

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

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

**DAY: FRIDAY**  
**DATE: DECEMBER 17, 2021**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

**RULINGS**

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

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

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

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

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

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

**ERRORS IN RULINGS**

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

1. [21-23600](#)-A-13     **IN RE: JEREMIAH RICHARDSON**  
[BRL-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY  
11-23-2021    [\[22\]](#)

BERT VEGA/ATTY. FOR DBT.  
BENJAMIN LEVINSON/ATTY. FOR MV.

**Final Ruling**

This case was dismissed on December 8, 2021, ECF No. 40. As such this matter will be removed from the calendar as moot. No appearances are required. A civil minute order will issue.

2. [21-23206](#)-A-13     **IN RE: JULIEANNE/RANDY PRICE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-15-2021    [\[42\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

**Final Ruling**

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

3. [18-20812](#)-A-13     **IN RE: MATHEW BARNES**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-17-2021    [\[35\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$338.00.

The opposition filed by the debtor's counsel states that counsel has been unable to contact the debtor and plans to convert the case to

chapter 7 unless the plan payments are brought current prior to the hearing on this motion.

The debtor's opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. The court is unable to deny the motion given the outstanding delinquency.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$388.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

4. [21-22712](#)-A-13     **IN RE: MIRANDA WESTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-30-2021    [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
12/2/21 FINAL INSTALLMENT FEE PAID \$76

#### **Final Ruling**

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

5. [21-21815](#)-A-13     **IN RE: TYLER HARKER**  
[WLG-1](#)

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

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

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** Continued from November 16, 2021; non-opposition filed by the trustee

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

**Subject:** Chapter 13 Plan, filed September 29, 2021

The debtor moves for confirmation of his chapter 13 plan. The trustee filed non-opposition to the motion. The court continued this matter from November 16, 2021, to allow the debtor to augment the record with supplemental schedules I and J. The debtor has filed the necessary schedules, ECF No. 48.

### **DEFAULT OF RESPONDENT**

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

### **CHAPTER 13 PLAN CONFIRMATION**

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

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

6. [17-26116](#)-A-13     **IN RE: AARON/PHELICIA MCGEE**  
[MWB-3](#)

CONTINUED MOTION TO BORROW  
10-20-2021    [\[64\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Approve New Debt [Vehicle Loan]

**Notice:** Continued from December 1, 2021

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued to this date to allow the debtors an opportunity to augment the record with admissible evidence clarifying the facts.

The debtors seek permission to incur new debt to finance the purchase of a vehicle, a 2009 Toyota Tacoma. The exhibit submitted in support of the motion, ECF No. 67, is a copy of the financing and purchase agreement for the vehicle. The exhibit shows that the debtors intend to finance \$12,801.67 and pay a cash down payment of \$8,000.00, with a total purchase price of \$20,801.67.

Conversely, the trustee's opposition, ECF No. 79, and the debtor's initial declaration in support of the motion, ECF NO. 67, indicate that the down payment is \$4,300.00.

The court agrees that the debtors have a need for a replacement vehicle as the debtor's sole source of income is from self-employment as a courier, which of necessity requires a vehicle. The court requested clarification regarding the following matters: the precise amount and source(s) of the down payment; clarification of the monthly payment on the contract; clarification of the purchase price; and amount financed. See Civil Minutes, ECF No.87.

The debtors filed a supplemental declaration on December 8, 2021, ECF No. 93. The debtors stated that the down payment was \$8,000.00 but failed to provide the additional information requested by the court. Of particular concern is the source of the down payment which the trustee raised in his initial opposition to the motion.

The court finds that the debtors have failed to provide the information necessary for it to grant the motion. The information requested and not provided was the source of the down payment; clarification of the amount financed; the amount of the monthly payment; clarification of the purchase price.

### **CIVIL MINUTE ORDER**

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

Debtor's motion to borrow money for the purchase of a vehicle has been presented to the court. Having considered the motion with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

7. [18-23816](#)-A-13     **IN RE: LISA SLEDGE**  
[DPC-3](#)

MOTION TO DISMISS CASE  
11-17-2021    [[169](#)]

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

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$634.00 and that an additional amount of \$320.00 is due on November 25, 2021.

The debtor's opposition states that the debtor has paid several payments after the trustee filed the present motion to dismiss. The debtor also states that the plan payments will be brought current prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admit the existence of a delinquency in the amount of \$634.00.

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

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$634.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

8. [21-23819](#)-A-13     **IN RE: GEORGIA/MILTON MERCER**  
[SLE-1](#)

MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC  
11-10-2021    [9]

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

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$11,919.07 - Asset Acceptance, LLC

**All Other Liens:**

- First Deed of Trust Select Portfolio Servicing, Inc. \$313,967.00
- Second Deed of Trust Specialized Loan Servicing, LLC \$167,000.00

**Exemption:** \$1.00

**Value of Property:** \$266,800.00

**Subject:** 2310 Catalina Dr., Sacramento, California

Debtor seeks to avoid the judicial lien of Asset Acceptance, LLC under 11 U.S.C. § 522(f).

