



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

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

DAY: TUESDAY
DATE: NOVEMBER 19, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [24-23807](#)-A-13 **IN RE: WILLIAM/FRANCES MEROSHNEKOFF**
[DPC-1](#)

MOTION TO DISMISS CASE
10-22-2024 [\[25\]](#)

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: November 5, 2024 - timely

Amended Plan Filed: not filed - untimely

Cause: 11 U.S.C. § 1307(c)(1) - Failure to prosecute plan

Best Interests of Creditors/Estate: Dismiss

Petition Filed: August 27, 2024

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1). The trustee contends that the debtors have failed to file and serve a motion to confirm the Chapter 13 Plan which was filed September 24, 2024, or to file the necessary supporting motions to avoid liens. The trustee contends this delay constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

The debtor has filed a timely opposition which consists of unsworn statements by debtors' counsel. Opposition, ECF No. 29. The opposition offers no explanation for the debtors' failure to file the four motions to avoid lien, a further modified plan, or the motion to confirm the plan which was filed on September 24, 2024. The oppositions states:

Before the hearing on this matter, Debtors will have on file: a) 4 motions to avoid judicial liens, and b) an amended Plan with an accompanying Motion to Confirm.

Opposition, 1:23-24, ECF No. 29.

UNTIMELY OPPOSITION - MOTION TO MODIFY; MOTIONS TO AVOID LIEN

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

More importantly, as indicated previously, the debtors' opposition indicates that the debtors will file and serve: (1) a further amended plan; (2) a motion to confirm the plan; and (3) 4 motions to avoid lien which are required to confirm the plan. None of these documents were filed by November 5, 2024, as required. No

explanation was given regarding the debtors' failure to timely respond to the motion by filing the amended plan and required motions. Neither did counsel present any showing of cause or any request for additional time to file the necessary pleadings.

The opposition does not resolve the motion to dismiss as the debtors have failed to take the required action to resolve the trustee's motion. A statement indicating that the debtor(s) will take future action to resolve the motion is not a resolution of the motion to dismiss.

The court is aware that the motion to dismiss was filed October 22, 2024, giving the debtor only 28 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7-days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

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

TRUSTEE STATUS REPORT

On November 12, 2024, the trustee filed a status report, ECF No. 32. The trustee now reports that plan payments are delinquent in the amount of \$929.08. The delinquency is caused by the increase in the Class 1 mortgage payment to claimant Truist Bank, Claim No. 1.

The trustee also reiterates his contention that the case should be dismissed for unreasonable delay because the debtor has yet failed to file a motion to confirm plan or the required motions to avoid lien. The court notes that as of November 15, 2024, no modified plan, motion to confirm the existing plan, or motions to avoid lien have been filed.

The court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

2. [24-24212](#)-A-13 **IN RE: RANDY YASSINE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-28-2024 [\[14\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Tentative Ruling

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

3. [24-21615](#)-A-13 **IN RE: MILTON PEREZ**
[DPC-1](#)

MOTION TO DISMISS CASE
10-22-2024 [\[46\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: November 5, 2024 - timely

Motion to Modify Plan Filed: November 5, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is December 17, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to December 17, 2024, at 9:00 a.m.

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

4. [24-22416](#)-A-13 **IN RE: REYNALDO TABOT**
[DPC-1](#)

MOTION TO DISMISS CASE
10-22-2024 [\[23\]](#)

ERIC GRAVEL/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: November 2, 2024 - timely

Motion to Modify Plan Filed: November 2, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and as the debtor has failed to file a motion to confirm the modified plan which was previously filed.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is December 17, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to December 17, 2024, at 9:00 a.m.

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

5. [24-24120](#)-A-13 **IN RE: KRISTINA FLUETSCH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-29-2024 [\[29\]](#)

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: Continued to January 22, 2025, at 9:00 a.m.

Order: Civil minute order

SERVICE

The debtor represents herself in this case, appearing in propria persona.

A certificate of service was not filed as required in this case. Fed. R. Bankr. P. 2002(b); LBR 7005-1; 9014-1(e). Accordingly, the court is unable to determine if the debtor was served with the objection.

NOTICE OF ERRATA

On October 29, 2024, the Chapter 13 trustee filed a Notice of Errata as follows:

DAVID P. CUSICK, notes the Trustee efiled a rough draft of the objection to confirmation today in this case as well as the final version that was actually served. Once docketed the Trustee will identify the versions.

Notice of Errata, 1:20-22, ECF No. 32.

Accordingly, the court reviewed the docket in this case. The court did not find that duplicate objections were filed as indicated in the notice of errata. Moreover, there has been no further pleading filed by the trustee, as indicated in the notice. Finally, as the court has previously indicated in this ruling, a certificate of service evidencing service of the objection on the debtor was not filed.

CONFIRMATION

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

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

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

Hearing Continued for Proper Notice and Service

The court will continue the hearing on this objection to allow the Chapter 13 trustee to: (1) file an amended notice of hearing; (2) serve the debtor with the amended notice and the objection to confirmation; and (3) file a certificate of service properly documenting service of the amended notice and objection on the debtor.

