[DBL-1](#)

MOTION TO MODIFY PLAN
10-6-2021 [\[33\]](#)

BRUCE DWIGGINS/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).

The debtors request an order modifying their chapter 13 plan. The trustee opposes the motion stating that the plan provisions conflict with the debtors' actual plan payments and that the motion to modify references an incorrect plan.

The plan identified in the Notice of Motion is inconsistent with the plan identified in the Motion to Modify Plan. The debtors' motion, ECF No. 33, indicates that the First Modified Plan dated June 15, 2021, is the subject of the motion. The Notice of Motion, ECF No. 34, refers to the plan dated October 6, 2021. The inconsistency is confusing and does not provide adequate notice to creditors.

The motion will be denied without prejudice.

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. Given the procedural deficiencies discussed by the court in its ruling,

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

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

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

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

No Ruling

22. [21-23326](#)-A-13 **IN RE: ROBERT MACLAY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-27-2021 [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The chapter 13 trustee objects to confirmation of the debtor's plan. The trustee contends the plan is not feasible and will not fund within the 60-month maximum plan length under 11 U.S.C. § 1322(d). The trustee calculates that the proposed plan will take 68 months to complete because of the claim filed by secured creditor LoanDepot.com, LLC. The claim (Claim No. 1) amount exceeds the debtor's estimation in the plan by \$8,756.85. The claim is provided for in Class 2 of the 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).

FEASIBILITY

The debtor must prove that the plan is 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).

Here, the debtor has not carried that burden. The plan payments are not high enough to pay the claim of the secured creditor which the debtor has proposed to pay in Class 2 of the plan. The court will sustain the objection.

The debtor has filed a response to the objection to confirmation, ECF No. 29. In it the debtor proposes to increase the plan payments as follows: pay \$1,080.00 for 6 months; increase the plan payment to \$1,292.00 for 54 months. This does not cure the feasibility objection. Schedules I and J, ECF No. 1, filed at the inception of the case show the available income to fund the plan is \$1,079.23. Both Schedules I and J indicate that the debtor does not anticipate any change to his income or expenses within the next year. The debtor has provided no admissible evidence indicating how he will make the increased plan payment.

PLAN LENGTH

The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d). As the plan does not fund within 60 months the court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

23. [21-23326](#)-A-13 **IN RE: ROBERT MACLAY**
[ELP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LOANDEPOT.COM, LLC
10-13-2021 [\[17\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

Creditor, LoanDepot.com, LLC objects to confirmation of the debtor's chapter 13 plan contending that the plan is not feasible. Creditor's claim is provided for in Class 2 of the plan in the amount of \$47,000.00 and a monthly payment of \$690.62. The creditor has filed a proof of claim, Claim No. 1, which lists the balance due as \$55,756.85 with required monthly payments of \$589.73.

The difference in the amounts owed is approximately \$8,874.81. To pay this additional amount in Class 2 of the plan will require an increased plan payment. While the debtors have replied to a similar objection filed by the chapter 13 trustee, DPC-1, they have not filed a reply to this motion.

The court finds that the plan is not mathematically feasible as it will not pay the Class 2 claim of LoanDepot.com, LLC in full during the 60-month plan. Nor has the debtor proven his ability to make a plan payment at a higher amount.

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.

LoanDepot.com, LLC'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. [21-20928](#)-A-13 **IN RE: MARK KAYLOR**
[EJS-1](#)

MOTION TO CONFIRM PLAN
10-1-2021 [\[48\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

25. [19-23633](#)-A-13 **IN RE: ROBERTO/TRACI TREVIZO**
[DPC-1](#)

MOTION TO DISMISS CASE
10-18-2021 [\[72\]](#)

STEELE LANPHIER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to

make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,785.00.

A modified plan has been filed in this case. The scheduled hearing on the modification is December 17, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to December 17, 2021, at 9:00 a.m.

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating 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.

26. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[DPC-1](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CONFIRMATION OF PLAN
BY DAVID P. CUSICK
5-19-2021 [\[19\]](#)

HARRY ROTH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from August 17, 2021

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

This matter was continued from August 17, 2021, to allow the debtor to complete litigation in Family Court which might impact the chapter 13 plan.

On November 2, 2021, the chapter 13 trustee filed a status report, ECF No. 89. In his report the trustee indicates that he has communicated with debtor's counsel who has indicated that the debtor intends to file an amended plan.

Because an amended plan has not yet been filed the court will sustain the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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

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

27. [21-21334](#)-A-13 **IN RE: DANIEL LUPINA**
[JWC-1](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CONFIRMATION OF PLAN
BY KELLY WILLIAMS
6-24-2021 [\[33\]](#)

HARRY ROTH/ATTY. FOR DBT.
JOSEPH CAFFREY/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from August 17, 2021

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

This matter was continued from August 17, 2021, to allow the debtor to complete hearings in Family Court which might impact the chapter 13 plan.

On November 2, 2021, the chapter 13 trustee filed a status report, ECF No. 89. In his report the trustee indicates that he has communicated with objecting creditor's counsel who has indicated that he anticipates the debtor will file an amended plan.

Because an amended plan has not yet been filed the court will sustain the creditor's objection to confirmation.

CIVIL MINUTE ORDER

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

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

The objecting 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 sustained. The court denies confirmation of the chapter 13 plan.

28. [17-28335](#)-A-13 **IN RE: LISA KOPPLE**
[PSB-9](#)

MOTION TO MODIFY PLAN
9-28-2021 [[161](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The debtor's 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.

The trustee opposes the motion contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6), and that the plan seeks to impermissibly modify the interest rate on a secured obligation which was established upon confirmation of the plan.

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).

FEASIBILITY

The debtor must prove that the plan is 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).

Delinquent Plan Payments

The trustee indicates that payments under the proposed modified plan are not current. The debtor has not met her burden of proving that the plan is feasible, and the court will not approve a plan where payments are delinquent.

Ability to Fund Plan

In 2018 third parties filed declarations in support of the debtor's plan indicating their ability and willingness to make payments to the debtor. The payments are significant. The amended Schedule I filed in support of this motion shows that the debtor's sole source of income is contributions from third parties, ECF No. 165. The total amount of the contributions equal \$5,600.00 from the debtor's boyfriend and \$4,833.00 from debtor's mother and other unidentified sources.