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

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3)

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

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

9. [21-23819](#)-A-13     **IN RE: GEORGIA/MILTON MERCER**  
[SLE-2](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC  
11-10-2021    [\[14\]](#)

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

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$13,074.64 Ford Motor Credit Company, LLC

**All Other Liens:**

- First Deed of Trust Select Portfolio Servicing, Inc. \$313,967.00
- Second Deed of Trust Specialized Loan Servicing, LLC \$167,000.00
- Judicial Lien - Asset Acceptance Corporation \$11,919.07
- Judicial Lien - Diversified Acceptance Corporation \$5,396.43

**Exemption:** \$1.00

**Value of Property:** \$266,800.00

**Subject:** 2310 Catalina Dr., Sacramento, California

Debtor seeks to avoid the judicial lien of Ford Motor Credit Company, LLC under 11 U.S.C. § 522(f).

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



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

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

10. [21-23819](#)-A-13     **IN RE: GEORGIA/MILTON MERCER**  
[SLE-3](#)

MOTION TO AVOID LIEN OF DIVERSIFIED ACCEPTANCE CORPORATION  
11-10-2021    [\[19\]](#)

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

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** Diversified Acceptance Corporation \$5,396.43

**All Other Liens:**

- First Deed of Trust Select Portfolio Servicing, Inc. \$313,967.00
- Second Deed of Trust Specialized Loan Servicing, LLC \$167,000.00
- Judicial Lien - Asset Acceptance Corporation \$11,919.07

**Exemption:** \$1.00

**Value of Property:** \$266,800.00

**Subject:** 2310 Catalina Dr., Sacramento, California

Debtor seeks to avoid the judicial lien of Diversified Acceptance Corporation under 11 U.S.C. § 522(f).

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

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

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

11. [19-22526](#)-A-13     **IN RE: KENNETH/ANN VALLIER**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-17-2021    [\[113\]](#)

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

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$7,298.24.

The debtor's opposition states that the debtor will either be current or have filed a modified plan prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$7,298.24.

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$7,298.24. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

12. [19-21827](#)-A-13     **IN RE: SEDALIA MCFADDEN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-17-2021    [\[72\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2,266.26.

The debtor's opposition states that the debtor has paid all sums due under the plan, and that the trustee's motion was resolved upon the granting of the debtor's prior motion to modify plan, WLG-2, on September 15, 2021, ECF No. 62. Debtor's counsel states that he forwarded an order to the trustee's office on September 16, 2021, but that the order has not yet been returned.

The court notes that the facts in this motion are very similar to a prior motion to dismiss filed by the trustee. That motion was filed on August 11, 2021. The use of the duplicate motion control numbers and the factual similarity to the prior motion make it difficult to analyze this motion. However, it appears from the docket that the prior motion to dismiss was withdrawn by the trustee, ECF No. 71. Additionally, the motion to modify the debtor's plan was granted on September 15, 2021, ECF No. 62. A review of the payment schedule submitted by the trustee in this motion, ECF No. 72, 2:11-12, shows that plan payments have been tendered for the months of August 2021 through November 2021. Thus, from the record the court is unable to determine if a delinquency exists. The motion will be denied without prejudice.

#### **VIOLATION OF LBR 9014-1(c)**

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

The docket control number used in this motion was used in a previous motion by the trustee - a motion to dismiss filed on August 11, 2021, ECF No. 63.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is denied.

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

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

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

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the *currently confirmed plan*. The trustee contends that the debtor is delinquent in the amount of \$2,875.00, ECF No. 89.

The debtor's motion to modify plan, SLE-3, has been denied, as the proposed plan is not feasible.

The court is unable to deny the motion to dismiss given the outstanding delinquency under the currently confirmed plan.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,875.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

14. [19-23633](#)-A-13     **IN RE: ROBERTO/TRACI TREVIZO**  
[SLE-3](#)

MOTION TO MODIFY PLAN  
11-3-2021    [\[78\]](#)

STEELE LANPHIER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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

### Plan Overextension

The proposed plan calls for a plan term of 36 months, ECF No. 81. The trustee calculates that the plan will take 48 months to complete.

Therefore, the plan is not feasible under 11 U.S.C. § 1325(a)(6).

### Schedules I and J

The debtors have not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on July 14, 2021, 5 months ago, ECF No. 64. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The trustee also argues that the debtors' most recently filed schedules I and J do not support the feasibility of the plan as neither of the debtors have any source of regular income. The debtors are unable to make any payment as their regular monthly expenses total \$4,218.00, ECF No 64 Schedule J, page 2.