The debtor will also be given an opportunity to file and serve opposition to the objection.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 22, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 26, 2024, the Chapter 13 trustee shall: (1) file an amended notice of hearing; (2) serve the debtor with the amended notice and the objection to confirmation; and (3) file a certificate of service properly documenting service of the amended notice and objection.

IT IS FURTHER ORDERED that no later than December 23, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than January 7, 2025; or

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

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

6. [24-21622](#)-A-13 **IN RE: RACHEL KNAPP**
[TLA-1](#)

MOTION TO MODIFY PLAN
10-7-2024 [\[22\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed October 7, 2024

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on October 7, 2024, ECF No. 28. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 36.

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.

7. [24-22923](#)-A-13 **IN RE: ERROL QUOCK AND IRENE WONG**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-14-2024 [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from October 22, 2024

Disposition: Overruled

Order: Civil minute order

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

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. Debtors' counsel was unable to attend the meeting of creditors on August 8, 2024. The debtors failed to attend the scheduled continued meeting on October 17, 2024. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection.

Trustee Request to Dismiss Objection

The trustee reports that the debtors attended the meeting of creditors on November 7, 2024. The trustee has concluded the meeting, and no longer opposes confirmation of the plan. Given the debtors' prior appearance in this matter and written opposition to the objection the court will simply overrule 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 overruled.

8. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**
[FEC-1](#)

MOTION TO EXTEND EVIDENTIARY RECORD
10-25-2024 [\[84\]](#)

SUHMER FRYER/ATTY. FOR MV.

No Ruling

9. [24-21835](#)-A-13 **IN RE: MARISOL/PHILLIP CHAVEZ**
[SLH-1](#)

MOTION TO CONFIRM PLAN
9-30-2024 [\[35\]](#)

SETH HANSON/ATTY. FOR DBT.

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).

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 \$3,750.00. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

The 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.

10. [21-23937](#)-A-13 **IN RE: DMITRIY SHCHEBENKO**
[DPC-1](#)

MOTION TO DISMISS CASE
10-10-2024 [\[26\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: October 11, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$ 1,811.00, with one payment(s) of \$262.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 30, 31. The debtor's declaration states that the debtor has paid the trustee \$2,073.00. See Declaration, ECF No. 31.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On November 8, 2024, counsel for the Chapter 13 trustee filed a notice of withdrawal of the motion to dismiss. Notice of Withdrawal, ECF No. 33. *Counsel is reminded that a party may not unilaterally withdraw a motion after the opposing party has appeared in a matter.* Fed. R. Civ. P. 41.

However, and only in this case, the court will construe the “Notice of Withdrawal” as the trustee’s request to withdraw the motion. *Id.* Going forward the trustee should make the appropriate motion to withdraw.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

11. [24-21038](#)-A-13 **IN RE: PERFECTO GUADIANA**
[MOH-3](#)

MOTION TO CONFIRM PLAN
9-13-2024 [\[49\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$180.00. The plan cannot be confirmed if the plan payments are not current.

Mortgage Payment

The trustee contends the plan is not feasible as it does not pay sufficient funds into the plan each month to pay the adequate protection payment due to Class 1 creditor PHH Mortgage Corporation, Claim No. 2. 11 U.S.C. §§ 1322(b)(2), 1325(a)(6).

Attachments to Claim No. 2 list the ongoing monthly mortgage payment as \$1,351.78. Conversely, the proposed plan provides for a monthly ongoing mortgage payment of \$699.09. The proposed plan payment is \$1,250.00 per month which is less than the ongoing monthly mortgage payment as it appears in the claim.

Accordingly, the proposed plan is inadequately funded as the payment is insufficient to pay the following monthly dividends: (1) ongoing mortgage payment of \$1,351.77; (2) arrearage dividend of \$351.07; (3) attorney compensation of \$116.00; and (4) trustee administration fee of. The trustee estimates the plan payment will need to increase to \$1,975.00 per month to pay a 100% dividend to unsecured creditors as required by the terms of the proposed plan.

The court finds the proposed plan is not feasible and will deny the motion and need not consider the remaining issues raised in the trustee's opposition.

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.

12. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
9-20-2024 [\[53\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

13. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**
[PGM-3](#)

MOTION TO MODIFY PLAN
10-7-2024 [\[59\]](#)

PETER MACALUSO/ATTY. FOR DBT.

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 trustee opposes the motion to modify because the modified plan: (1) significantly increases the debtor’s monthly housing expense; (2) reduces the amount and percentage paid to unsecured creditors; (3) continues *voluntary* contributions to the non-filing spouse’s retirement, using community property funds; and (4) fails to account for additional monthly income. Trustee Opposition to Modified Plan, ECF No. 82.

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).

Unreported Income

The debtor has failed to report income received on behalf of two foster children which are part of his household. See Schedule I, J, ECF No. 63.

The debtor has failed to prove that all sources of income are listed in his schedules. Accordingly, the court is unable to determine the feasibility of the plan or to determine if the plan is proposed in good faith. The debtor has an obligation to list all sources of income. 11 U.S.C. §§ 1325(a)(3), (6).

Increase in Housing Expense Not Reasonable or Necessary

The debtor filed a motion to incur debt concurrently with this motion, (PGM-4).

