



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

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

DAY: TUESDAY
DATE: DECEMBER 17, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

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

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

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

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan
Notice: Continued from November 5, 2024
Disposition: Overruled as moot
Order: Civil minute order

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

CIVIL MINUTE ORDER

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

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

2. [24-23903](#)-A-13 **IN RE: STACI ADAMS**
[DPC-1](#)

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

MICHAEL SALANICK/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from November 5, 2024

Disposition: Overruled as moot

Order: Civil minute order

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

CIVIL MINUTE ORDER

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

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

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

MOTION TO CONFIRM PLAN
11-12-2024 [\[31\]](#)

MICHAEL SALANICK/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

SERVICE

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

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 34. Service of the motion therefore does not comply with LBR 7005-1. The court will deny the motion.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 81 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

The court will deny confirmation of the debtor's plan.

CIVIL MINUTE ORDER

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

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

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

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

4. [24-22210](#)-A-13 **IN RE: CARRIE MURRELL**
[DPC-2](#)

MOTION TO DISMISS CASE
11-8-2024 [\[39\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

On December 6, 2024, the debtor filed a non-opposition to the motion. Non-Opposition, ECF No. 43.

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor failed to file an amended Chapter 13 Plan after the court denied confirmation of the previously filed plan, on September 10, 2024. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

5. [24-24010](#)-A-13 **IN RE: DENNIS POTOCZNY**

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

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

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Overruled as moot

Order: Civil minute order

Ford Motor Credit Company LLC objects to confirmation of the debtor's plan. The court has sustained the objection to confirmation filed by the Chapter 13 trustee (DPC-1). Accordingly, the court will overrule the creditor's objection to confirmation as moot.

VIOLATION OF LBR 9014-1(c) (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:

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

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

6. [24-24010](#)-A-13 **IN RE: DENNIS POTOCZNY**
[DPC-1](#)

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

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: LBR 3015-1(c)(4), 9014-1(f)(2); 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).

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).

Disability Income

When the petition was filed the debtor indicated in Schedule I that he had applied for disability benefits. The petition was filed on September 6, 2024. Accordingly, plan payments begin October 25, 2024. The proposed plan calls for an increase in the plan payment to \$1,240.00 per month beginning February 25, 2025. Schedules I and J show that the debtor has disposable income of only \$503.00 per month. Schedule I, J, ECF No. 1. There is no additional admissible evidence regarding the debtor's approval of the anticipated disability income and ability to pay the increased plan payment. As such the court finds that the plan is not feasible. The court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

7. [24-24612](#)-A-13 **IN RE: AHMAD RAZA AND SUMBAL AHMAD**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
11-22-2024 [\[17\]](#)

MARK WOLFF/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, Toyota Motor Credit Corporation, objects to confirmation
of the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued
to February 4, 2025, at 9:00 a.m. The court may rule in this matter
without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the
debtor(s) shall do one of the following:

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

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

specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 21, 2025; or

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

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

8. [24-24813](#)-A-13 **IN RE: STEVEN/RIKKI CONNER**
[CRG-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
11-5-2024 [9]

CARL GUSTAFSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

The hearing on the debtors' motion to value collateral of Ally Financial will be continued to January 22, 2025, at 9:00 a.m. to allow the debtors to file additional admissible evidence in support of the motion.

The motion contends that the loan securing the subject vehicle is secured by a non-purchase money security interest. The debtors have failed to file any admissible evidence proving the type of security interest held by the respondent.

IT IS ORDERED that the hearing on this motion is continued to January 22, 2025, at 9:00 a.m. No later than January 2, 2025, the debtors shall file and serve admissible evidence in support of this motion.

IT IS FURTHER ORDERED that the respondent shall file and serve opposition, if any, to the motion no later than January 15, 2025.

9. [24-21615](#)-A-13 **IN RE: MILTON PEREZ**
[DPC-1](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

10. [24-21615](#)-A-13 **IN RE: MILTON PEREZ**
[MET-2](#)

MOTION TO CONFIRM PLAN
11-5-2024 [\[51\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d) (1)-(2). The Chapter 13 trustee does not oppose the motion. Creditor, 1 Oak Ventures Step Fund, 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).

Family Support

The opposing creditor contends the plan is not feasible. The debtor's Schedule I indicates the debtor receives \$775.00 in income from family assistance. Schedule I, ECF No. 50. Without the funds the plan payment is not feasible. A declaration was filed by the debtor's parents stating their willingness to assist the debtor with plan payments. Declaration, ECF No. 59. However, the declaration filed by the debtor's parents does not provide sufficient detail to prove that they are able to pay \$775.00 per month for the duration of the 60-month plan. For example, the declaration fails to state the amount or source(s) of the parent's income. Neither does it indicate the expenses, or amounts of expenses, of the parents. As such the court is unable to determine if the debtor's parents could make the significant monthly contribution required to fund the plan.