### Terms of Proposed Plan

The debtors propose the following terms in the plan's additional provisions:

Debtors will be authorized to skip up to 8 more plan payments (November 2021 through June 2022). Plan payments beginning July 2022 shall resume at \$595 per month until Plan completion. The plan term shall be extended by the number of months that Debtors skip. If Debtors' financial situation changes, they may resume plan payments early.

Modified Chapter 13 Plan, ECF No. 81, § 7.01

The proposed plan is supported by the Declaration filed with the motion, ECF No. 80. The Declaration states:

"Additionally, it is our understanding that our previous attempt for a COVID extension was denied because of the court's concerns regarding payments on our vehicle. Accordingly, under the new plan, we will pay \$100 per month during the extension." *Id.*, 2:1-3.

The plan terms are inconsistent with the terms proposed in the motion and declaration. The plan calls for payments to Class 2 creditor, Chase Auto Financial in the amount of \$85.00 per month. If the debtors miss plan payments during the months of November 2021 through June 2022, then payments will not be disbursed to the secured creditor who is entitled to adequate protection. *The additional provisions in the plan only propose to extend the plan term.* There is no provision in the plan for a \$100.00 per month payment in the event of a missed

payment. Thus, the court's concerns about adequately protecting the secured car lender are not resolved.

Moreover, Section 7.01 is impracticable for the trustee to administer. It gives the debtors the option to make plan payments as desired and to resume payments as desired. The trustee will be unable to determine if the plan payments are current in any given month.

The court finds that the proposed plan is not feasible, and its terms are unclear, uncertain, and impracticable. Anyone reading the plan would be unable to determine: if the plan was current; the amount of the plan payment due in any given month; or the length of the plan.

The court will deny the motion to modify.

#### **GOOD FAITH**

The trustee also contends that the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3) as the debtors have made only one payment of \$100.00 since June 21, 2021. The court need not consider this issue as the court has sustained the trustee's objection regarding feasibility.

#### **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 good cause appearing,

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



15. [19-22234](#)-A-13     **IN RE: BRADLEY NYDEGGER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
11-17-2021    [[39](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,485.00.

### **CIVIL MINUTE ORDER**

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

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

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

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

16. [18-25046](#)-A-13     **IN RE: LORENZO/CORRINA AGUILAR**  
[DPC-3](#)

MOTION TO DISMISS CASE  
11-17-2021    [\[73\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,840.00 and that an additional payment of \$920.00 was due November 25, 2021.

The debtor's opposition states that the debtors have scheduled payments to be tendered through TFS and that payments will be brought current.

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

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,760.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

17. [21-24046](#)-A-13     **IN RE: PATRICIA MICHAEL**  
[TJW-1](#)

MOTION TO IMPOSE AUTOMATIC STAY  
12-2-2021    [\[8\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Impose the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

Debtor moves for an order imposing the automatic stay under 11 U.S.C. § 362(c)(4). The instant case was filed on December 1, 2021, and this motion was filed on December 2, 2021.

### **MOTION TO EXTEND STAY**

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphasis added).

The motion indicates that at least 2 or more cases were pending in the 1-year period preceding the current petition but were dismissed. A presumption that this case has not been filed in good faith arises under subsection (c)(4)(C) of section 362. See *id.* § 362(c)(4)(D)(i). Clear and convincing evidence is required to rebut the presumption. *Id.* Supporting declarations should proffer evidence that rebuts this presumption. The motion is not supported by sufficient evidence rebutting this presumption and demonstrating that the moving party is entitled to the relief requested. LBR 9014-1(d)(6).

For example, if applicable, the presumption may be rebutted by facts showing that, as to any of the prior cases in the past year that were dismissed, debtors had substantial excuse for any failure to file or amend the petition or other documents, or that such failure was caused by the negligence of debtors' attorney. See *id.* § 362(c)(4)(D)(i)(II). Alternatively, if applicable, the declaration should address facts indicating a "substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case" or "any other reason to conclude" that the current case will result in a "confirmed plan that will be fully performed." See *id.* § 362(c)(4)(D)(i)(III).

## **EVIDENCE OF PRESENT INCOME**

The evidence in support of this motion does not support the debtor's ability to make the proposed plan payments. The plan, ECF No. 3, calls for payments of \$6,400.00 per month.

In support of this motion the debtor filed: a Declaration, ECF No. 10; and Exhibits, ECF No. 11. Schedule I was filed at the inception of the case, ECF No. 1.

Schedule I projects income from Room Rents and Airbnb at \$7,390.00 per month, *id.*, page 29, line 8h. This information is not supported by the income information in the Exhibits in support of the motion, ECF No. 11. Exhibit 1, which provides rental income data, lists total rents from January 2021 through November 2021 at \$57,114.57, *id.*, page 4. The Exhibit shows the total amount of Airbnb income for the same period. The Airbnb total is \$13,462.87, *id.*, page 20. These totals are handwritten at the conclusion of the list of each income category, presumably by the debtor. The combined average monthly income for this period is \$6,416.13. The difference from the debtor's projection on Schedule I is (\$973.87). The plan is not feasible.