On November 11, 2021, two declarations were filed in this matter. The first declaration by Stuart Kopple, ECF No. 172, affirms Mr. Kopple's ability and desire to continue making contributions to the debtor in the amount of \$5,600.00 an amount consistent with his past contributions. The second declaration by Lori Leal, ECF No. 173, states that Ms. Leal will make the \$2,146.00 per month which she previously contributed. The second assertion made in Ms. Leal's declaration is that she will contribute an additional \$2,687.00 to her daughter. See *id.*, 1:25-27. There is no evidence explaining how Ms. Leal will pay the increased amount.

The court agrees with the trustee, the debtor has not proven her ability to make the plan payment of \$2,890.00 per month.

INTEREST RATE

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

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

- (2) extend or reduce the time for such payments;
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan;
- or
- (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

...

11 U.S.C. § 1329(a).

The trustee argues that § 1329 precludes a change to the interest rate to be paid to a creditor after confirmation of the plan. The court agrees with the trustee. Section 1329 provides a limited number of adjustments which can be made to a chapter 13 plan after confirmation and does not encompass a change to an interest rate paid to a secured creditor.

This order confirming the plan, ECF No. 134, provides for interest on the claim of Debbie Lasley at the rate of 7.25%. The debtor may not change the percentage payable on this claim through the modification of the plan.

CIVIL MINUTE ORDER

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

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

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.

29. [19-24338](#)-A-13 **IN RE: LASHRAY WRIGHT**
[PGM-3](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
10-18-2021 [\[56\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,380.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting into the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully modified the chapter 13 plan extending the plan length to 84 months as the debtor was impacted by the COVID-19 pandemic. The complications created by the pandemic

were unanticipated at the time the case was filed and the extension of the plan to 84 months represents substantial work.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,380.00.

CIVIL MINUTE ORDER

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

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

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$1,380.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

30. [20-24042](#)-A-13 **IN RE: JAANA BROWN**
[CYB-1](#)

MOTION TO MODIFY PLAN
9-29-2021 [\[20\]](#)

CANDACE BROOKS/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).

RULE 3015.1(e)

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

...

- (e) the Local Form contains a final paragraph for:
 - (1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and
 - (2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

Fed. R. Bankr. P. 3015.1(e)

Thus, Rule 3015.1(e) requires that the Eastern District Plan provide for specific placement of plan provisions which are nonstandard.

LBR 3015-1(a)

Local Bankruptcy Rule 3015-1(a) requires that all chapter 13 debtors shall utilize the district's form plan as follows:

- (a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 13 21, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form *Chapter 13 Plan*.

LBR 3015-1(a)

The Eastern District Chapter 13 Plan provides as follows:

Section 7. Nonstandard Provisions

Debtor may propose nonstandard provisions that modify the preprinted text of this form plan. *All nonstandard plan provisions shall be on a separate piece of paper appended to this plan.* Each nonstandard provision shall be identified by a section number beginning with section 7.01 and indicate which section(s) of the form plan are modified by the nonstandard provision. Nonstandard provisions placed elsewhere are void. The signatures below are certifications by Debtor

and Debtor=s attorney that this plan form has not been altered and that all nonstandard provisions are in section 7.

EDC 3-080 (emphasis added).

The language in EDC 3-080 is clear, it requires nonstandard provisions to be provided for on a separate piece of paper, appended to the plan.

Here the debtor has proposed a plan utilizing the district's form plan EDC 3-080. However, in proposing nonstandard provisions at Section 7 the plan fails to list those provisions on a separate piece of paper appended to the plan. Rather, they appear in the same type, as a continuation on the page of standard preprinted language. The labeling of the section as Non-Standard is irrelevant as the type and font used is identical to that of the standard preprinted terms of the plan. Even someone familiar with this district's form plan could easily overlook the nonstandard provisions as proposed. The court will deny the debtor's motion to modify.

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 considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is denied without prejudice. The court denies modification of the chapter 13 plan.

31. [21-21742](#)-A-13 **IN RE: ISAC/LORENA ALVAREZ**
[JLL-1](#)

MOTION TO CONFIRM PLAN
9-30-2021 [\[35\]](#)

JENNIFER LEE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation as follows: the debtor has failed to file a motion to value collateral and obtain an order granting said motion, a prerequisite to confirmation; debtors have failed to provide copies of business documents, bank statements, corporate tax returns, pay advices and personal tax returns to the trustee for his review; inconsistent treatment in plan and schedules of an IRS claim; and the debtors' failure to proffer accurate schedules or to amend bankruptcy schedules.

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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce an unidentified Class 2 secured claim based on the value of the collateral securing such claim. The trustee believes that this claim is that of Wells Fargo, but the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

The court notes that the trustee raised this identical objection in his Objection to Confirmation of Plan, ECF No. 15.

FAILURE TO PROVIDE BUSINESS DOCUMENTS

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: 2019 personal tax returns; 2 years of corporate tax returns; 5 months of profit and loss statements; 6 months of bank statements for all bank accounts, including any personal accounts; full 60 days of employer payment advices for Lorena Alvarez received prior to the filing of the petition pursuant to 11 U.S.C. §521(a)(1)(B)(iv).

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the trustee raised this identical objection in his Objection to Confirmation of Plan, ECF No. 15. The court will sustain the trustee's objection.

GOOD FAITH

A 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.

The trustee objects as the debtors have failed to amend inaccurate schedules as they relate to an obligation owed to Ally Financial, Claim No. 3. The claim, which is secured by a 2013 Kia Sportage, is not provided for in the plan, nor is the secured obligation listed in Schedule D. Moreover, the co-debtor on the Ally Financial obligation is not listed in Schedule H.

The trustee further objects to the inconsistency between the plan treatment and the schedules regarding the claim of the Internal Revenue Service. The plan treats the claim as secured but Schedule D has not yet been amended to include the IRS.

The court notes that the trustee raised these objections in his Objection to Confirmation of Plan, ECF No. 15.

At the hearing debtors' counsel should be prepared to explain why the debtors have proffered a plan for confirmation without resolving any of these matters previously raised 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 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.

32. [21-23142](#)-A-13 **IN RE: JILLIAN BEILBY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
10-18-2021 [\[17\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

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

Order: Civil minute order

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

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

The chapter 13 trustee objects to confirmation of the debtor's plan claiming it incorrectly classifies the claim of NewRez, LLC (Shellpoint). NewRez, LLC, which holds the first deed of trust on debtor's residence filed a proof of claim, Claim No. 7. The claim indicated that \$14,675.60 is owed in mortgage arrears and the debtor has listed this obligation in Class 4 of the plan.

The debtor has filed a reply to the trustee's objection, ECF No. 21. In the reply the debtor explains that the mortgage payments are currently in forbearance. The debtor proposes language to be included in the order confirming the plan which will clarify the

timing of a proposed modification of the loan and/or the timing of a modified plan at the end of the forbearance period.