Accordingly, the court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

11. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-13](#)

MOTION TO INCUR DEBT
11-25-2024 [[246](#)]

MARK WOLFF/ATTY. FOR DBT.

No Ruling

12. [24-22416](#)-A-13 **IN RE: REYNALDO TABOT**
[DPC-1](#)

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

ERIC GRAVEL/ATTY. FOR DBT.

No Ruling

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

MOTION TO CONFIRM PLAN
11-2-2024 [[27](#)]

ERIC GRAVEL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee does not oppose the motion.

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

PLAN FEASIBILITY

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

Schedules I and J

The proposed plan calls for an increase in monthly payments to \$1,398 beginning the third month of the plan. Amended Plan, § 7, ECF No. 17. The petition was filed on May 31, 2024. As such the plan payment is now \$1,398.00.

Schedules I and J, filed at the inception of the case show the debtor's net monthly income is only \$1,322.00. Schedule I, J, ECF No. 1. Accordingly, the schedules do not show that the debtor can fund the plan. While the trustee opines that the debtor might change discretionary expenses, the debtor has failed to file amended budget schedules evidencing he has done so. Without current income and expense information the court is unable to determine the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

CIVIL MINUTE ORDER

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

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

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

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

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

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

STANLEY BERMAN/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.
DEBTOR NON-OPPOSITION

Final Ruling

This case was dismissed on December 11, 2024. Accordingly, this objection will be removed from the calendar as moot. No appearances are required.

15. [24-24417](#)-A-13 **IN RE: RENE/HEATHER DOMINGUEZ**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-20-2024 [[14](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to February 4, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 21, 2025; or

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

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

16. [24-23720](#)-A-13 **IN RE: KANDY TOBIASSEN**
[DPC-1](#)

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

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 5, 2024

Disposition: Overruled

Order: Civil minute order

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

CONFIRMATION

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

The trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved as the debtor has provided copies of missing income tax returns, and proof that the returns were submitted to the IRS. The debtor filed amended Schedule A/B listing the applicable refunds as requested by the trustee.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled.

17. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[DPC-2](#)

MOTION TO DISMISS CASE
11-15-2024 [[75](#)]

COLBY LAVELLE/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,540.66 with one payment(s) of \$538.19 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

18. [24-22522](#)-A-13 **IN RE: AMRIT LAL**
[AVN-3](#)

MOTION TO CONFIRM PLAN
11-6-2024 [\[56\]](#)

ANH NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

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 \$20,910.00, which represents the November 2024 payment. The plan cannot be confirmed if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

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

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

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

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

NICHOLAS WAJDA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from November 5, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from November 5, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (WLG-1) has been granted.

Accordingly, the motion to dismiss 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 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.

20. [23-23524](#)-A-13 **IN RE: LINDA WILKINSON**
[WLG-1](#)

MOTION TO MODIFY PLAN
10-30-2024 [\[33\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, filed October 30, 2024

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on October 30, 2024, ECF No. 32. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 43.

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.

21. [23-22825](#)-A-13 **IN RE: KAREN JOHNSON**
[DPC-2](#)

MOTION TO DISMISS CASE
11-8-2024 [\[74\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$281,635.00 with one payment(s) of \$235.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

22. [24-22932](#)-A-13 **IN RE: KENNETH MURRAY**
[DPC-2](#)

MOTION TO DISMISS CASE
11-8-2024 [\[29\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Convert to Chapter 13

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$5,280.00. The trustee also seeks dismissal because the debtor failed to file an amended plan after the court denied confirmation of the previously proposed plan on November 5, 2024.

The court finds the debtor's failure to propose a plan and failure to make payments since the filing of the case constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

The court finds that conversion to Chapter 7 is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The Chapter 13 trustee reports that bankruptcy estate holds non-exempt assets valued at approximately \$12,932. The assets include: (1) a 2008 Lincoln; (2) a 2015 Jeep; and (3) firearms valued at \$2,500. Declaration of Neil Enmark, ECF No. 31.

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 debtor's failure to propose an amended plan and the plan delinquency under the previously filed chapter 13 plan in this case. The court hereby converts this case to Chapter 7.

23. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**
[DPC-2](#)

MOTION TO DISMISS CASE
11-19-2024 [[92](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor has failed to file an amended plan and motion to confirm plan after the court denied confirmation of the most recently filed plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

24. [24-24434](#)-A-13 **IN RE: ROBERT MCBRIDE AND VERTIS**
BROWN-MCBRIDE
[DKF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS,
INC.
11-27-2024 [[21](#)]

JULIUS CHERRY/ATTY. FOR DBT.
DANIEL FUJIMOTO/ATTY. FOR MV.

No Ruling

25. [24-24434](#)-A-13 **IN RE: ROBERT MCBRIDE AND VERTIS**
BROWN-MCBRIDE
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ FINANCIAL
SERVICES USA LLC
11-5-2024 [\[14\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, Mercedes-Benz Services USA, LLC, objects to confirmation
of the debtor(s) plan.

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

On December 9, 2024, the objecting creditor filed a status report
informing the court that the parties had resolved the objection by
stipulation. However, the proposed order confirming the plan , ,
which was submitted in lieu of a stipulation, is not signed by the
Chapter 13 trustee. The Chapter 13 trustee shall be a party to all
stipulations at confirmation of the plan to insure the plans
feasibility and compliance with 11 U.S.C. § 1325(a), (b).
Accordingly, the court will issue its order requiring the parties to
submit a *stipulation* which has been approved and signed by the
Chapter 13 trustee.

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued
to February 4, 2025, at 9:00 a.m. The court may rule in this matter
without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the
debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree
that the creditor's objection is well taken, the debtor(s) shall

concede the merits and file a statement of non-opposition to the objection. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 21, 2025; or

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

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

26. [24-24235](#)-A-13 **IN RE: GARY/MICHELLE WHITAKER**
[CK-1](#)

MOTION TO CONFIRM PLAN
11-12-2024 [28]

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,500.00. The plan cannot be confirmed if the plan payments are not current.

Misclassification of Mortgage

Secured creditor John Hyatt opposes the proposed plan contending the plan misclassifies his claim. Hyatt filed Claim No. 22, and holds a note secured by a deed of trust in real property located at 30 Bear Canyon Road, Weaverville, California. The property is the debtor's residence. Petition, ECF No. 1. The note matures August 1, 2026, Claim No. 22.

The proposed 60-month plan lists the claim in Class 1. Amended Plan, ECF No. 26. As such the plan does not provide for payment of the claim as contractually required. 11 U.S.C. § 1322. This classification is incorrect as the claim comes due during the pendency of the plan. The claim should properly be provided for in Class 2 of the plan as it matures during the term of the plan.

Accordingly, the court finds that the debtor has failed to prove the feasibility of the proposed plan under 11 U.S.C. § 1325(a)(3). The court will deny confirmation of the plan.

CIVIL MINUTE ORDER

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

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

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

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

27. [24-24536](#)-A-13 **IN RE: RYAN BEJARANO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-25-2024 [[16](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to February 4, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 25, 2025; or

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

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

28. [24-24536](#)-A-13 **IN RE: RYAN BEJARANO**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
11-25-2024 [[12](#)]

JULIUS CHERRY/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, Capital One Auto Finance, objects to confirmation of the
debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued
to February 4, 2025, at 9:00 a.m. The court may rule in this matter
without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the
debtor(s) shall do one of the following:

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

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

specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 21, 2025; or

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

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

29. [24-21153](#)-A-13 **IN RE: PATRICIA MELMS**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-8-2024 [\[68\]](#)

PETER MACALUSO/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
DEBTOR DISMISSED: 11/23/24; U.S. BANK NATIONAL ASSOCIATION VS.

Final Ruling

This case was dismissed on November 23, 2024. Accordingly, the motion for stay relief is removed from the calendar as moot. No appearances are required.

30. [24-24053](#)-A-13 **IN RE: BOUGNAVETH/KHAMPHOUVY PHOMMARATH**
[DPC-1](#)

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

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 5, 2024

Disposition: Overruled

Order: Civil minute order

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

CONFIRMATION

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

The trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved with the debtor's agreement to provide the following language in the order confirming the plan: "Debtors shall pay into the plan all combined tax refunds exceeding \$2,000.00 for the life of the plan." The trustee also reports the plan payments are current. Reply, ECF No. 22. Finally, the trustee requests that his objection be overruled.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled.

31. [24-22754](#)-A-13 **IN RE: MY TRAN**
[DPC-3](#)

MOTION TO DISMISS CASE
11-8-2024 [72]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Attorneys Neil Enmark and Peter Macaluso shall appear at the hearing on this matter. Appearances may be made in person, via Zoom or Courtcall.