The motion and declaration do not address or explain the discrepancy between the income amounts projected in Schedule I and the income amounts earned from January 2021 through November 2021, as listed in the Exhibits.

Given the inconsistencies in the evidence relating to her income the debtor has not met her burden of proof. There is not sufficient monthly income to fund the proposed monthly plan payments. 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 Impose Automatic Stay 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.

18. [18-23747](#)-A-13     **IN RE: BOBBY CABESAS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
11-17-2021    [[60](#)]

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

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2,826.00 and that an additional payment of \$961.00 was due November 25, 2021.

The debtor's opposition states that the debtor will file a modified plan and a motion to modify plan prior to the hearing on this motion. In effect, the debtor's statements regarding the need for a modified plan admits the existence of a delinquency in the amount of \$2,826.00.

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

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,826.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

19. [20-21047](#)-A-13     **IN RE: PAUL DENNO AND SANDRA MURRAY**  
[MWB-6](#)

MOTION TO SELL  
11-18-2021    [\[98\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Sell Real Property

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

**Disposition:** Denied without prejudice

**Order:** Civil Minute Order

The debtor seeks an order approving the sale of real property.

### **PROOF OF SERVICE**

Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit. See Fed. R. Civ. P. 4(1)(1).

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. See LBR 9014-1(e)(2).

The motion to sell real property was filed November 18, 2021, ECF No. 98. No proof of service has been filed indicating that service was made under Fed. R. Civ. P. 4. Under LBR 9014-1 the proof of service must be filed not more than 3 days after the filing of the pleadings or documents served.

The motion to sell real property will be denied without prejudice.

### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to sell real property has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

OBJECTION TO CONFIRMATION OF PLAN BY 2ND CHANCE MORTGAGES  
INC.

10-18-2021    [\[8\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
HENRY PALOCI/ATTY. FOR MV.

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

**Disposition:** Overruled in part; sustained in part

**Order:** Civil minute order

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

Objecting creditor 2nd Change Mortgages, Inc. objects to confirmation of debtor's chapter 13 plan. The creditor objects as the plan provides for the creditor's claim in an amount which differs from the amount claimed by the creditor in Claim No. 1. Creditor also objects to the interest rate of 2% indicated in the debtor's plan as the contractual rate of interest is 9%, Claim No. 1, Promissory Note.

The plan calls for payment in full of creditor's fully matured claim in Class 2 and provides for interest to be paid at 2%, ECF No. 3. The court notes that neither the objecting creditor nor the chapter 13 trustee have objected to the feasibility of the plan.

The subject property appears to be the debtor's residence as indicated in the Petition, ECF No. 1. The court notes that the address is the same in the petition, claim and the motion but that the city appears to be mistakenly indicated as "Olivehurst" in Schedule A/B, ECF No. 1. The creditor's claim is secured by a deed of trust only in the debtor's residence.

### **PLAN SECTION 3.02**

Section 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the amount owed on the Class 2 claim does not reduce the amount reflected in a filed proof of claim.

The objection will be overruled because any understatement of the amount owed in the plan does not alter or affect the creditor's rights.

#### **INTEREST**

Movant objects to the proposed interest rate of 2% on its claim. Movant contends it is entitled to the rate stated on the note, which is 9%. 11 U.S.C. § 1322(b)(2) does not allow the debtor to modify a loan which is secured only by the debtor's residence. The court sustains this objection to confirmation.

#### **VIOLATION OF LBR 9014-1**

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

#### **CIVIL MINUTE ORDER**

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled in part and sustained in part. The court denies confirmation of the debtor's plan.

21. [19-22648](#)-A-13     **IN RE: JOEL DURIA**  
[DPC-1](#)

MOTION TO DISMISS CASE  
11-17-2021    [\[25\]](#)

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

#### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$1,530.00 and that an additional \$780.00 was due November 25, 2021.



The debtor's opposition states that the plan payments will be brought current prior to the hearing on this motion. In effect, the debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$1,530.00.

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$1,530.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

22. [19-24749](#)-A-13     **IN RE: KAREN LANDWEHR**  
[DPC-1](#)

MOTION TO DISMISS CASE  
11-17-2021    [\[58\]](#)

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

#### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2,468.00 and that an additional payment of \$1,476.00 was due November 25, 2021.

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

debtor's statements regarding amounts remaining to be paid admits the existence of a delinquency in the amount of \$2,468.00.