In his bankruptcy schedules the debtor asserted ownership of real property located at 2816 Poppintree Lane, Lincoln, California (real property). Schedule A/B asserts that the real property was owned solely by the debtor. Schedule A/B, ECF No. 1. However, Schedule A/B also states that there is a joint tenant. It is unclear whether the debtor is the sole owner of the real property or if the property is community property. However, whatever the debtor's interest in the real property, it is an asset of the bankruptcy estate. 11 U.S.C. §§ 541(a)(1), (2).

The debtor claimed an exemption in the real property under C.C.P. § 704.730 in the amount of \$600,000. Amended Schedule C, ECF No. 39.

The debtor filed a motion for an order approving the sale of the real property, PGM-2. On October 15, 2024, the court issued an order authorizing the sale of the debtor's real property located at 2816 Poppintree Lane, Lincoln, California. Order, ECF No. 71. As a result of the sale the trustee is holding funds pending reinvestment of the sale proceeds. The debtor contends the trustee is holding approximately \$85,800.00 in sale proceeds. Motion, 2:15, ECF No.

77. The Chapter 13 trustee has not indicated the amount of the funds he is holding.

By a motion to incur debt the debtor seeks the court's approval of the following transaction: (1) reinvestment of the sale proceeds in real property located at 105 Barley Court, Lincoln, California; and (2) approval of the financing of the newly purchased Barley Court property by the debtor's non-filing spouse, Janelle Leigh Howard in the amount of \$776,963.00 with a monthly payment (including impound amounts) of \$5,647.00. The motion to incur debt and the supporting declaration of the debtor state that the financing for the loan will be solely in the name of Janelle Leigh Howard.

Neither the motion to incur debt, the declaration in support of the motion, nor the exhibits in support of the motion indicate how title to the Barley Court property will be held.

C.C.P. § 704.720 provides:

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. *The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.*

Cal. Civ. Proc. Code § 704.720(b) (emphasis added).

Accordingly, while the proceeds of the sale of the Poppintree Lane property are exempt, they must be reinvested within 6 months after the proceeds are received by the debtor to maintain their exempt status.

The debtor has failed to prove that he will receive any interest in the Barley Court property. As such, the use of the sale proceeds of the Poppintree Lane property to purchase the Barley Court property is a transfer of the asset to the debtor's non filing spouse.

Additionally, as the trustee contends, the debtor's monthly housing payment will increase from \$3,428.49 (See Claim No. 10, p. 4) to \$5,647.00. See Supplemental Schedules I and J, ECF No. 63. The monthly increase in the housing payment is \$2,218.50.

The currently confirmed plan provides for an arrearage dividend of \$1,270.00 per month. Chapter 13 Plan, ECF No. 3. Adding this amount to the payment provided in Claim No. 10 equals \$4,698.49. The new payment proposed in this motion is still nearly \$1,000.00 more each month. The debtor has failed to provide admissible evidence in

either the instant motion or the motion to incur debt regarding how such a significant housing increase is reasonable, necessary, or in the best interests of the bankruptcy estate. Moreover, the debtor has failed to explain how the plan is feasible with such an increased expense.

Additionally, without timely reinvestment of the sale proceeds from the Poppintree Lane property the proceeds will no longer be exempt, and the plan will fail the liquidation test. 11 U.S.C. § 1325(a)(4).

Accordingly, the court will deny the motion and need not address the remaining issues in the trustee's opposition. 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.

14. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**
[PGM-4](#)

MOTION TO INCUR DEBT
10-29-2024 [\[77\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Approve New Debt

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

Disposition: Denied

Order: Civil minute order

The debtor seeks to incur new debt to finance the purchase of a new home. For the following reasons the court will deny the motion.

BACKGROUND

Estate Property

The debtor filed the petition on January 29, 2024. The debtor's spouse Janelle Leigh Howard did not join in filing the petition.

In his bankruptcy schedules the debtor asserted ownership of real property located at 2816 Poppintree Lane, Lincoln, California (real property). Schedule A/B asserts that the real property was owned solely by the debtor. Schedule A/B, ECF No. 1. However, Schedule A/B also states that there is a joint tenant. It is unclear whether the debtor is the sole owner of the real property, if the property is community property, or if there is some other form of ownership. However, whatever the debtor's interest in the real property, it is an asset of the bankruptcy estate. 11 U.S.C. §§ 541(a)(1), (2).

The debtor claimed an exemption in the real property under C.C.P. § 704.730 in the amount of \$600,000. Amended Schedule C, ECF No. 39.

The debtor filed a motion for an order approving the sale of the real property, PGM-2. On October 15, 2024, the court issued an order authorizing the sale of the debtor's real property located at 2816 Poppintree Lane, Lincoln, California. Order, ECF No. 71. As a result of the sale the trustee is holding funds pending reinvestment of the sale proceeds. The debtor contends the trustee is holding approximately \$85,800.00 in sale proceeds. Motion, 2:15, ECF No. 77. The Chapter 13 trustee has not indicated the amount of the funds he is holding.