32. [24-23958](#)-A-13 **IN RE: FERMIN MARTINEZ JAIME**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-8-2024 [32]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Overruled as moot
Order: Civil minute order

The Chapter 13 trustee objects to the debtor's claim of exemptions. The objection will be overruled as moot for the following reasons.

SCHEDULE C AMENDED

Rule 1009(a) allows a debtor to amend schedules as a matter of course at any time, even after a case has been reopened. See *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 393 (B.A.P. 9th Cir. 2003). This includes the right to amend the list of property claimed as exempt. *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998).

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1).

On December 2, 2024, the debtor filed an amended Schedule C, rendering the instant objection moot.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled as moot.

33. [24-23860](#)-A-13 **IN RE: DANNY MENZIES**
[DPC-1](#)

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

SCOTT SHUMAKER/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

34. [24-24660](#)-A-13 **IN RE: CRAIG PAINTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-20-2024 [[19](#)]

Tentative Ruling

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

35. [23-22564](#)-A-13 **IN RE: PAAJ YANG**
[DPC-1](#)

MOTION TO DISMISS CASE
11-15-2024 [[26](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The case was converted to Chapter 7. Accordingly, this matter will be removed from the calendar. No appearances are required.

36. [23-23664](#)-A-13 **IN RE: JEFFREY/LAURIE SWENSON**
[FF-6](#)

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

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

Tentative Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: Continued from November 19, 2024, non-opposition filed by
the Chapter 13 trustee

Disposition: Approved in part; denied in part

Order: Civil minute order

Compensation allowed: Post-Petition Services Rendered - \$4,004.00

COMPENSATION AND EXPENSES

In this Chapter 13 case, attorney Gary Fraley has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount

of \$2,682.00 for pre-petition services rendered to the debtors and \$4,836.00 in post-petition compensation. At the time of the filing of this motion the applicant held a retainer of \$2,701.00 in his client trust account. Approval of hourly compensation is sought at the following rates: \$480.00 for attorney Gary Fraley; \$180.00 for paralegal services. Exhibits B, C, ECF No. 112. The court notes that the columns indicated for time spent in Exhibits B or C do not identify the individual performing the service. However, a review of the amounts charged shows that the first column is that of Gary Fraley and the third column is that of a paralegal.

The Chapter 13 trustee filed a response to the motion and supports the amounts requested. Trustee Response, ECF No. 116.

The debtors, support the motion. Declaration, ECF No. 111.

Status of the Case

The case was dismissed on the motion of the Chapter 13 trustee prior to confirmation of any plan. The trustee holds no funds.

Qualifications of Counsel

Debtor's counsel is an experienced bankruptcy practitioner. Counsel states:

My fees are justified based upon my significant experience. I have practiced law for 45 years, almost all of which has been in Bankruptcy. I am also certified directly by the California State Bar Board of Legal Specialization Certified Bankruptcy Law Specialist, one of only approximately 157 in the State of California

For many years I have taught California State Bar Certified Bankruptcy CLE courses through the National Business Institute and taught at a National Convention of the National Association of Consumer Bankruptcy Attorneys.

I have also published an ebook for everyone considering bankruptcy titled "49 Do's and Don't's You Need to Know When Considering Bankruptcy". It is written for "Ordinary people" in understandable terms without legalese but with my sense of humor. It can be found and downloaded by the public, no matter what state or territory they live in, directly from my law firm website at sacramentobankruptcyattorneys.com.

Declaration of Gary Fraley, 4:11-22, ECF No. 109.

COMPENSATION

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). The applicant bears the burden of proof. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *In re Roderick Timber Co.*, 185 B.R. 601, 606 (B.A.P. 9th Cir.1995).

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, *the court shall consider the nature, the extent, and the value of such services*, taking into account all relevant factors, including--

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3) (emphasis added).

Confirmation of Plan Not Required

The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were “reasonably likely” to benefit the estate at the time the services were rendered. The statute is clear and unambiguous.

In re Mednet, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)

Mednet noted a split of authority regarding the legal standard to determine whether services are necessary or beneficial to the estate. *Id.* at 107. We rejected a standard that services are only compensable if they result in a material benefit to the estate because this does not comport with the clear meaning of the statute. *Id.* at 108. *Instead, a professional need demonstrate only that the services were reasonably likely to benefit the estate at the time rendered. Id.*

In re Garcia, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)) (emphasis added).

DISCUSSION

Pre-Petition Services

The debtors do not oppose the motion. Declaration of Debtors, ECF No. 111. Absent a motion for disgorgement of fees, which is not before the court, prepetition compensation is governed under state contract law and not under the Bankruptcy Code. Accordingly, the court makes no ruling on the approval of prepetition compensation.