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

#### **VIOLATION OF LBR 9014-1(c)**

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

The docket control number used in this motion was used in a previous motion by the trustee - an objection to claim, ECF No. 33.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$2,468.00. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

23. [18-23651](#)-A-13     **IN RE: THOMAS HURST**  
[DPC-1](#)

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

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

### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued from November 16, 2021, to allow for hearing on the debtor's motion to modify his chapter 13 plan. The motion to modify, PGM-2, has been granted

The trustee has filed a status report, ECF No. 74, indicating that he no longer wishes to pursue his 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.

24. [18-23651](#)-A-13     **IN RE: THOMAS HURST**  
[PGM-2](#)

MOTION TO MODIFY PLAN  
11-3-2021    [\[64\]](#)

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

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** First Modified Chapter 13 Plan COVID 19 Plan, filed November 3, 2021

### **DEFAULT OF RESPONDENT**

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

The debtor seeks an order modifying his chapter 13 plan. The debtor has submitted supplemental schedules I and J, filed November 3, 2021, in support of the motion. The trustee has filed a non-opposition to the motion.

### **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.

25. [21-21652](#)-A-13     **IN RE: MARIA PAGTAKHAN**  
[GW-3](#)

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

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

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

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

### **DEFAULT OF RESPONDENT**

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

Debtor seeks an order confirming her First Amended Chapter 13 Plan filed August 2, 2021. The chapter 13 trustee has filed a non-opposition to the motion.

### **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.

26. [19-23653](#)-A-13     **IN RE: ROOSEVELT MCCLINTON**  
[BLG-1](#)

MOTION TO MODIFY PLAN  
11-9-2021    [\[48\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** First Modified Chapter 13 Plan, filed November 9, 2021

### **DEFAULT OF RESPONDENT**

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

The debtor seeks an order modifying his chapter 13 plan. The debtor has submitted supplemental schedules I and J, ECF No. 55, in support of the motion. The trustee has filed a non-opposition to the motion.

### **CHAPTER 13 PLAN MODIFICATION**

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

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

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

27. [19-23653](#)-A-13     **IN RE: ROOSEVELT MCCLINTON**  
[DPC-2](#)

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

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

### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued from November 16, 2021, to allow for hearing on the debtor's motion to modify his chapter 13 plan. The motion to modify, BLG-1, has been granted

The trustee has filed a status report, ECF No. 61, indicating that he no longer wishes to pursue his 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.

28. [19-26161](#)-A-13     **IN RE: CIRILO/RIZEL LARON**  
[PGM-4](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
11-11-2021    [\[123\]](#)

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

### **Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Granted

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First Request

**Additional Compensation Requested:** \$1,035.00

**Additional Cost Reimbursement Requested:** \$0

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,035.00.

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

### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

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

In this case the applicant successfully modified the chapter 13 plan extending the plan length to 84 months as the debtor was impacted by the COVID-19 pandemic. The complications created by the pandemic were unanticipated at the time the case was filed and the extension of the plan to 84 months represents substantial work. The debtors have filed a declaration in support of the additional compensation requested, ECF No. 126.



The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,035.00.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the application is approved. The court allows the additional compensation in the amount of \$1,035.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

29. [21-22861](#)-A-13     **IN RE: MEGAN EKOMAYE**  
[BLG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW  
GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S)  
11-11-2021    [\[34\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Application:** Allowance of First Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:** \$2,952.50

**Expenses:** \$35.52

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, Bankruptcy Law Group, PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,952.50 and reimbursement of expenses in the amount of \$35.52.

The aggregate amount requested equals \$2,988.02. As of the date of the application, the applicant held a retainer in the amount of \$542.00, ECF No. 42. The amount of \$2,446.02 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.

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.

Bankruptcy Law Group, PC'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 \$2,952.50 and reimbursement of expenses in the amount of \$35.52. The aggregate allowed amount equals \$2,988.02. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$2,446.02 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.

30. [18-27962](#)-A-13     **IN RE: GUILLERMO MIRALRIO**  
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-12-2021    [\[109\]](#)

W. SHUMWAY/ATTY. FOR DBT.  
CHAD BUTLER/ATTY. FOR MV.  
CITIBANK, N.A. VS.

RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 1415 G Street, Rio Linda, California

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

The movant seeks relief under 11 U.S.C. §§ 362(d)(1) and (d)(2) for cause regarding the subject property.

#### **PLAN AND MORTGAGE PAYMENT STATUS**

The chapter 13 trustee reports that the debtor is delinquent in the amount of \$9,374.00 under the confirmed plan with the last payment of \$2,366.00 made on July 1, 2021. The trustee's motion to dismiss, DPC-2 has been continued to the date of this hearing. ECF No. 122, 1:25-28.

The trustee further reports the movant is included in Class 1 of the debtor's confirmed plan as Select Portfolio Servicing. The trustee's records reflect principal payments past due under the plan in the amount of \$6,421.84 for ongoing mortgage payments and

\$3,683.04 for payments toward pre-petition arrears, ECF No. 122, 2:1-2, 7-9.