Motion to Incur Debt

By the instant motion the debtor seeks the court's approval of the following transaction: (1) reinvestment of the sale proceeds in real property located at 105 Barley Court, Lincoln, California; and (2) approval of the financing of the newly purchased Barley Court property by the debtor's non-filing spouse, Janelle Leigh Howard in the amount of \$776,963.00 with a monthly payment (including impound

amounts) of \$5,647.00. The motion and the supporting declaration of the debtor state that the financing for the loan will be solely in the name of Janelle Leigh Howard.

Neither the motion, the declaration in support of the motion, nor the exhibits in support of the motion indicate how title to the Barley Court property will be held. Accordingly, the court presumes, given the proposed financing, that title will be held solely in the name of the debtor's non-filing spouse.

Exempt Proceeds Must Be Timely Reinvested

C.C.P. § 704.720 provides:

(b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. *The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.*

Cal. Civ. Proc. Code § 704.720(b) (emphasis added).

Accordingly, while the proceeds of the sale of the Poppintree Lane property are currently exempt, they must be reinvested within 6 months after the proceeds are received by the debtor to maintain their exempt status.

The debtor has failed to prove that he will receive any interest in the newly purchased Barley Court property. As such, the use of the sale proceeds of the Poppintree Lane property to purchase the Barley Court property appears to be a transfer of the asset to the debtor's non filing spouse. The debtor has provided no admissible evidence that the debtor will retain an interest in the newly purchased property should the court grant the motion.

The court will deny the motion.

NEW DEBT IS NOT IN THE BEST INTERESTS OF CREDITORS OR THE BANKRUPTCY ESTATE

The Chapter 13 trustee has also opposed the proposed modification of the debtor's plan (PGM-3) which is being heard concurrently with this motion.

The trustee opposes the motion to modify because the modified plan:

- (1) significantly increases the debtor's monthly housing expense;
- (2) reduces the amount and percentage paid to unsecured creditors;

(3) continues *voluntary* contributions to the non-filing spouse's retirement, using community property funds; and (4) fails to account for additional monthly income. Trustee Opposition to Modified Plan, ECF No. 82.

The debtor's monthly housing payment will increase from \$3,428.49 (See Claim No. 10, page 4) to \$5,647.00. See Supplemental Schedules I and J, ECF No. 63. The monthly increase in the housing payment is \$2,218.50.

The currently confirmed plan provides for an arrearage dividend of \$1,270.00 per month. Chapter 13 Plan, ECF No. 3. Adding this amount to the payment provided in Claim No. 10 equals \$4,698.49. The new payment proposed in this motion is still nearly \$1,000.00 more each month. The debtor has failed to provide admissible evidence in either the instant motion or the motion to modify how such a significant housing increase is reasonable, necessary, or in the best interests of the bankruptcy estate.

The court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's motion to incur debt has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

15. [24-23546](#)-A-13 **IN RE: MICHAEL MCGEE**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-17-2024 [\[19\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Prepared by moving 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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 Chapter 13 trustee objects to the debtor's claim of exemptions in the following assets:

2014 Mazda 3 Sport Sedan for \$5,000.00, (#3.1); 2019 Ford Fusion for \$1,836.54, (#3.3); Cash for \$20.00, (#16.1); Checking: SAFE Credit Union (acct #9781) for \$500.00, (#17.1); Share Account/Savings: SAFE Credit Union (acct #9773) for \$10.00, (#17.2); Share Account/Savings: Golden 1 Credit Union (acct #5927-00) for \$10, (#17.3); and, Checking: Golden 1 Credit Union (acct #5927-09) for \$10.00.

Objection, 1:24-28, ECF No. 19.

The debtor has claimed the assets exempt under C.C.P. § 704.130.

(a) Before payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt.

(b) Subdivision (a) does not apply to benefits that are paid or payable to cover the cost of health care if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable.

. . .

Cal. Civ. Proc. Code § 704.130.

The trustee contends that the exemption claimed is not applicable to the assets indicated. The debtor has failed to file opposition to the objection. The court concludes that Cal. Civ. Proc. Code § 704.130 is not applicable to the assets claimed exempt thereunder. Accordingly, the court will sustain the objection and disallow the claim of exemptions in the assets listed in the objection.

The Chapter 13 trustee shall prepare an order consistent with this ruling.

16. [24-23447](#)-A-13 **IN RE: STEPHANIE CHITWOOD**
[EML-1](#)

MOTION TO VALUE COLLATERAL OF M & T BANK
10-14-2024 [\[30\]](#)

EVAN LIVINGSTONE/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order valuing collateral of M&T Bank. The motion will be denied without prejudice for the following reasons.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

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

LBR 1001-1(g) (emphasis added).

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be overruled without prejudice. Certificate of Service, ECF No. 34, 35.

CIVIL MINUTE ORDER

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

The debtor's motion to value 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.

17. [23-23949](#)-A-13 **IN RE: TANGELA BABBITT**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
9-18-2024 [\[96\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from October 22, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from October 22, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (MS-3) has been granted.

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 has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

18. [23-23949](#)-A-13 **IN RE: TANGELA BABBITT**
[MS-3](#)

MOTION TO MODIFY PLAN
10-15-2024 [\[106\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Second Modified Chapter 13 Plan, filed October 15, 2024

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on October 15, 2024, ECF No. 112. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 116.

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.