Post-Petition Services

The court has reviewed the task billing records of the applicant and the applicant's paralegal. The court finds the services provided by the attorney and his staff were reasonable.

Attorney and Paralegal Compensation Rates

We have held that "[i]n determining a reasonable hourly rate, the district court should be guided by the rate prevailing in the community for *similar* work performed by attorneys of comparable skill, experience, and reputation."

Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011) (citing *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11, (9th Cir. 1986), *opinion amended on denial of reh'g*, 808 F.2d 1373 (9th Cir. 1987) (emphasis added)).

Additionally, the court may apply its own knowledge of prevailing rates of compensation in determining a reasonable hourly rate. *Id.* at 928.

The application seeks approval of a \$480 hourly rate for attorney Gary Fraley's services. Fraley cites two cases in the Eastern District of California in support of his hourly rate.

The first case is *In re Zoe Ashley Burton-Rosal*, Case No. 22-22949, (E.D. Cal. Bankr. 2022). This court approved an hourly rate of \$495.00 for Russell Cunningham, the attorney representing the Chapter 7 trustee. Attorney Cunningham is well known to this court and represents multiple Chapter 7 trustees primarily in complex litigation. Fraley contends that as he has been licensed to practice law for nine years longer than Cunningham, and is a bankruptcy specialist, that \$480 represents a reasonable hourly rate for his services in the instant case. The court disagrees. The litigation services provided by an attorney representing a Chapter 7 trustee are not *similar* to the services provided by debtor's counsel in a Chapter 13 bankruptcy case.

The second case Fraley cites is *In re Binh Quoc Do*, Case No. 23-23483 (E.D. Cal. Bankr. 2023). In this case Judge Ronald Sargis approved Fraley's hourly rate of \$510.00. However, Judge Sargis also noted that "\$510 per hour is on the higher side of attorneys' rates...". *Id.*, Civil Minutes, ECF No. 42. The court also noted that

extraordinary circumstances existed in the case including an initial consultation which lasted 3 hours to halt an imminent foreclosure proceeding.

In the instant case Fraley discloses that: (1) he represented the debtors in two prior bankruptcy cases; (2) the debtors' had recently received a Chapter 7 discharge; (3) the instant Chapter 13 case was filed to reorganize two remaining obligations, one to the Franchise Tax Board and the other to the mortgage lender; and (4) that the Chapter 13 case was filed to halt a foreclosure proceeding, while the debtors continued to pursue a loan modification. Within 4 months the debtors achieved the loan modification and opted, with advice of counsel, not to oppose the Chapter 13 trustee's motion to dismiss the case. Although the court finds that the services Fraley provided to the debtors were reasonable and beneficial to the debtors it does not find that the circumstances of this case were extraordinary or complex warranting an hourly rate of \$480.00.

The court relies on its own recent analysis of the reasonable rate for attorney/applicant Fraley as stated in *In re Elizabeth Rodas Barrios*, Case No. 23-20831 (E.D. Cal. Bankr. 2024). In the *Barrios* case Mr. Fraley represented a debtor in a Chapter 13 case. The applicant requested approval of compensation after the dismissal of the case. On July 16, 2024, this court held:

However, the court may apply its own knowledge in determining a reasonable rate of compensation. In this case the court determines that reasonable compensation for similar work by an experienced consumer bankruptcy attorney in this district at \$325.00 per hour. Because the applicant is a certified bankruptcy specialist the court increases this hourly rate by 20%. See LBR 2016-1(c)(1)(C). Accordingly, the court determines that the applicant's reasonable hourly rate of compensation is \$390.00.

Id., Civil Minutes, ECF No. 89.

The attorney services performed on behalf of the debtor totaled 5.8 hours for post-petition work. Exhibit B, ECF No. 112. Accordingly, the attorney compensation approved is calculated as follows: 5.8 hours x \$390.00 per hour. The total is \$2,262.00 in attorney compensation.

The rate of paralegal compensation requested is \$180 per hour.

As it held in the previous application this court determines the reasonable hourly rate of the paralegal in this case to be \$130.00. This represents approximately one third of the amount charged by the lead attorney on an hourly basis.

The paralegal services performed on behalf of the debtor totaled 13.4 hours for post-petition work. Exhibit B, ECF No. 112. Accordingly, the paralegal compensation approved is calculated as follows: 13.4 hours x \$130.00 per hour. The total is \$1,742.00 in paralegal compensation.

The aggregate amount approved totals \$4,004.00. The court will allow post-petition compensation in the amount of \$4,004.00.

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.