Debtor's counsel also requests a continuance of this hearing as he is unable to attend the hearing.

The court will continue the hearing on this motion to allow the parties to negotiate and circulate a stipulation resolving the matter.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on the trustee's objection is continued to December 1, 2021, at 9:00 a.m.

33. [19-20845](#)-A-13 **IN RE: RAYMOND CORREA**
[DPC-1](#)

MOTION TO DISMISS CASE
10-18-2021 [\[75\]](#)

TARAS KURTA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$899.00.

CIVIL MINUTE ORDER

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

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

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

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

34. [20-22849](#)-A-13 **IN RE: GLORIA SULLIVAN**
[DPC-2](#)

OBJECTION TO CLAIM OF TRAGOPAN, CLAIM NUMBER 8 & 9
9-21-2021 [\[47\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

35. [21-21850](#)-A-13 **IN RE: JACKQUELINE BARNES**
[MMM-1](#)

MOTION TO MODIFY PLAN
10-19-2021 [\[18\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modification of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The debtor moves for an order modifying her chapter 13 plan. The motion to modify and documents in support of the motion were served on October 19, 2021. See Proof of Service, ECF No. 23.

REQUIRED NOTICE

The moving party did not provide a sufficient period of notice of the hearing on the motion. Federal Rule of Bankruptcy Procedure 3015(g) requires not less than 21 days' notice of the time fixed for

filing objections and the hearing to consider a proposed modification of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 3015(g) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. LBR 3015-1(d).

The court will deny the motion without prejudice as the motion and notice of hearing were filed and served less than 35 days prior to the hearing.

CIVIL MINUTE ORDER

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

The debtor's Motion to Modify Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

36. [18-23651](#)-A-13 **IN RE: THOMAS HURST**
[DPC-1](#)

MOTION TO DISMISS CASE
10-19-2021 [57](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$3,000.00.

A modified plan has been filed in this case. The scheduled hearing on the modification is December 17, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to December 17, 2021, at 9:00 a.m.

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating 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. [21-21652](#)-A-13 **IN RE: MARIA PAGTAKHAN**
[GW-3](#)

MOTION TO CONFIRM PLAN
9-27-2021 [\[55\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

Subject: First Amended Chapter 13 Plan filed August 2, 2021

The debtor requests confirmation of his chapter 13 plan filed September 29, 2021. The trustee has filed a non-opposition to the plan. The most recently filed Schedules I and J were filed on May 18, 2021.

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).

FEASIBILITY

The debtor must prove that the plan is 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).

Here, the debtor has not carried that burden. In this case, the movant's Schedules I and J were filed on May 18, 2021. Consequently, they are not recent enough to be probative of the debtor's ability to perform the plan.

The debtor has not supported the plan by filing recently amended Schedules I and J. Without those documents, the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The court will continue this matter to allow the debtor to provide the amended Schedules I and J.

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 debtor's motion to confirm is continued to December 17, 2021, at 9:00 a.m.

IT IS FURTHER ORDERED that on or before November 30, 2021, the debtor shall file and serve Amended Schedules I and J, on all interested parties. If the debtor fails to file the required schedules by this date the court may deny this motion without further hearing.

38. [19-23653](#)-A-13 **IN RE: ROOSEVELT MCCLINTON**
[DPC-2](#)

MOTION TO DISMISS CASE
10-19-2021 [\[42\]](#)

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,590.00.

A modified plan has been filed in this case. The scheduled hearing on the modification is December 17, 2021, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to December 17, 2021, at 9:00 a.m.

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating 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.

39. [18-27654](#)-A-13 **IN RE: JASON/MOLLY ZYSMAN**
[DPC-3](#)

MOTION TO DISMISS CASE
10-19-2021 [[90](#)]

DAVID FOYIL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$15,708.00.

A modified plan has been filed in this case. The scheduled hearing on the modification is January 5, 2022, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to January 5, 2022, at 9:00 a.m.

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating 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.

40. [21-23557](#)-A-13 **IN RE: PERRY MAYER**
[MRL-1](#)

MOTION TO AVOID LIEN OF KELSTIN GROUP, INC.
10-18-2021 [\[11\]](#)

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

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$20,620.48 - Kelstin Group, Inc.

All Other Liens:

First Deed of Trust: \$245,756.00 - Select Portfolio Servicing, Inc.

Second Deed of Trust: \$14,137.00 - Select Portfolio Servicing, Inc.

Statutory Lien: \$9,300.00 - Sacramento County Tax Collector

Mechanics Lien: \$17,762.00 - Foundation Finance Company

Exemption: \$300,000.00

Value of Property: \$383,000.00

Subject Property: 10417 Georgetown Drive, Rancho Cordova,
California

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 moves for an order avoiding the judicial lien of Kelstin Group, Inc. in the amount of \$20,620.48.

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

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

41. [21-23557](#)-A-13 **IN RE: PERRY MAYER**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-27-2021 [\[19\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.
AMERICAN HONDA FINANCE CORPORATION VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2013 Honda Goldwing Motorcycle

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).

Movant seeks an order under 11 U.S.C. § 362(d)(1) allowing it to pursue its state law remedies regarding a 2013 Honda Goldwing Motorcycle. Movant also requests waiver of the 14 day stay under Fed. R. Bankr. P. 4001(a)(3). The debtor has provided for the obligation owed to American Honda Finance Corporation in Class 3 of the Chapter 13 Plan, ECF No. 4, indicating his intent to surrender the vehicle.

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 post-petition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

Additionally, because the plan which has not yet been confirmed, provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore,

relief from the automatic stay under § 362(d)(2) is warranted as well.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Honda Goldwing Motorcycle, 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.

42. [18-23858](#)-A-13 **IN RE: ROBERT/JUNE ROSENBERGER**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [\[28\]](#)

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

Tentative Ruling

Matter: Motion to Dismiss Case

Notice: Continued from September 21, 2021

Disposition: Denied

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,017.02.

A modified plan has been filed and set for hearing on this calendar, MJG-1. The court has granted the motion to modify. The court will deny this motion to dismiss

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is denied.

43. [18-23858](#)-A-13 **IN RE: ROBERT/JUNE ROSENBERGER**
[MJG-1](#)

CONTINUED MOTION TO MODIFY PLAN
9-17-2021 [\[34\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from September 23, 2021

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed September 17, 2021

The debtors seek modification of their chapter 13 plan. The chapter 13 trustee has opposed the motion indicating what he believes is a drafting error in the plan. The trustee requests that the following language be included in the order confirming the modified plan: "the total amount paid in through month 40 (October 2021) is \$18,911.98, with payments beginning in November 2021, of \$480.00 for the remaining 7 months of the Plan."