19. [23-22451](#)-A-13 **IN RE: MANUEL NIPPS**
[DPC-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
10-10-2024 [[62](#)]

CARL GUSTAFSON/ATTY. FOR DBT.
DEBTOR DISMISSED: 10/24/24

Final Ruling

This case was dismissed on October 24, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

20. [24-24252](#)-A-13 **IN RE: GUY ARCHBOLD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-29-2024 [[25](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

21. [24-21153](#)-A-13 **IN RE: PATRICIA MELMS**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
9-3-2024 [\[56\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from October 8, 2024

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Plan delinquency; failure to file modified plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$6,112.40, with one payment(s) of \$2,733.20 due prior to the hearing on this motion.

The trustee also seeks dismissal because the debtor has failed to file a modified plan after the court denied confirmation of the debtor's previously proposed plan.

The debtor previously requested a continuance of this hearing so that the debtor could file a modified plan. Opposition, ECF No. 62. The court ordered the debtor to file a modified plan and a motion to confirm the modified plan no later than October 22, 2024. Order, ECF No. 66. The debtor failed to file any documents as ordered.

On November 5, 2024, the Chapter 13 trustee filed a status report. The trustee informs the court the plan payment remains delinquent, and that debtor has failed to file an amended plan.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

22. [24-22953](#)-A-13 **IN RE: JESSICA KENYON**
[DPC-1](#)

MOTION TO DISMISS CASE
10-10-2024 [\[37\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: November 5, 2024 - timely

Modified Plan Filed: unfiled - untimely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$2,051.68, with one payment(s) of \$1,975.84 due prior to the hearing on this motion.

The debtor has filed a timely opposition which consists solely of unsworn statements made by debtor's counsel. Opposition, ECF No. 41. The opposition states:

The Debtor acknowledges a default in payments. Debtor's home had water damage that required immediate repairs to be dealt with by Debtor which caused a financial hardship. Debtor intends to file a plan modification and just needs to sign the documents so that can be filed and set for hearing.

Id., 1:20-24.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating the extent of the damage to the debtor's home, the amount of money spent addressing the problem, or why the debtor has not already signed the required documents to modify the 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.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

As indicated previously in this ruling the debtor filed an opposition to the motion to dismiss, ECF No. 41. The opposition consists of an unsworn statement by the debtor(s)' attorney stating his intention to file a modified plan before the hearing on this

motion. A modified plan was not filed. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

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

The court is aware that the motion to dismiss was filed October 10, 2024, giving the debtor 40 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7-days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, Fed. R. Bankr. P. 9006(b), LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). *No such orders were sought here.*

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

23. [24-20056](#)-A-13 **IN RE: TYLOR/TAMMY VEST**
[DPC-2](#)

MOTION TO DISMISS CASE
10-23-2024 [\[46\]](#)
CATHERINE KING/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file modified plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$145.00 with one payment(s) of \$983.00 due prior to the hearing on this motion.

The trustee also seeks dismissal because the debtor has failed to file a modified plan after the court denied confirmation of the previously filed plan on August 13, 2024.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, and because the debtor has failed to file a modified plan. The court hereby dismisses this case.

24. [24-24257](#)-A-13 **IN RE: JAIME ARMENDARIZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-29-2024 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

25. [24-24159](#)-A-13 **IN RE: HARRY/CAROL CHAFFEE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-29-2024 [\[19\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to January 7, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 7, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 3, 2024, the debtor(s) shall do one of the following:

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

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

then the trustee shall file and serve a reply, if any, no later than December 17, 2024. The evidentiary record will close after December 17, 2024; or

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

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

26. [23-23664](#)-A-13 **IN RE: JEFFREY/LAURIE SWENSON**
[FF-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRALEY &
FRALEY, PC FOR GARY RAY FRALEY, DEBTORS ATTORNEY(S)
10-25-2024 [\[107\]](#)

GARY FRALEY/ATTY. FOR DBT.
DEBTORS DISMISSED: 02/28/24

Final Ruling

The hearing on this motion will be continued to allow the Chapter 13 trustee to file a response.

IT IS ORDERED that the hearing is continued to December 17, 2024, at 9:00 a.m. No later than December 3, 2024, the Chapter 13 trustee shall file and serve a response to the motion.

27. [23-24270](#)-A-13 **IN RE: DAVID SIMMONS**
[DPC-3](#)

MOTION TO DISMISS CASE
10-22-2024 [\[107\]](#)

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

Opposition Due: November 5, 2024

Opposition Filed: November 8, 2024 - untimely

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file modified plan

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor has failed to file a modified plan after the court denied confirmation of the previously proposed plan on August 29, 2024. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to propose a modified plan.

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

On November 8, 2024, the debtor(s) filed an opposition to the motion to dismiss, ECF No. 112. The opposition consists of an unsworn statement by the debtor(s)' attorney stating he has filed a motion to modify.

The debtor's opposition states, "We ask that you accept the late response." Opposition, 2:2-3, ECF No. 112. This is not a sufficient request to extend the time to file opposition. First, the request must be made prior to the date opposition is due. Second, the debtor has provided no showing of cause as required. Fed. R. Bankr. P. 9006(b), LBR 9014-1(j).

The opposition does not state why it was not filed timely. Neither does the opposition explain why the modified plan and motion to modify were not filed timely.