Gary Fraley's application for allowance of final compensation and reimbursement of expenses 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 application is approved on a final basis. The court allows final compensation in the amount of \$4,004.00 for post-petition compensation. As of the date of the application, the applicant held a retainer in the amount of \$2,701.00. The applicant is authorized to draw on any retainer held. The remainder of the allowed amounts shall be paid directly by the debtors; and

IT IS FURTHER ORDERED that all other requested relief is denied.

37. [24-22164](#)-A-13 **IN RE: JOHN/KIMBERLY MCCABE**
[DPC-1](#)

MOTION TO DISMISS CASE
11-8-2024 [\[40\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: November 19, 2024 - timely

Motion to Modify Plan Filed: November 19, 2024 - timely

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

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is January 7, 2025, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not

been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to January 7, 2025, at 9:00 a.m.

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

38. [24-20667](#)-A-13 **IN RE: CHRISTOPHER HIGGINBOTHAM**
[DPC-1](#)

MOTION TO DISMISS CASE
11-15-2024 [\[33\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: December 3, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,124.86, with one payment(s) of \$2,105.81 due before the hearing on this motion.

The debtor has filed a timely opposition consists of the Declaration of the Debtor and Exhibits, ECF Nos. 37, 38. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion, and that he has

tendered payments to the trustee totaling \$3,420.00. See Declaration, ECF No. 37.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

39. [24-24467](#)-A-13 **IN RE: STEPHEN SHAIDELL**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-19-2024 [[17](#)]

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to February 4, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the debtor(s) shall do one of the following:

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

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

include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 25, 2025; or

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

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

40. [24-24467](#)-A-13 **IN RE: STEPHEN SHAIDELL**
[RDW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JUSTIN ALDI
11-21-2024 [21]

PATRICIA WILSON/ATTY. FOR DBT.
JOSHUA SCHEER/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

Creditor, Justin Aldi, objects to confirmation of the debtor(s) plan.

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to February 4, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 21, 2025; or

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

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

41. [19-24669](#)-A-13 **IN RE: RAMON CAPARAS**
[DPC-2](#)

MOTION TO DISMISS CASE
11-7-2024 [\[154\]](#)

ARASTO FARSAD/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: November 25, 2025, - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$6,001.61, with one payment of \$3,343,48 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 158, 159, 160. The delinquency was caused by necessary repairs to the debtor's home. The debtor's declaration states that the debtor has paid \$500 to the trustee and will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 160.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

42. [23-24270](#)-A-13 **IN RE: DAVID SIMMONS**
[PGM-2](#)

MOTION TO CONFIRM PLAN
11-8-2024 [[114](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR DISMISSED: 11/23/24

Final Ruling

This case was dismissed on November 23, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

43. [23-20674](#)-A-13 **IN RE: ELAINE CORPUZ**
[MRL-2](#)

MOTION TO MODIFY PLAN
11-6-2024 [\[37\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Chapter 13 Plan, filed November 6, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Chapter 13 Plan, ECF No. 39. The plan is supported by Schedules I and J filed, November 6, 2024, ECF No. 43. The Chapter 13 trustee has filed a non-opposition to the motion, 44.

The trustee's response requests language in the order confirming the plan which states: "post-petition arrears total \$2,006.54 for the month of June 2024." The court will approve the motion if the language is included in the order confirming the plan. The debtors shall submit an order which complies with this ruling.

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 with the changes requested by the trustee in his response.

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

MOTION TO CONFIRM PLAN
10-8-2024 [\[29\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed October 8, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 34. The plan is supported by Schedules I and J filed, October 8, 2024, ECF No. 35. The Chapter 13 trustee has filed a non-opposition to the motion, 44.

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.

45. [24-21277](#)-A-13 **IN RE: MARTIN MANCILLA GUTIERREZ**
[DPC-1](#)

MOTION TO DISMISS CASE
11-15-2024 [[16](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: December 3, 2024 - timely

Modified Plan: Not filed - untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$6,900.00, with one payment(s) of \$2,800.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 20, 21. The opposition merely states:

There have been significant changes to Debtor's finances since his case was filed. Debtor is working with counsel to modify his plan and will have a modified plan and supporting documents filed within 7 days' time.

Declaration, ECF No. 21.

A modified plan has not been timely filed.