The court will grant the motion with this change in the order.

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 with the inclusion of the language requested by the chapter 13 trustee. The court will grant the motion and approve the modification.

44. [18-26260](#)-A-13 **IN RE: JESSICA TODD**
[DPC-1](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER
15
9-29-2021 [\[32\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 13 trustee objects to the proof of claim filed by the debtor on behalf of the Internal Revenue Service, Claim No. 15. The debtor filed her proof of claim on July 20, 2020, in the amount of \$18,000.00.

The 341 Meeting of Creditors was first set on November 15, 2018. The Internal Revenue Service filed its own timely proof of claim, Claim No. 5, on November 16, 2018. The IRS amended the proof of claim on March 8, 2019.

RULE 3004

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The

clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.

Fed. R. Bankr. P. 3004.

The IRS filed a timely proof of claim. The trustee contends that Rule 3004 allows the debtor to file a proof of claim only in the absence of a claim by the creditor. The trustee is correct. In 2005 Rule 3004 was amended. The Advisory Committee note to the 2005 amendment clarifies when a debtor may file a proof of claim.

The rule is amended to conform to § 501(c) of the Code. Under that provision, the debtor or trustee may file proof of a claim if the creditor fails to do so in a timely fashion. The rule previously authorized the debtor and the trustee to file a claim as early as the day after the first date set for the meeting of creditors under § 341(a). *Under the amended rule, the debtor and trustee must wait until the creditor's opportunity to file a claim has expired.* Providing the debtor and the trustee with the opportunity to file a claim ensures that the claim will participate in any distribution in the case. This is particularly important for claims that are nondischargeable. Since the debtor and trustee cannot file a proof of claim until after the creditor's time to file has expired, the rule no longer permits the creditor to file a proof of claim that will supersede the claim filed by the debtor or trustee. The rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim. Other changes are stylistic.

Fed. R. Bankr. P. 3004 Advisory Committee note to 2005 amendment (emphasis added).

Since the IRS filed a proof of claim the debtor is precluded from doing so. If the debtor believes that the claim of the IRS is incorrect, she may object to the claim.

The trustee also argues that the claim contains no attachments or explanation regarding the obligation and thus, no evidence exists that the claim is owed.

Absent any response to this objection by the debtor, the court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's Objection to the Claim of Internal Revenue Service, Claim No. 15 filed by the debtor, 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 sustained, Claim No. 15 is disallowed in its entirety.

45. [18-27962](#)-A-13 **IN RE: GUILLERMO MIRALRIO**
[DPC-2](#)

MOTION TO DISMISS CASE
10-19-2021 [\[105\]](#)

W. SHUMWAY/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,654.00.

The trustee also moves for dismissal contending that the current plan is overextended and will not complete within the plan term of 66 months. The plan will take 78 months to complete, which violates 11 U.S.C. § 1322(d).

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 and because the plan is overextended. The court hereby dismisses this case.

46. [18-23364](#)-A-13 **IN RE: BARRY RAASS**
[DPC-2](#)

MOTION TO DISMISS CASE
10-19-2021 [\[71\]](#)

SETH HANSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Trustee's Motion to Dismiss Case

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

Disposition: Withdrawn

Order: Civil minute order

Chapter 13 trustee David P. Cusick filed a motion to dismiss the debtor's Chapter 13 case, because the payments under the plan were delinquent. The debtor responded to the trustee's motion indicating that payments would be brought current. On November 3, 2021, the trustee filed a status report, ECF No. 78. In his report, the trustee indicated that the plan payments were current and that he no longer wished to pursue the motion to dismiss.

DISCUSSION

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the objection is withdrawn.

47. [19-24464](#)-A-13 **IN RE: ERNESTO MELENDRES AND LINDA AVITIA**
[DPC-1](#)

MOTION TO DISMISS CASE
10-19-2021 [\[34\]](#)

THOMAS GILLIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 5, 2022, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case as the plan term is overextended. The confirmed plan provides for a plan term of 36 months. Due to the filing of a higher than anticipated priority claim the plan term extends to 58 months. The plan requires modification to extend the plan term to 58 months. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case.

Attorney Mark O'Toole has substituted into the case as counsel for the debtors, ECF No. 40. The debtors have filed an opposition to the trustee's motion to dismiss, ECF No. 44. Given that Mr. O'Toole has recently substituted into the case the court will allow the late opposition to the motion. In their opposition the debtors agree that the plan is overextended due to the higher claim filed by the IRS and state that they have filed an objection to the claim of the IRS. The objection is set for hearing on January 5, 2022, at 9:00 a.m.

The court will continue this motion to January 5, 2022, to coincide with the hearing on the objection to the claim of the IRS.

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 continued to January 5, 2022, at 9:00 a.m.

48. [21-20864](#)-A-13 **IN RE: HEATH/CHRISTIAN FULKERSON**
[DPC-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO RECONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
10-20-2021 [[158](#)]

DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Matter: Motion to Reconvert Case to Chapter 7

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

The Motion will be continued to allow for proper service of the motion on the debtors as the trustee failed to serve the debtors at their new address of record. The trustee's motion was served on October 20, 2021, see ECF No. 161, on the debtors at the following addresses:

HEATH AND CHRISTIAN FULKERSON PO BOX 60686 RENO, NV 89506
HEATH AND CHRISTIAN FULKERSON 747-525 DOYLE GRADE DOYLE, CA 96109

On October 18, 2021, the debtors filed an amended petition which changed their address of record to 691 Addison Lane, Folsom, California, 95630.

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to reconvert case to chapter 7 is continued to December 17, 2021, at 9:00 a.m.

IT IS FURTHER ORDERD that no later than December 3, 2021, the trustee shall serve the debtors at the correct address with the motion.

IT IS FURTHER ORDERED that no later than December 3, 2021, the trustee shall file and serve an amended notice of hearing on all interested parties.

49. [21-20864](#)-A-13 **IN RE: HEATH/CHRISTIAN FULKERSON**
[GMR-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR
MOTION FOR TURNOVER OF PROPERTY
6-22-2021 [\[80\]](#)

RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Debtors' Claim of Exemptions and Turnover of Property

Notice: Continued from November 2, 2021

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order if appropriate

This matter was continued from November 2, 2021, to coincide with the chapter 13 trustee's motion to dismiss/reconvert to chapter 7, DPC-1. That motion has been continued to December 17, 2021, at 9:00 a.m. The court will continue this motion to the same date and time.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to December 17, 2021, at 9:00 a.m.