The court notes that the debtor filed a Modified Chapter 13 plan, ECF No. 118, and a motion to confirm the modified plan, ECF No. 114, on November 8, 2024. The modified plan is set for hearing on December 17, 2024; it is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is

due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed October 22, 2024, giving the debtor only 28 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses.

First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

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

The court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because the debtor has failed to file a modified plan. The court hereby dismisses this case.

28. [23-24571](#)-A-13 **IN RE: SANDRA OWENS**
[BLG-1](#)

MOTION TO MODIFY PLAN
9-30-2024 [\[20\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed September 30, 2024

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan payment is unchanged as the modification is proposed to account for additional claims filed in this case. Accordingly, amended budget schedules were not required in this instance. Moreover, the debtor remains on a fixed income. See Declaration of Sandra Owens, ECF No. 22. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 27.

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.

29. [24-21673](#)-A-13 **IN RE: AARON MCCONVILLE**
[AM-3](#)

MOTION TO VALUE COLLATERAL OF JEFFERSON CAPITAL SYSTEMS LLC
10-2-2024 [\[73\]](#)

AARON MCCONVILLE/ATTY. FOR MV.

Final Ruling

Motion: Value Collateral

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order valuing the collateral of Jefferson Capital System, Claim No. 15. For the following reasons the motion will be denied without prejudice.

SERVICE ON CLAIMANT IS REQUIRED

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

The certificate of service does not include an attachment which lists the names and addresses of any parties which were served with the motion. Certificate of Service, ECF No. 74. Accordingly, the

court cannot determine if service was sufficient under Fed. R. Bankr. P. 7004.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is denied without prejudice.

30. [24-21673](#)-A-13 **IN RE: AARON MCCONVILLE**
[DPC-2](#)

MOTION TO DISMISS CASE
10-22-2024 [\[75\]](#)

DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file modified plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$265.00 with one payment(s) of \$315.00 due prior to the hearing on this motion. Additionally, the trustee moves to dismiss the case as the debtor has failed to file a modified plan after the court denied confirmation of the previously proposed plan on September 10, 2024. A modified plan has not been filed.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan; and the debtor's failure to file a modified plan in this case. The court hereby dismisses this case.

31. [24-22577](#)-A-13 **IN RE: MARTHA ESCH SAND**
[GEL-1](#)

MOTION TO CONFIRM PLAN
10-8-2024 [\[28\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Failure To Provide Financial/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 debtor's income is derived in part from the operation of a business and rental income from real property. Schedule I, Attachment A, ECF No. 1.

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code or with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor(s) failed to produce the following documents: (1) copy of the most recently filed tax returns; (2) 6 months of profit and loss statements; (3) 6 months of bank statements; and (4) proof of business license and insurance or written statements that no such documentation exists.

Additionally, while the trustee received a completed business questionnaire for each of the two Air B&B properties as well as the Lockeport Grill & Fountain business, the trustee has not received: (1) 2023 tax return; (2) completed business questionnaire for the Yatch Lettering business; and (3) copies of all licenses and proof of insurance for each of the debtor's businesses.

The failure to provide the requested 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 debtor is the moving party. Accordingly, this information was due at the outset of the motion, and not in response to the trustee's opposition to the motion. The requested income information is part of the debtor's prima facie case for confirmation, and the debtor has failed to prove the plan is feasible as required under 11 U.S.C. § 1325(a)(6).

Debtor Reply

On November 12, 2024, the debtor filed a reply to the trustee's opposition, ECF No. 41. The reply consists of an unsworn statement by debtor's counsel. The debtor states that the documents requested were forwarded to the trustee on November 12, 2024. The debtor has proffered no explanation regarding the delay in sending the documents to the trustee. Moreover, the trustee has not had an opportunity to review the documents prior to filing his opposition to the motion.

As the court has previously stated in this ruling the information provided to the trustee is part of the debtor's prima facie case for confirmation. It was due when requested by the trustee June 27, 2024, or when the debtor filed this motion. Trustee Opposition, 2:8-10, ECF No. 38.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

32. [24-20381](#)-A-13 **IN RE: JEFFREY JORISSEN AND ELLEN CLARK**
[DPC-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
10-10-2024 [\[29\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss or Convert Case

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

Disposition: Granted, case converted to Chapter 7

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Convert to Chapter 7

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 or convert this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to convert the case. Payments under the confirmed plan

are delinquent in the amount of \$11,833.12 with one payment(s) of \$10,789.04 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

The court finds that conversion is in the best interests of the creditors and the estate. The Chapter 13 trustee reports that there is approximately \$31,849.99 in non-exempt equity in the assets listed on Schedules A & B. It appears that most of the non-exempt equity is from three vehicles in the schedules.

This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby converts this case to Chapter 7.

33. [23-24382](#)-A-13 **IN RE: VICTOR/ELMY HOPPER**
[DPC-2](#)

MOTION TO DISMISS CASE
10-16-2024 [\[52\]](#)

CATHERINE KING/ATTY. FOR DBT.

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

Final Ruling

This case was dismissed on November 18, 2024. Accordingly, the motion to dismiss will be denied as moot. No appearances are necessary.