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

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

On December 3, 2024, the debtors filed an opposition to the motion to dismiss, ECF No. 20. The opposition consists of a declaration by the debtor(s)' attorney stating his intention to file a modified

plan by December 13, 2024. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

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

The court is aware that the motion to dismiss was filed November 15, 2024, giving the debtor only 16 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

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

The debtor's opposition makes no request for an extension of time to file a modified plan as required by Fed. R. Bankr. P. 9006(b), LBR 9014-1. Neither does the opposition state any cause as a basis for the court to grant such an extension.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

46. [24-23477](#)-A-13 **IN RE: JOSHUA WILLIAMS**
[GEL-1](#)

MOTION TO CONFIRM PLAN
11-5-2024 [\[42\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation. The motion is also opposed by secured creditors: (1) Foothill Mortgage Fund of Olympia, LLC; and (2) Michael Jacob/Denise Meier.

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

PLAN FEASIBILITY

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

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$36,000.00. The plan cannot be confirmed if the plan payments are not current.

Sale of Real Property

The proposed plan contains the following provisions:

3.08(3) Secured Creditor, Bay Mark Financial identified above in Class 2 holds a matured second position deed of trust against real property located at 2147 W Green Springs Road, El Dorado Hills, CA.

D Payment Treatment : Debtor shall provide adequate protection payments of \$2,500.00 at 8.5% interest for 12 months. *Within 4 months, or by December 6, 2024, Debtor will pay entire claim in full from the sale of either or property sales of : 1) 645 Kanaka Valley Road, Rescue CA 95672 and/or 2) 1025 Donkey Lane, Rescue CA 95672 and/or 3) 2147 W Green Springs Road, El Dorado Hills, CA.*

First Amended Chapter 13, Plan, § 7, ECF No. 46, (emphasis added). The proposed plan calls for the sale of real property on or before December 6, 2024. The court has reviewed the docket and no motion to approve the sale of any real property has been filed in this case. Moreover, as the trustee asserts, the motion to confirm the plan is devoid of any evidence describing the debtor's actions regarding the marketing and sale of any real property.

Accordingly, the court finds that the debtor has failed to prove that the plan is feasible under 11 U.S.C. § 1325(a)(6) and will deny the motion. As such the court need not consider the remaining contentions raised in opposition to the motion.

CIVIL MINUTE ORDER

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

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

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

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

47. [24-23577](#)-A-13 **IN RE: JAMIE MELONI**
[TLA-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY
FOR THOMAS L. AMBERG, DEBTORS ATTORNEY(S)
11-15-2024 [[19](#)]

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$2,920.00

Reimbursement of expenses: \$45.00

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Thomas L. Amberg, Jr., has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,920.00 and reimbursement of expenses in the amount of

\$45.00. The Chapter 13 trustee does not oppose the motion. Non-Opposition, ECF No. 25.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$2,920.00 and reimbursement of expenses in the amount of \$45.00. The aggregate allowed amount equals \$2,965.00. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$2,965.00 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.

48. [24-23678](#)-A-13 **IN RE: ADRIANA GARCIA**
[JBR-2](#)

MOTION TO CONFIRM PLAN
10-19-2024 [[27](#)]

JENNIFER REICHHOFF/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

NOTICE OF WITHDRAWAL

On December 9, 2024, the debtor filed a Notice of Withdrawal of her motion to confirm, ECF No. 43. However, opposition to the motion was filed by creditor Wells Fargo Bank on October 22, 2024, as discussed below in this ruling. Because opposition was filed the debtor may not unilaterally withdraw the motion. Fed. R. Civ. P. 41. The court expressly disallows the withdrawal of the motion by the debtor and instead issues this ruling.

NO RESPONSE BY CHAPTER 13 TRUSTEE

The Chapter 13 trustee has failed to file a response to the motion as required. 11 U.S.C. § 1302(b). Written response was required no later than 14 days prior to the hearing on this motion. LBR 9014-1(f)(1).

The court will proceed with the motion as the opposing creditor's argument is dispositive.

WELLS FARGO OPPOSITION

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

Wells Fargo Bank, N.A., opposes the motion, objecting to confirmation, contending that as residential home mortgage payments

were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper.

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

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a). Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$1,858.34. Compare Claim No. 11 (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.

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

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

49. [23-24379](#)-A-13 **IN RE: GRACE LEE**
[JLK-3](#)

MOTION TO CONFIRM PLAN
11-5-2024 [[62](#)]

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

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

Order: Civil minute order

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

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

The trustee's "non-opposition" is actually an opposition to the motion, ECF No. 69. However, the court agrees that the matters raised in the trustee's opposition may be resolved in the order confirming the plan. However, as the debtor has failed to file a reply, there is no evidence of the debtor's position regarding the trustee's opposition. The court will continue this matter to allow the parties to submit a signed order confirming the plan which resolves *only* the matters raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is continued to January 22, 2025, at 9:00 a.m. Should the parties resolve the matter by stipulation then no later than January 7, 2025, the debtor shall submit an order confirming the plan which has been signed by the Chapter 13 trustee.