50. [21-20167](#)-A-13 **IN RE: HARLAN/CHARLOTTE CONFER**
[MOH-1](#)

MOTION TO MODIFY PLAN
10-5-2021 [\[109\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Modified Chapter 13 Plan, filed October 5, 2021

CHAPTER 13 PLAN MODIFICATION

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

The debtors seek confirmation of the proposed modified chapter 13 plan filed October 5, 2021, ECF No. 112. The chapter 13 trustee has filed a non-opposition to the plan. Creditors Jacob Watson and James Watson (Watsons) oppose the plan, ECF Nos. 114-117.

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).

BACKGROUND

Factual Background

Prior to the filing of the case the debtors purchased a home at 295 San Joaquin Drive, Red Bluff, California. The loan is currently secured by obligations owed to Shellpoint Mortgage which holds the first deed of trust and Umpqua Bank which holds the second deed of trust.

Foreclosure proceedings were commenced prior to the filing of the bankruptcy and the debtors entered into a Residential Purchase

Agreement (Purchase Contract) with Jacob Watson and James Watson. The Watsons made a down payment of \$22,000.00 called for by the agreement but did not deposit the balance of the purchase price into escrow. The debtors declined to proceed with the sale. Watsons filed an action in state court seeking specific performance of the Purchase Contract and damages. The state court conducted a default hearing and ordered the debtors to sign escrow instructions and to execute and deliver a grant deed for 295 San Joaquin Drive to the escrow holder. After the order was entered the debtors filed the instant chapter 13 case.

Procedural Status of the Case

The debtors filed this case on January 20, 2021. The plan was confirmed on April 16, 2021, ECF No. 27.

On April 16, 2021, creditors Jacob Watson and James Watson (Watsons) filed a Motion for Relief From the Automatic Stay. The Order Denying Relief From the Automatic Stay was entered on June 8, 2021, ECF No. 53.

On June 16, 2021, the Watsons filed a Notice of Appeal, ECF No. 60, appealing the Order Denying Relief From the Automatic Stay; and then filed a Statement of Issues on Appeal, on July 21, 2021, ECF No. 85. No stay has been entered pending appeal.

The chapter 13 trustee filed a Motion to Reconsider Confirmation, ECF No. 100. In his motion the trustee indicated that the plan's treatment of Shellpoint Mortgage was inappropriate as it could potentially result in overpayment of the mortgage.

The Shellpoint claim comes due during the life of the plan and is provided for in the confirmed plan as a Class 1 creditor. This is an incorrect treatment under the Eastern District Plan, EDC 3-080. The court entered an order denying the trustee's motion, ECF No. 106, indicating that the relief sought by the trustee must be brought by filing an adversary proceeding under Fed. R. Bankr. P. 7001(5) and not by motion. The trustee has not filed an adversary proceeding seeking to revoke confirmation of the plan.

The debtors, however, have brought this motion to modify their chapter 13 plan, ECF No. 109. The motion follows both the trustee's motion to reconsider discussed in the previous paragraphs and the filing of the trustee's Notice of Filed Claims on August 6, 2021, ECF No. 94.

DEBTORS' CHAPTER 13 PLANS

Confirmed Chapter 13 Plan

The confirmed chapter 13 plan, ECF No. 12, provided as follows: payments of \$1,518.00 per month through September 25, 2023; an increase in payments to \$1,709.00 per month commencing October 25, 2023, for the remainder of the 60-month plan; and payment of 0% on allowed unsecured claims. The plan did not provide for the assumption of any executory contracts. The plan provided for the

mortgage payments to Shellpoint Mortgage (first deed of trust holder) in Class 1 of the plan, with payments to Shellpoint in the amount of \$986.95 per month.

Proposed Modified Chapter 13 Plan

The proposed modified chapter 13 plan, ECF No. 112, changes the treatment of Shellpoint Mortgage. The Shellpoint claim has been removed from Class 1 and placed in Class 2. According to the Eastern District Plan, Class 2 "includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed." See *id.*, EDC 3-080.

The proposed monthly payment to Shellpoint is \$892.83. This proposed treatment in the plan conforms to the claim filed on behalf of Shellpoint, Claim No. 6. The claim provides a total balance due of \$49,688.49. The Deed of Trust attached to the claim shows that the note matures on November 1, 2025, which is during the term of the confirmed plan and the proposed modified plan.

The proposed modified plan proposes as follows: \$12,200.00 paid through September 25, 2021; payments of \$1,512.00 from October 25, 2021, through September 25, 2023; payments of \$1,689.00 from October 25, 2023, through the end of the 60-month plan; and 100% payment on allowed unsecured claims. These appear to be the only substantive changes proposed in the modified plan. There is no change proposed in the modified plan regarding the treatment of the Purchase Contract with the Watsons.

RELIEF FROM STAY ORDER

Watsons' Motion for Relief From Stay

The Watsons filed a motion for relief from the automatic stay, ECF No. 20. The Watsons argued that the state court order requiring specific performance meant that the 295 San Joaquin Drive property was no longer property of the estate and not required for an effective reorganization under 11 U.S.C. § 362(d).

Order Denying Relief From Stay

In its Memorandum decision, ECF No. 50, the court ruled that that: 1) the state court's specific performance order did not extinguish the debtors' rights in 295 San Joaquin Drive; 2) the state court's order did not bind the bankruptcy court; the confirmed chapter 13 plan binds the Watsons; 4) stay relief was denied as to the debtors and debtors' property.

In support of its ruling the court found that the Purchase Contract was an executory contract and was rejected in the chapter 13 plan as the buyers had not yet paid the purchase price; and sellers had not conveyed title and remained in possession of the property.

Issues on Appeal

Watsons list the following issues in their Statement of the Issues on appeal, ECF No. 85: 1) was the Purchase Contract an executory contract; 2) did the specific performance order in state court extinguish the debtors' rights in 295 San Joaquin Drive; 3) did the state court specific performance order bind the bankruptcy court; and 4) did the confirmed chapter 13 plan bind the Watsons.

MOTION TO MODIFY

Watson's Opposition to Motion to Modify

The Watson's opposition to the motion to modify plan, ECF No. 114, requests that the court find that the proposed modified plan does not reject the Purchase Contract, see *id.* 10:11-15.

In their opposition Watsons contend that 1) the proposed modified plan does not address the Purchase Contract; 2) the Purchase Contract is not an executory contract and therefore cannot be rejected; and 3) even if the Purchase Contract was executory, it has not been rejected in the modified plan.