34. [24-23482](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CHANGE LENDING, LLC
10-30-2024 [\[50\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

Change Lending, LLC, objects to confirmation of the debtor's plan. The creditor incorrectly files its opposition to the proposed plan as an objection to confirmation. The petition was filed on August 8, 2024. As such, the debtor was required to file a Chapter 13 Plan not later than August 21, 2024. The debtor did not file a plan until September 4, 2024. Accordingly, the debtor was required to file a motion to confirm the plan. LBR 3015-1(c)(3), (d)(1).

The debtor filed a motion to confirm the Chapter 13 Plan (TBG-3), which is set for hearing concurrently with this objection. The certificate of service in support of the motion to confirm shows that the objecting creditor was served at multiple addresses with the motion to confirm. Certificate of Service, ECF No. 44. Accordingly, opposition to the motion to confirm is required to be filed under the docket control number assigned to the motion and not as a separate objection to confirmation of the plan. LBR 3015-1(c)(3), (d)(1), 9014-1(f)(1).

In this case the court has denied the motion to confirm the proposed plan, (TBG-3). Accordingly, this objection to confirmation is overruled as moot.

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.

Change Lending, 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 overruled as moot.

35. [24-23482](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[TBG-3](#)

MOTION TO CONFIRM PLAN
10-15-2024 [\[40\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$17,866.72. The plan cannot be confirmed if the plan payments are not current. The court notes that the opposition filed by the creditors Remus also relates to the lack of feasibility of the proposed plan.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee attributes the overextension to the claim of Loancare, LLC, which filed a claim alleging mortgage arrears nearly \$13,000 higher than provided for in the proposed plan. Claim No. 7. The claim provides pre-petition mortgage arrears in the amount of \$147,588.57. Conversely, the proposed plan provides for arrears to the creditor in the amount of \$133,694.55. Chapter 13 Plan, § 3.07(c), Class 1, ECF No. 27.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1).

The court will deny confirmation of the plan.

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308." 11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy

law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

If the debtor has not filed a 2020 and 2021 tax return, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308. The IRS has filed an estimated claim for tax years 2020 and 2021 indicating it has not received returns for those tax years. Claim No. 9.

CIVIL MINUTE ORDER

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

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

The 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.

36. [24-23482](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[TBG-4](#)

MOTION TO AVOID LIEN OF BENFANG HU
10-22-2024 [\[45\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject: 327 Steven Circle, Benicia, California

Judicial Lien Avoided: \$10,445.00 - Benfang Hu

All Other Liens:

- Deed of Trust - LoanCare, LLC - \$1,048,234.28

Exemption: \$1.00

Value of Property: \$1,016,700.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). 522(f).

LIEN AVOIDANCE

The debtor seeks an order avoiding the judicial lien of Benfang Hu under 11 U.S.C. §

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.

37. [24-20883](#)-A-13 **IN RE: DARON/CHANTEL YOUNG**
[DPC-1](#)

MOTION TO DISMISS CASE
10-16-2024 [\[81\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file modified plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$480.00 with one payment(s) of \$480.00 due prior to the hearing on this motion.

The trustee also seeks dismissal as the debtors have failed to file a modified plan after the court denied confirmation of the previously proposed plan on July 30, 2024.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under

chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan and the debtors' failure to file a modified plan in this case. The court hereby dismisses this case.

38. [22-20491](#)-A-13 **IN RE: MICHELLE PAILLET**
[DPC-2](#)

MOTION TO DISMISS CASE
10-10-2024 [\[114\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on November 5, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

39. [23-20791](#)-A-13 **IN RE: SHEILA ALLEN**
[DPC-1](#)

MOTION TO DISMISS CASE
10-10-2024 [[19](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: November 5, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$342.00 with one payment(s) of \$171.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

40. [24-23393](#)-A-13 **IN RE: MERIDO HUEZO CAMPOS AND CAROLINA HUEZO**
[CRG-1](#)

MOTION TO CONFIRM PLAN
9-27-2024 [[20](#)]

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed September 27, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 24. The Chapter 13 trustee has filed a non-opposition to the motion, 29.

CHAPTER 13 PLAN CONFIRMATION

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

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

41. [24-23393](#)-A-13 **IN RE: MERIDO HUEZO CAMPOS AND CAROLINA HUEZO**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-11-2024 [\[16\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

42. [24-23495](#)-A-13 **IN RE: ANDY DANG**
[NLG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
9-18-2024 [\[18\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on Lakeview Loan Servicing, LLC's objection to
confirmation was continued to allow the debtor to file opposition to
the motion.

On October 22, 2024, the debtor filed opposition to the objection.
The opposition is supported by the declaration of the debtor, ECF
No. 25.

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).

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

The secured creditor objects to confirmation, contending that as
residential home mortgage payments were delinquent on the date of
the petition that classification of that claim in Class 4 (direct
payment) is improper.

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

In most instances, the validity and amount of a secured debt is
determined by state, not federal, law. 11 U.S.C. § 502(b)(1),

§1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$8,077.25. Compare Claim No. 9 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

In re Giesbrecht, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue

confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the Arrearage dividend shall pay the arrears in full.

...

(b) Maintaining payments. Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,], or the plan is confirmed.