IT IS FURTHER ORDERED that if the parties are unable to resolve this matter in the order confirming the plan, then the debtor shall file and serve a reply indicating her position no later than January 7, 2025.

50. [24-25280](#)-A-13 **IN RE: DARRELL/ELIZABETH KEITH**
[DWL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
12-3-2024 [[9](#)]

PATRICIA WILSON/ATTY. FOR DBT.

Final Ruling

This case was dismissed on December 9, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

51. [24-20381](#)-A-7 **IN RE: JEFFREY JORISSEN AND ELLEN CLARK**
[DWL-1](#)

MOTION TO MODIFY PLAN
11-18-2024 [[35](#)]

PATRICIA WILSON/ATTY. FOR DBT.
CASE CONVERTED: 11/23/24

Final Ruling

This case was converted to a Chapter 7 on November 23, 2024. Accordingly, this motion will be removed from the calendar. No appearances are necessary.

52. [24-24591](#)-A-13 **IN RE: NICHOLAS/LINDSAY DEROSA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-26-2024 [[14](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to February 4, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the debtor(s) shall do one of the following:

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

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

January 21, 2025. The evidentiary record will close after January 25, 2025; or

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

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

53. [24-24195](#)-A-13 **IN RE: BRANDAN GRIEGO**
[KMM-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO AUTO
10-31-2024 [[19](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

54. [24-24495](#)-A-13 **IN RE: VIVIAN TOLIVER**
[PR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-22-2024 [[21](#)]

PATRICK RIAZI/ATTY. FOR MV.
VALINOR HOLDINGS, LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Valinor Holdings, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice as follows.

SERVICE AND NOTICE

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

Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

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

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 26. Accordingly, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

Valinor Holdings, LLC's motion for stay relief has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

55. [23-23797](#)-A-13 **IN RE: MICHAEL/AMY WHITING**
[DPC-1](#)

MOTION TO DISMISS CASE
11-15-2024 [40]

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: December 3, 2024, - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$7,016.00, with one payment(s) of \$7,016.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 44, 45. The debtor's declaration states that the debtors tendered payment to the trustee on November 30, 2024, and that plan payments are current. The court notes that the declaration provides no details regarding the amount of payment tendered, or manner of payment. See Declaration, ECF No. 45.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

56. [24-24597](#)-A-13 **IN RE: AYANNA SPIKES**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-26-2024 [[19](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained

Order: Civil minute order

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

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

On December 9, 2024, the debtor filed a response to the objection. The response states that the debtor intends to file an amended plan, and requests that the court sustain the trustee's objection.

Accordingly, the court will sustain the objection because the plan is not feasible UNDER 11 U.S.C. § 1325(a)(3). The trustee reports that payments under the plan are \$2,000 delinquent and the plan cannot be confirmed if the payments are not current.

The court will sustain the objection on this basis and need not reach the remaining contentions in the trustee's objection.

CIVIL MINUTE ORDER

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

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

The 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.

57. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[DPC-6](#)

MOTION TO DISMISS CASE
11-15-2024 [\[113\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: December 3, 2024

Opposition Filed: December 3, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,336.25 with one payment(s) of \$4,336.25 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 117, 118. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion, and that the debtor has already tendered \$8,672.50 to the trustee, although the payments have not yet been processed. See Declaration, ECF No. 118. The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

58. [24-23799](#)-A-13 **IN RE: RYAN DEVRIEND**

[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.

CUSICK

10-9-2024 [[15](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 5, 2024

Disposition: Sustained

Order: Civil minute order

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

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

The debtor has filed a statement indicating that he concedes the trustee's objection. Specifically, the debtor states that he has not forwarded requested documents to the trustee. Response, ECF No. 21. Accordingly, the court will sustain this objection because as the trustee contends the feasibility of the plan cannot be established without the documents requested pursuant to 11 U.S.C. § 521. 11 U.S.C. § 1325(a)(6).

CIVIL MINUTE ORDER

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

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

The 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.

59. [24-23799](#)-A-13 **IN RE: RYAN DEVRIEND**
[MRL-2](#)

MOTION TO SELL
11-21-2024 [[31](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

60. [24-24399](#)-A-13 **IN RE: JESSICA SANCHEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-20-2024 [[13](#)]

KRISTY HERNANDEZ/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to February 4, 2025, at 9:00 a.m.

Order: Civil minute order

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

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to February 4, 2025, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than January 7, 2025, the debtor(s) shall do one of the following:

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than January 21, 2025. The evidentiary record will close after January 25, 2025; or

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

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