EXCLUSIVE APPELLATE JURISDICTION

In their opposition to this motion to modify the Watsons request that the court find that the proposed modified plan does not reject the Purchase Contract. The court may not consider this argument or issue an order regarding this legal issue.

This court has previously held that the purchase contract was an executory contract and that the contract was rejected. The order was made in the context of a Motion for Relief From Stay. However, the issue is central to the request made by the Watsons in opposing this motion to modify the plan. It is the same issue on appeal to the Bankruptcy Appellate Panel.

Appellate Jurisdiction

Generally, a bankruptcy court has wide latitude to reconsider and vacate its own decisions. *In re Hagel*, 184 B.R. 793, 798 (B.A.P. 9th Cir. 1995), citing *In re Adams Apple, Inc.*, 829 F.2d 1484, 1489 (9th Cir.1987). A pending appeal, however, divests a bankruptcy court of jurisdiction. *Id.* The court cannot vacate or modify an order which is on appeal. *In re Bialac*, 694 F.2d 625, 627 (9th Cir.1982).

In re Hagel, 184 B.R. 793 (B.A.P. 9th Cir. 1995).

This court follows the principle of exclusive appellate jurisdiction. That principle does not allow the court to render a decision which would interfere with the appellate process. Nor does it allow this court to render a decision in this motion to modify plan as requested by the Watsons.

The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time. *In re Mirzai*, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999); citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); *Marino*, 234 B.R. at 769; 20 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 303.32[1] (3rd ed. 1999) ("MOORE'S"). The trial court cannot take actions "over those aspects of the case involved in the appeal." *Griggs*, 459 U.S. at 58, 103 S.Ct. 400.

In re Mirzai, 236 B.R. 8 (B.A.P. 9th Cir. 1999).

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Trulis v. Barton*, 107 F.3d 685, 694-95 (9th Cir.1995).

Trial Court May Issue Orders Maintaining the Status Quo

While the court may not issue orders which contravene or modify prior orders which are on appeal, it may issue orders consistent with its prior rulings and which maintain the status quo so long as those decisions do not disrupt the appellate process.

To this end, a trial court may not interfere with the appeal process or with the jurisdiction of the appellate court. It is equally established, however, that while an appeal of an order is pending, the trial court retains jurisdiction to implement or enforce the order. This is true because in implementing an appealed order, the court does not disrupt the appellate process so long as its decision remains intact for the appellate court to review.

Id. Courts thus distinguish between actions to enforce the judgment, which are permissible, and actions to expand upon or alter the judgment, which are prohibited. *Id.* *In re Marino*, 234 B.R. 767, 769-70 (B.A.P. 9th Cir. 1999) citing *In re Hagel*, 184 B.R. 793, 798 (B.A.P. 9th Cir. 1995).

In re Marino, 234 B.R. 767 (B.A.P. 9th Cir. 1999).

In granting the debtors' motion to modify this court is issuing no decision regarding the Purchase Contract. The monthly payment changes proposed in the debtors' modified plan are minor. The reclassification of the Shellpoint claim from Class 1 to Class 2 has no substantive bearing on the position of the parties regarding the issues pending appeal. There is no change to the classification of the Purchase Contract and therefore no conflict with the issues

pending appeal. Thus, this ruling maintains the status quo regarding the issues on appeal.

Accordingly, the court will grant the motion and approve the modification.

51. [16-23970](#)-A-13 **IN RE: RUSSELL/VICTORIA THOMPSON**
[WW-4](#)

CONTINUED OBJECTION TO CLAIM OF DITECH FINANCIAL LLC, CLAIM
NUMBER 8
8-11-2021 [[64](#)]

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Objection: Objection to Claim [Based on Waiver of the Right to the Remaining Balance]

Notice: LBR 3007-1(b)(1); continued from September 21, 2021

Disposition: Sustained in part; relief under 11 U.S.C. § 506(d) denied

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 objects to the claim of Ditech Financial LLC, Claim No. 8. Debtor contends the claim should be disallowed except as to the amounts previously paid because the claimant has returned funds, stopped cashing chapter 13 plan disbursement checks, and failed to respond to inquiries by the chapter 13 trustee and debtor's counsel.

Debtor also requests that the court determine that the lien securing the obligation is void under 11 U.S.C § 506(d).

LEGAL STANDARDS

Deemed Allowance under § 502(a)

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). 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.

State Law on Waiver

With limited exceptions, § 502(b)(1) of the Bankruptcy Code means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

Under California state law, waiver can be asserted as a defense to a claim. "California courts will find waiver when a party intentionally relinquishes a right, or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *Intel Corp. v. Hartford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991) (citation omitted).

DISCUSSION

The claimant has returned funds received from the trustee and/or has communicated to the trustee in writing that it no longer wants to receive payment on its claim. But until an objection to the claim is brought, the claim remains allowed. 11 U.S.C. § 502(a). And the trustee must continue to pay all allowed claims consistent with the plan.

By its return of funds and/or its written statements, the claimant has waived its right to receipt of any further amounts on its claim. These acts are inconsistent with an intent to enforce the right to any unpaid balance of the claim. This also creates an impossibility for the trustee in paying the allowed claim consistent with the trustee's duties.

Given the claimant's waiver of its right to receive any remaining balance of its claim, the court will liquidate the claim at the amount requested by the trustee.

The debtor's attorney has reviewed the records provided by National Data Center (NDC.org) which reports activity and payments in Chapter 13 cases. Debtor's counsel provided a declaration under penalty of perjury stating the amounts which have been paid on Ditech's claim and provided copies of the documents used to determine these amounts at Exhibits B and C in support of the objection. See ECF Nos. 74-75.

The claim will be allowed as (1) a secured claim in the amount of \$11,397.25 of principal paid for ongoing mortgage payments; \$2,681.11 of principal paid for mortgage arrears and \$1,560.04 of interest and (2) an unsecured claim in the amount of \$0. The remaining balance of the claim will be disallowed.

The court will deny the debtor's request for relief under 11 U.S.C. § 506(d). This requires an adversary proceeding under Fed. R. Bankr. P. 7001(2).

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 objection to claim has been presented to the court. Having entered the default of the respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection to the claim of Ditech Financial, LLC, Claim No. 8, is sustained. The court liquidates the amount of the claim at the amount paid by the trustee on the claim. The claim will be allowed as (1) a secured claim in the amount of \$11,397.25 of principal paid for ongoing mortgage payments; \$2,681.11 of principal paid for mortgage arrears and \$1,560.04 of interest and (2) an unsecured claim in the amount of \$0. The remaining balance of the claim will be disallowed. All other relief is denied.