#### **STAY RELIEF**

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

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1415 G Street, Rio Linda, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

31. [18-27962](#)-A-13     **IN RE: GUILLERMO MIRALRIO**  
[DPC-2](#)

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

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

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Civil minute order

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

The hearing on this motion was continued from November 16, 2021. At the prior hearing the debtor appeared without his attorney and the court ordered attorney William Shumway to appear on this date, ECF No. 120.

### **CASE DISMISSAL**

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

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

### **CIVIL MINUTE ORDER**

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

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

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

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

32. [21-20864](#)-A-13     **IN RE: HEATH/CHRISTIAN FULKERSON**  
[DPC-1](#)

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

DAVID CUSICK/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

### **BACKGROUND**

The hearing on this motion was continued from November 16, 2021, to allow for proper service upon the debtors at their new address of record. On November 17, 2021, the debtors were properly served with the motion, the notice and supporting documents, ECF No. 174.

The chapter 13 trustee moves to dismiss, or alternatively to reconvert to Chapter 7, under 11 U.S.C. § 1307, contending that actions by the debtors in the prosecution of their chapter 13 case have caused unreasonable delay and prejudice to creditors. The chapter 13 trustee has updated the record and filed a status report, ECF No. 180, on December 7, 2021.

The debtors have previously sought dismissal of this case on an ex parte basis, ECF No. 164. That motion was denied as it was not set for hearing or served upon all parties in interest, ECF No. 166.

The debtors have not appeared to defend 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--*

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

...

(4) failure to commence making timely payments under section 1326 of this title;

11 U.S.C. §§ 1307(c)(1), (4) (emphasis added).

The debtors filed this case as a chapter 7 on March 11, 2021. The chapter 7 trustee conducted an examination of the debtors and determined the debtors were owed significant income tax refunds, in estimated amounts exceeding \$76,000.00. On June 22, 2021, the chapter 7 trustee filed an objection to the exemptions claimed in the tax refunds, and a motion for turnover of property, GMR-1. The chapter 7 trustee contended that the debtors' exemption claimed in the tax refunds exceeded the amount available under C.C.P. § 703.150(b)(5) by \$46,441. See Declaration of Trustee in Support of Trustee's Objection to Claim of Exemption in Income Tax Proceeds and Motion to Compel Turnover of Income Tax Proceeds, ECF No. 82.

The debtors provided a copy of their 2020 Federal Income Tax Return to the chapter 7 trustee. The returns show that the debtors are entitled to a refund of \$65,728.00, *id.*, 2:14-16.

On July 28, 2021, the debtors converted this case to one under chapter 13. Since the conversion of this case the debtors have caused unreasonable delay in the prosecution of the chapter 13 case as follows.

#### Plan Delinquency

The chapter 13 trustee reports that the debtors have not tendered any plan payments since the conversion of this case to chapter 13, and three payments are now due. Plan payments are delinquent in the amount of \$13,635, ECF No. 180, 1:19-21. Thus, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss or reconvert the case.

#### Meeting of Creditors

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The chapter 13 trustee reports that the debtors did not attend the scheduled meeting on December 2, 2021, after missing a previously scheduled meeting of creditors on October 7, 2021. Thus, the trustee and interested creditors were unable to examine the debtors regarding their plan. The court finds that this constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1).

Failure to Provide Documents 11 U.S.C. 521(e)(2)(A, Fed. R. Bankr. P. 4002(b)(3)

The chapter 13 trustee reports that the debtors failed to provide the required 2020 tax return to the trustee at least 7 days prior to the meeting of creditors. The debtors have not provided the trustee the following additional documents before or at the meeting of creditors: bank and/or investment account statements for the 6-month period prior to the filing of the petition. The court finds that this constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1).

The court finds that reconvert the case to Chapter 7 is in the best interests of the creditors and the estate. The prior chapter 7 trustee has identified significant non-exempt assets which will result in distributions to creditors. The debtors' failure to properly prosecute their chapter 13 case constitutes unreasonable delay which is prejudicial to creditors and cause to reconvert this case to chapter 7 under 11 U.S.C. § 1307(C)(1). The court will grant the chapter 13 trustee's motion and reconvert this case to chapter 7.

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The court hereby reconverts this case to Chapter 7.



33. [21-20864](#)-A-13     **IN RE: HEATH/CHRISTIAN FULKERSON**  
[GMR-1](#)

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

**Final Ruling**

As this case has been reconverted to Chapter 7 the hearing on this motion will be continued to January 18, 2022, at 9:00 a.m. A civil minute order will issue.

34. [21-23474](#)-A-13     **IN RE: PATRICIA MICHAEL**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
11-12-2021    [[24](#)]

TIMOTHY WALSH/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
DEBTOR DISMISSED: 11/19/2021

**Final Ruling**

This case was dismissed November 19, 2021, ECF No. 28. This hearing on this motion will be dropped as moot. No appearances are required. A civil minute order will issue.