Id. at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir.

1998), aff'd, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

The debtor's opposition contends that the payments were current on the date the petition was filed. Yet the debtor has offered no documentary proof of payments, and the declaration does not state when payments were made to the objecting creditor or the amount of any payments. Moreover, the debtor has not filed an objection to the claim of the objecting creditor.

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

CIVIL MINUTE ORDER

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

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

Lakeview Loan Servicing, 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.

43. [24-24120](#)-A-13 **IN RE: KRISTINA FLUETSCH**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GUILD MORTGAGE COMPANY
LLC
10-30-2024 [\[34\]](#)

JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to January 22, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, Guild Mortgage, objects to confirmation of the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 22, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 23, 2024, the debtor(s) shall do one of the following:

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

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

If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 7, 2025. The evidentiary record will close after January 7, 2025; or

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

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

44. [24-24120](#)-A-13 **IN RE: KRISTINA FLUETSCH**
[JLS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL GORENBERG, ET AL.
10-31-2024 [\[38\]](#)

JOSHUA SCHEER/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to January 22, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, Michael Gorenberg, et. al., objects to confirmation of the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 22, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 23, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 7, 2025. The evidentiary record will close after January 7, 2025; or

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

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

45. [24-24186](#)-A-13 **IN RE: ROSE LIZOLA**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RANLIFE HOME LOANS
10-31-2024 [\[15\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to January 7, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, RanLife Home Loans, objects to confirmation of the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 7, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 3, 2024, the debtor(s) shall do one of the following:

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

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

If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than December 17, 2024. The evidentiary record will close after December 17, 2024; or

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

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

46. [24-22019](#)-A-13 **IN RE: KIMBERLY NICHOLAS AND SANFORD**
NICKERSON
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-31-2024 [\[52\]](#)

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

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to January 7, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 7, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 3, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than December 17, 2024. The evidentiary record will close after December 17, 2024; or

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

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

47. [24-24156](#)-A-13 **IN RE: MICHELLE SUMMERS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
11-4-2024 [\[19\]](#)

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to January 7, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 7, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 3, 2024, the debtor(s) shall do one of the following:

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

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

December 17, 2024. The evidentiary record will close after December 17, 2024; or

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

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

48. [24-24078](#)-A-13 **IN RE: ANGELA TINSELY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-4-2024 [\[35\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to January 7, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 7, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 3, 2024, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than December 17, 2024. The evidentiary record will close after December 17, 2024; or

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

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

49. [24-24186](#)-A-13 **IN RE: ROSE LIZOLA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-4-2024 [\[19\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to January 7, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to January 7, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than December 3, 2024, the debtor(s) shall do one of the following:

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

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

then the trustee shall file and serve a reply, if any, no later than December 17, 2024. The evidentiary record will close after December 17, 2024; or

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

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

50. [24-24120](#)-A-13 **IN RE: KRISTINA FLUETSCH**
[DPC-2](#)

MOTION TO DISMISS CASE
11-4-2024 [\[43\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 22, 2025, at 9:00 a.m.

Order: Civil minute order

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

DISMISSAL

The chapter 13 trustee moves to dismiss this case on multiple bases including: (1) the debtor is not eligible to be a debtor under 11 U.S.C. § 109(e); (2) the debtor's failure to provide Social Security and/or identification information; (3) the debtor has not filed the Chapter 13 Plan using the proper form plan; (4) plan delinquency; (5) the debtor's failure to file tax returns for the past 4 years as required; (5) the debtor's failure to provide business documents; and (6) the debtor's failure to file complete and/or accurate bankruptcy schedules.

The trustee asserts that cause exists under § 1307(c)(1) as the bases for dismissal constitute unreasonable delay which is prejudicial to creditors.

The court will continue the hearing on this motion to allow the debtor to file written opposition to the motion. The trustee may also reply to the opposition. The trustee's reply shall provide analysis regarding his request to dismiss the case instead of converting the case to Chapter 7. The trustee contends that the bankruptcy estate consists of assets valued at approximately \$2,032,115.96. Additionally, the trustee contends that the debtor has improperly claimed exemptions in her Schedule C, ECF No. 17. Yet the court also notes that the trustee has not filed an objection to the exemptions.

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 motion to dismiss is continued to January 22, 2025, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than December 23, 2024, the debtor shall file and serve opposition, if any, to the trustee's motion.

IT IS FURTHER ORDERED that no later than January 7, 2025, the Chapter 13 trustee shall file a status report apprising the court of his position. The status report shall include at a minimum the status of payments under the plan, the analysis indicated in this ruling regarding the assets of the bankruptcy estate, and whether the trustee has filed an objection to the debtor's claim of exemptions.

51. [24-21622](#)-A-13 **IN RE: RACHEL KNAPP**
[TLA-2](#)

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

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: Continued from November 5, 2024

Disposition: Approved

Order: Civil minute order

Compensation: \$3,777.50

Reimbursement of Expenses: \$45.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this 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, Thomas L. Amberg, Jr., has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,777.50 and reimbursement of expenses in the amount of \$45.00.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,777.50 and reimbursement of expenses in the amount of \$45.00. The aggregate allowed amount equals \$3,822.50. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$3,822.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.