52. [19-20771](#)-A-13 **IN RE: MARTIN HERNANDEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-24-2021 [[103](#)]

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

No Ruling

53. [19-20771](#)-A-13 **IN RE: MARTIN HERNANDEZ**
[MWB-5](#)

MOTION TO MODIFY PLAN
9-15-2021 [[109](#)]

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

Subject: Modified Chapter 13 Plan, filed September 15, 2021

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

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

The debtor moves for modification of his chapter 13 plan. The trustee opposes the motion on several bases.

FEASIBILITY

The debtor must prove that the plan is 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 payments are delinquent in the amount of \$100.00 under the proposed modified plan. The court will not approve a plan where payments are delinquent. The plan is not feasible.

Income and Expense Schedules

The trustee indicates that the motion is not supported by current budget schedules evidencing the debtor's ability to make plan payments. The debtor's last schedules were filed on September 29, 2020, ECF No. 91, as an Exhibit. Consequently, they are not recent enough to be probative of the debtor's ability to perform the plan.

Additionally, filing schedules as an exhibit makes it difficult for the court, the trustee, and any interested parties to locate the schedules as they are not easily identifiable within the docket.

On November 8, 2021, in response to the trustee's opposition, the debtor filed Amended Schedules I and J.

Drafting Error Impacts Feasibility of Plan

The trustee indicates that the terms of the debtor's additional provisions conflict with the monies paid as reflected in the trustee's records. The trustee requests that the debtor include the following language in the order modifying the plan "The Debtor has paid in a total of \$59,800.00 through August 2021, (month 30) \$2,400.00 for the month of September 2021, and shall pay \$2,500.00 beginning October 25, 2021, for the remaining 29 months of the plan."

The court agrees with the trustee. Without the clarifying language the plan cannot be properly administered and is not mathematically feasible.

Unclear and Uncertain Additional Provisions - Class 1 Obligation

The trustee argues that the plan does not adequately or clearly provide for prepetition and post-petition mortgage arrears.

The proposed plan, ECF No. 111, contains the following language in the Additional Provisions, Section 7.03:

"The Trustee shall pay the net amount of each payment (Payment of on-going Mortgage payments of \$1,401.00 (more or less) less Trustee Fees= net amount) until post-petition arrears and prepetition arrears are paid in full."

The trustee argues that this provision is unclear and uncertain. The court agrees, the provision lacks specificity and fails to provide a specific post-petition arrearage amount, interest rate and monthly dividend.

The trustee also states that the plan fails to provide a monthly dividend for pre-petition arrears whereas under the currently confirmed plan the monthly dividend for pre-petition arrears is \$450.00. Without a monthly dividend for prepetition arrears the trustee cannot pay this obligation.

Finally, the trustee indicates that his records do not reflect that any post-petition arrears are owed.

The court finds that the plan fails to adequately provide for the Class 1 mortgage obligation.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

54. [18-26272](#)-A-13 **IN RE: PAULETTE PERFUMO**
[DPC-2](#)

MOTION TO DISMISS CASE
10-19-2021 [\[91\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

The chapter 13 trustee filed this motion to dismiss contending the plan payments were delinquent. No opposition to the motion was filed by the debtor. On November 1, 2021, the trustee filed a status report, ECF No. 95. In the report the trustee indicated that the plan payments were current and that he no longer wished to pursue his motion to dismiss.

The court construes the trustee's statements as a request to withdraw his motion. The minutes will reflect that this matter is withdrawn by the moving party. The court will remove this matter from the calendar. No appearances are necessary.

55. [21-23274](#)-A-13 **IN RE: JASON/SARAH SMITH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
10-25-2021 [\[13\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

The chapter 13 trustee objects to confirmation of the debtors' plan as follows: the plan fails the disposable income test under 11 U.S.C. § 1325(b); the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3); and the amount of attorney fees charged exceeds the maximum allowed under LBR 2016-1(c).

DISPOSABLE INCOME TEST

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

11 U.S.C. § 1325(b)(1).

The debtors completed Official Form 122C-2, ECF No. 1. The form provides that the debtors' monthly net income is \$2,598.64. The

proposed plan calls for monthly payments of \$763.73 for 60 months, and 28% to unsecured creditors. In the plan, ECF No. 4, the total amount of unsecured debt is listed at \$125,467.25.

The trustee contends that if the debtors paid their net disposable income into the plan for 60 months then the unsecured creditors would be paid 100%. The court finds that the plan fails the disposable income test of § 1325(b) (A) and (B) as the plan does not propose to pay all unsecured claims in full, nor does the plan propose to pay the net monthly disposable income of \$2,598.64 to unsecured creditors. The court will sustain this objection.

GOOD FAITH

Duplicate and/or Excessive Expenses

The trustee contends the plan is not proposed in good faith under 11 U.S.C. § 1325(a) (3). The debtors have listed several expenses in Schedule J which appear to be duplicative. For example, "personal care" expenses are listed twice in Schedule J in two separate amounts; food for the household is listed at \$1,500.00 but an additional amount of \$250.00 is listed elsewhere in the schedule for food and lunches; child education expenses and activities are listed in three separate locations and in differing amounts. It is unclear how these amounts were calculated. The trustee also contends that the expenses are excessive.

The court cannot determine from the schedules which expenses, if any, are duplicated. Further information would be required from the debtors. Thus, the debtors have not met their burden of proving the plan is proposed in good faith.

ATTORNEY FEES

LBR 2016-1(c) (1) allows a maximum of \$4,000.00 in attorney fees to be paid to debtor(s) counsel in a non-business case.

The proposed plan, ECF No. 4 states that Debtors' attorney has elected to be paid pursuant to Local Bankruptcy Rule 2016-1(c). The plan also states \$1,800.00 was paid prior to filing this case and \$5,300.00 will be paid through the Plan, for a total of \$7,100.00.

These fees are excessive under the rule. The amounts which have been paid and are to be paid to counsel are also inconsistently stated in the various documents which have been filed in this case including the Rights and Responsibilities, the Disclosure of Compensation, and the Statement of Financial Affairs. As such the trustee cannot determine the amount which counsel is to be paid under the plan.

The court notes that the debtors have filed an amended Rights and Responsibilities and Statement of Financial Affairs which show the attorney fees consistent with the Disclosure of Compensation. Counsel has been paid \$1,800.00 prepetition and is owed a total of \$4,000.00 for his services in this case. However, this does not

resolve the mistaken fees indicated in the plan which requires amendment.

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.