35. [21-23083](#)-A-13     **IN RE: JOSEPH JENKINS**  
[BLG-1](#)

MOTION FOR COMPENSATION FOR CHAD M JOHNSON, DEBTORS  
ATTORNEY(S)  
11-11-2021    [\[16\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Application:** Allowance of First Interim Compensation and Expense Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation:** \$4,839.00

**Expenses:** \$9.96

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, Bankruptcy Law Group, PC has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$4,839.00 and reimbursement of expenses in the amount of \$9.96. The aggregate allowed amount requested equals \$4,848.96.

As of the date of the application, the applicant held a retainer in the amount of \$542.00, ECF No.41. The amount of \$4,306.96 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.

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.

Bankruptcy Law Group, PC'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 \$4,839.00 and reimbursement of expenses in the amount of \$9.96. The aggregate allowed amount equals \$4,848.96. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$4,306.96 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.

36. [19-24685](#)-A-13     **IN RE: EMILIA ARDELEAN**  
[TBG-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE BANKRUPTCY  
GROUP, P.C. FOR DANIEL J. GRIFFIN, DEBTORS ATTORNEY(S)  
11-19-2021     [\[280\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
DEBTOR DISMISSED: 10/14/2021

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Continued to February 1, 2022, at 9:00 a.m.

**Order:** Civil minute order

### **BACKGROUND**

In this Chapter 13 case, The Bankruptcy Group, P.C. has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court approve its previous award as follows: compensation in the amount of \$31,000.00; and reimbursement of expenses in the amount of \$2,087.92, ECF No. 232. A chapter 13 plan was never confirmed, and this case has been dismissed.

#### Application Unclear Regarding Scope of Services

The applicant's motion states, "Debtor is not addressing the fees and expenses related to the adversary proceeding through this application." ECF No. 280, 1:25-26. The motion also states, "TBG waives any claim to additional time spent and expenses incurred after the interim fee application period." *Id.*, 2:17-18.

It is unclear to the court if the applicant intends to waive its claim to *all* compensation and expenses incurred after the entry of the interim fee order, including a claim for services performed in the adversary proceeding, or if it intends to separately claim compensation and expenses for services rendered in adversary proceeding, *Massioui v. Ardelean*, Case No. 19-02135.

### **COMPENSATION AND EXPENSES**

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).

(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with

the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

11 U.S.C. § 1326(a)(2).

The court will continue the hearing on this matter to allow the applicant to augment the record and clarify its position regarding waiver of compensation and expenses in the adversary proceeding.

The court will issue a separate order from chambers requiring the debtor to appear and state whether she supports or opposes an order authorizing the distribution of funds currently held by the chapter 13 trustee, to the applicant.

#### **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 Bankruptcy Group, P. C.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court.

IT IS ORDERED that the hearing on this motion is continued until February 1, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 4, 2022, the applicant shall file and serve on all interested parties, any additional evidence in support of its motion, to include clarification of applicant's intention regarding its claim for compensation and reimbursement of expenses in adversary proceeding, Case No. 19-02135.

IT IS FURTHER ORDERED that the chapter 13 trustee shall continue to hold all funds on hand in this case until the final resolution of this motion.

37. [21-23485](#)-A-13     **IN RE: RODNEY GREER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
11-22-2021    [\[15\]](#)

TIMOTHY WALSH/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:** Sustained and confirmation 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 Income Information

The trustee objects to confirmation of the plan as the debtor has failed to provide the following documents: 2019 tax returns; 6 months of profit and loss statements (from April 5, 2021 through October 2, 2021); 6 months of bank statements for First Northern Bank (from April 5, 2021 through October 5, 2021); 5 months of bank statements for Bank of America (from April 5, 2021 through August 31, 2021); and proof of license and insurance or written statements that no such documentation exists.

The trustee also requested that the debtor complete a business questionnaire as the debtor reports income from self-employment. The trustee has not received this completed document.

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

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

The debtors have filed a reply, ECF No. 37. The reply is merely a statement from debtors' counsel that the trustee's concerns will be addressed. A statement that the debtors intend to act in the future confirms the accuracy of the trustee's objections. It is not a resolution of the problem. This is particularly true when the documents the trustee requested were needed prior to the meeting of creditors so that the trustee could accurately evaluate the feasibility of the debtors' plan.

### Schedules I and J do not Support Plan Feasibility

The plan calls for payments of \$630.00 per month for 60 months, ECF No. 3. The debtor has filed schedules I and J in support of his plan, ECF No. 1, pages 30-33. The debtor is self-employed with monthly net income of \$4,267.43 and expenses of \$3,632.01. This leaves \$635.42 to fund the monthly plan payment. The debtor has also filed a Business Income and Expense statement, ECF No. 1, page 59. Neither Schedule I, Schedule J nor the Business Income and Expense statement reflect an expense for self-employment taxes. The trustee contends the self-employment taxes would be greater than \$5.42, which is the difference between the net income and the proposed plan payment. Thus, the plan is not feasible.