56. [21-22675](#)-A-13 **IN RE: DEDAN KIMANI**
[PLG-2](#)

MOTION TO CONFIRM PLAN
10-8-2021 [\[30\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

The chapter 13 trustee opposes the motion as follows: the debtor has failed to file a motion to value the collateral of Green Truck Financial, LLC; and the debtor has failed to provide proof of income.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Green Truck Financial, LLC's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

FEASIBILITY

The chapter 13 trustee objects to confirmation contending that the debtor has not performed his duties under 11 U.S.C. §521(a)(1)(B)(iv) as the debtor has failed to provide pay advices or other proof of income received from employment. The court notes that the debtor is an independent contractor and therefore may not possess pay advices from an employer. However, in cases where a debtor is self-employed it is imperative that the trustee receive sufficient information regarding the debtor's income and expenses such that the trustee can evaluate the feasibility of the debtor's plan. Copies of checks received from any trucking company where the debtor derives income would be useful as would appropriate profit and loss statements. In this circumstance the court sustains the trustee's objection to confirmation under 11 U.S.C. § 1325(a)(6) as the debtor has not provided the trustee with documents evidencing his income. As such the trustee cannot evaluate the feasibility of the debtor's plan.

CIVIL MINUTE ORDER

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

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

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

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

57. [19-27482](#)-A-13 **IN RE: TONIA BEAIRD**
[DPC-2](#)

MOTION TO DISMISS CASE
10-19-2021 [[60](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$480.00.

CIVIL MINUTE ORDER

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

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

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

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

58. [21-20989](#)-A-13 **IN RE: LISA BAZILE**
[MRL-2](#)

MOTION TO MODIFY PLAN
9-17-2021 [\[27\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, filed September 17, 2021

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of a modified chapter 13 plan filed September 17, 2021. The plan is supported by amended Schedules I and J filed on the same day. The chapter 13 trustee has filed a non-opposition to the motion. No other parties have opposed the motion to modify.

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.

59. [20-24890](#)-A-13 **IN RE: BARBARA PATTERSON**
[KLG-3](#)

MOTION TO CONFIRM PLAN
9-29-2021 [\[61\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

The trustee opposes the motion to confirm the plan as payments are delinquent under the proposed plan. The trustee indicates that the payments are delinquent in the amount of \$21.89.

MAILING MATRIX

It is the movant's burden to show that service was properly accomplished pursuant to LBR 9014-1(e).

This Motion to Confirm ECF No. 61, and Certificate of Service, ECF No. 65 were filed on September 29, 2021. The court notes that the mailing matrix used in connection with the service of this motion and supporting documents, ECF No. 66, was dated June 4, 2021. The mailing matrix is an evolving document with changes made to it on an ongoing basis. A matrix which is dated nearly 4 months prior to the Certificate of Service is not sufficiently current for the court to presume proper notice was given to all interested parties. The date on the mailing matrix should not be more than one week older than that of the certificate of service.

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.

60. [19-22994](#)-A-13 **IN RE: KATHERINE REINECK**
[DPC-1](#)

MOTION TO DISMISS CASE
10-19-2021 [\[50\]](#)

JOSEPH CANNING/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to December 17, 2021, at 9:00 a.m.

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case contending that the plan does not complete in the 60 months required under 11 U.S.C. § 1322(d). The trustee estimates that the plan is overextended and will take 72 months to complete.

The debtor has filed a modified plan and a motion to modify the plan. The matter is set for hearing on December 17, 2021, at 9:00 a.m.

The court will continue this matter to coincide with the debtor's motion to modify plan. 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 17, 2021, at 9:00 a.m.

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

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating 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.

61. [21-23197](#)-A-13 **IN RE: CLAUDE WILKES**
[CDW-2](#)

MOTION TO CONFIRM PLAN
10-7-2021 [\[22\]](#)

CLAUDE WILKES/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

Order: Civil minute order

THE CHAPTER 13 PLAN HAS BEEN SUPERSEDED

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan and supersedes the prior plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any motion to confirm a prior plan. On October 25, 2021, the debtor filed the First Amended Chapter 13 Plan, ECF No. 28.

Because a modified plan has superseded the plan to be confirmed by this motion, the court will deny the motion 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 motion to confirm is denied as moot.

62. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-27-2021 [\[12\]](#)

CHINONYE UGORJI/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The chapter 13 trustee objects to confirmation as follows: the plan is not feasible as payments are delinquent under the proposed chapter 13 plan; the plan is not feasible as it extends to 66 months; and the debtor has failed to provide income tax returns for the trustee's review.

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 \$3,481.00. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

Plan Overextension

The trustee indicates that the IRS filed a proof of claim (Claim No. 4) with a priority amount of \$14,307.85. The debtor's plan only contemplates paying a priority amount to the IRS of \$2,500.00. The higher claim amount means the current plan payment is insufficient to pay the priority claim. Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

The 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.

63. [21-23298](#)-A-13 **IN RE: BARBARA MYERS**
[ELP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
10-28-2021 [\[16\]](#)

CHINONYE UGORJI/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

Creditor, U.S. Bank Trust National Association objects to confirmation of the debtor's plan as follow: the plan impermissibly modifies obligation owed to the creditor under 11 U.S.C. § 1322(b)(2); the plan is not feasible under 11 U.S.C. § 1325(a)(6) as it fails to provide for the total amount due in mortgage arrears, and because debtor does not have the ability to pay the higher amount due as evidenced in Schedules I and J.

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).

1322 (b) (2)

Section 1322(b)(2) allows the plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence...". 11 U.S.C. § 1322(b)(2).

Creditor holds the first deed of trust in debtor's residence. The creditor has filed a proof of claim, Claim No. 7-1. The claim provides for mortgage arrears in the amount of \$83,616.17. The debtor's proposed plan, ECF No. 4, Section 3.07, provides for creditor's mortgage arrears in Class 1 but only in the amount of \$71,250.91.

The creditor has stated in its motion that the ongoing mortgage payment is \$2,184.14. The plan provides the total monthly payment to the objecting creditor (including the ongoing payment and arrears) in the amount of only \$2,025.50. Because the ongoing monthly payment due is greater than the amount provided for in the plan the plan impermissibly modifies the creditor's claim. The court will sustain this objection.

PLAN FEASIBILITY

Creditor argues that the monthly plan payment would need to be increased to \$3,577.00 to fund the ongoing monthly payment of \$2,184.14 and pay the arrearage claim of \$83,616.17. The \$3,577.00 projected by the creditor would only fund payments on its claim and not any of the other payments due creditors under the plan. The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6) and will sustain 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.

U.S. Bank Trust National Association'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.