The debtors have filed a reply, ECF No. 37. The reply is merely a statement from debtors' counsel that the trustee's concerns will be addressed. A statement that the debtors intend to act in the future confirms the accuracy of the trustee's objections. It is not a resolution of the problem. The debtors had an opportunity to analyze their finances in preparing the schedules prior to filing this case. The objection will be sustained.

### Attorney Fees Inconsistent in Documents

The trustee objects to confirmation as the attorney fees are inconsistently stated in the various documents filed with the court. Unless the documents accurately and consistently reflect the compensation which has been paid, and the compensation still owed, the court will not authorize payment of compensation to the debtor's attorney under 11 U.S.C. §§ 329, 330 and LBR 2016-1. Neither can the trustee determine the amount of compensation to be paid through the plan, which in turn impacts the feasibility of the plan under 11 U.S.C. § 1325(a)(6).

### **GOOD FAITH**

The trustee objects to confirmation under 11 U.S.C. § 1325(a)(3) stating that the debtor has failed to accurately list a co-debtor, Eighmie Mathers, in his schedules and thus, the co-debtor has not received notice of the bankruptcy proceeding. The debtor has an obligation to complete the bankruptcy statements and schedules truthfully and accurately. Failing to do so, or to promptly amend the schedules after an error has been ascertained is not indicative of good faith. The trustee expresses concern that the co-debtor has not received proper notice of the bankruptcy proceeding.

The debtors have filed a reply, ECF No. 37. The reply is merely a statement from debtors' counsel that the trustee's concerns will be addressed. A statement that the debtors intend to act in the future confirms the accuracy of the trustee's objections. It is not a resolution of the problem. The court notes that Schedule H has not been amended as of December 9, 2021.

The court will sustain all the trustee's raised objections to the plan.

### **CIVIL MINUTE ORDER**

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

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

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

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



38. [21-23485](#)-A-13     **IN RE: RODNEY GREER**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE  
CORPORATION  
11-24-2021    [\[25\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **OBJECTION TO CONFIRMATION**

#### Forborne Payments Owed at the Time of Filing Are Delinquent

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

The debtors have filed an opposition to the creditor's objection to confirmation, ECF No. 34. The debtors' opposition asserts that the payments to creditor are not delinquent and there are no arrears because the debtors and creditor entered into a forbearance agreement regarding mortgage payments which extends through January 2022.

The court notes that the plan, ECF No. 3, is silent regarding the forbearance of payments and makes no provision for the cure of the payments not tendered during the forbearance period. The payments to creditor are delinquent to the extent that they have not been made as of the date the petition was filed. The forborne payments have not been *forgiven* and they are a prepetition delinquency which must be addressed through the debtors' plan.

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

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 \$5,896.00. Compare Claim No. 10 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

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

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

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

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

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

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

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

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

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

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

*...*

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

Chapter 13 Plan § 3.07, EDC 3-080.

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

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

*Id.* at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

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

#### **CIVIL MINUTE ORDER**

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

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

Freedom Mortgage Corporation'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.

39. [19-22994](#)-A-13     **IN RE: KATHERINE REINECK**  
[DPC-1](#)

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

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

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 16, 2021

**Disposition:** Granted

**Order:** Civil minute order

The hearing on this motion was continued from November 16, 2021, to allow for hearing on the debtor's motion to modify chapter 13 plan. The motion to modify, JMC-4, was denied.

This motion was filed as the plan was over extended and would take 72 months to complete. As the motion to modify the plan was denied the plan remains overextended.

### **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, if any, and good cause appearing,

IT IS ORDERED that the motion is granted.

40. [19-22994](#)-A-13     **IN RE: KATHERINE REINECK**  
[JMC-4](#)

MOTION TO MODIFY PLAN  
11-8-2021    [\[58\]](#)

JOSEPH CANNING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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

### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$870.00. As such the plan is not feasible under 11 U.S.C. § 1325(a)(6).

### **PROOF OF SERVICE**

Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit. See Fed. R. Civ. P. 4(1)(1).

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. See LBR 9014-1(e)(2).

The motion to modify was filed November 8, 2021, ECF No. 58. No proof of service has been filed indicating that service was made under Fed. R. Civ. P. 4. Under LBR 9014-1 the proof of service must be filed not more than 3 days after the filing of the pleadings or documents served.

The motion to modify will be denied.

### **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 good cause appearing,

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

41. [21-22994](#)-A-13     **IN RE: JUSTIN/CHRISTINA BORGES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-29-2021    [[34](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
12/2/21 FINALL INSTALLMENT FEE PAID \$156

**Final Ruling**

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