



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

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

**DAY: WEDNESDAY**  
**DATE: JANUARY 22, 2025**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

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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 **Court Appearances** page of our website at:

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

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

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### 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.

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1. [24-20905](#)-A-13     **IN RE: SON TRAN**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[19\]](#)

MOHAMMAD MOKARRAM/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:** January 8, 2025

**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 \$4,000.00 with one payment(s) of \$2,000.00 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.

2. [24-24305](#)-A-13     **IN RE: ROBERT SOUZA**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID  
P. CUSICK  
11-13-2024    [\[16\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

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

**Notice:** Continued from December 3, 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 debtors' agreement to including the following language in the order confirming the plan: "The Debtor will pay in \$979.00 x 2, \$17,979.00 x 1, \$979.00 x 33 for a total plan length of 36 months".

The debtor filed a reply which states he agrees to include the proposed language in the order confirming the plan.

Accordingly, the court will overrule the objection and approve the requested provision in the order confirming the plan. The debtor(s) shall submit an order confirming the plan which is consistent with this ruling and 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.

3. [24-25005](#)-A-13     **IN RE: JAMIE WOLSKY**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK  
12-23-2024    [\[13\]](#)

MARK BRIDEN/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 March 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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.

4. [24-25205](#)-A-13      **IN RE: MERRILEE ZERROUGUI**

MOTION TO IMPOSE AUTOMATIC STAY  
12-30-2024    [\[28\]](#)

MERRILEE ZERROUGUI/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

**Petition filed:** November 15, 2024

**Motion served:** November 18, 2024

**Motion filed:** December 30, 2024

The motion states that the debtor seeks an order imposing the automatic stay under 11 U.S.C. § 362(c)(4).

The debtor is not eligible for relief under this code section.

(4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

11 U.S.C. § 362(c)(4)(A), (B).

The debtor has only filed one prior case which was dismissed during the previous year. That case was *In re Merrilee Rose Zerrougui*, Case No. 24-22293, E.D. Cal. Bank. (2024).

Because only one case was previously filed in the past year the debtor is not eligible for relief under 11 U.S.C. § 362(a).

However, the court construes the debtor's motion as a motion for extension of the automatic stay under 11 U.S.C. § 362(c)(3).



### **EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B).

Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c) (3) (B) (emphasis added). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

The debtor has had a previous case pending within the one-year period prior to the filing of this case. The motion to extend the stay was filed on December 30, 2024, which was after the expiration of the 30-day period after the petition date in this case. Motion, ECF No. 28. Neither has the hearing on this matter been completed before the expiration of the 30-day period.

The court notes that the certificate of service in this matter states that a Motion to Extend the Automatic Stay was served on November 18, 2024. Certificate of Service, ECF No. 13.

In any circumstance the hearing date of January 22, 2025, is more than 30 days after the filing of the petition on November 15, 2024.

Accordingly, the automatic stay has already terminated, and the court has no authority to grant the relief requested. The motion will be denied.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied.

5. [24-25205](#)-A-13     **IN RE: MERRILEE ZERROUGUI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-20-2024    [\[26\]](#)

12/30/2024 FINAL INSTALLMENT FEE PAID \$313

**Final Ruling**

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

6. [24-24212](#)-A-13     **IN RE: RANDY YASSINE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-27-2024    [\[33\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

**Final Ruling**

The case was dismissed on January 8, 2025, the order to show cause is discharged as moot.

7. [24-24212](#)-A-13     **IN RE: RANDY YASSINE**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
11-14-2024    [\[16\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

**Final Ruling**

This case was dismissed on January 8, 2025. Accordingly, the Objection will be removed from the calendar as moot. No appearances are required.

8. [24-21613](#)-A-13     **IN RE: EMILIO GARCIA**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-6-2024    [\[27\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
NISSAN MOTOR ACCEPTANCE COMPANY LLC VS.

**Final Ruling**

On January 14, 2025, the movant filed a notice of withdrawal of its motion pursuant to Fed. R. Civ. P. 41. Notice of Withdrawal, ECF No. 38. As no other parties have appeared the motion is withdrawn. Accordingly, this matter will be removed from the calendar. No appearances are required.

9. [24-24813](#)-A-13     **IN RE: STEVEN/RIKKI CONNER**  
[CRG-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL  
11-5-2024    [\[9\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** Continued from December 17, 2024

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The hearing on the debtor's motion to value to collateral of Ally Financial was continued so the debtor could provide admissible evidence regarding the nature of the security interest held by Ally.

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.

Civil Minutes, ECF No. 23.

**VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in

such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2021 Tesla Model 3. The debtors have failed to prove whether the debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The debtor's declaration and the monthly financial statement do not indicate whether the lien is a purchase money security interest or not.

The court notes that Ally Financial filed a claim in this case, but the claim does not attach financing documents, so the court is unable to conclude that the lien is a purchase money security interest.

Accordingly, the court is unable to grant the motion. The court will deny the motion without prejudice.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

10. [24-25113](#)-A-13     **IN RE: JASON PEREZ AND JENNIFER BECERRA**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SERVBANK, SB  
11-29-2024    [\[16\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

**Final Ruling**

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

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

**CIVIL MINUTE ORDER**

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

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

11. [24-25713](#)-A-13     **IN RE: TANIA MARTINEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-3-2025    [\[12\]](#)

DEBTOR DISMISSED: 01/07/25

**Final Ruling**

The case was dismissed on January 7, 2025. Accordingly, the order to show cause is discharged as moot.

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

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY ,  
MOTION/APPLICATION FOR ADEQUATE PROTECTION  
10-8-2024    [[106](#)]

MARC VOISENAT/ATTY. FOR DBT.  
BENJAMIN LEVINSON/ATTY. FOR MV.  
CHRISTINA S. DICK, STEVEN P. DICKS VS.

#### **Final Ruling**

On January 8, 2025, the parties filed a joint status report, ECF No. 125. The report states that counsels for the debtors, the movant, and Towd Point Mortgage Trust have met and conferred. The debtors are currently engaged in securing a loan modification. The parties request a continuance until March 4, 2025.

IT IS ORDERED that the hearing on this motion is continued until March 4, 2025, at 9:00 a.m. No later than 14 days prior to the hearing the parties shall file a joint status report apprising the court of the status of the motion. The status report shall be circulated and signed by all counsel of record appearing in this motion.

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

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

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

#### **Final Ruling**

On January 8, 2025, the parties filed a joint status report, ECF No. 125. The report states that counsels for the debtors, the movant, and Christina Dicks and Steven P. Dick, Trustees of the Dick Family Trust have met and conferred. The debtors are currently engaged in securing a loan modification. The parties request a continuance until March 4, 2025.

IT IS ORDERED that the hearing on this motion is continued until March 4, 2025, at 9:00 a.m. No later than 14 days prior to the hearing the parties shall file a joint status report apprising the court of the status of the motion. The status report shall be circulated and signed by all counsel of record appearing in this motion.

14. [24-25015](#)-A-13     **IN RE: STEVEN/KAREN STRAND**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-23-2024    [\[14\]](#)

CATHERINE KING/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 March 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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.

15. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-23-2024    [\[80\]](#)

12/30/24 INSTALLMENT FEE PAID \$78

#### **Final Ruling**

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

16. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[DNL-1](#)

MOTION TO DISMISS CASE  
1-6-2025    [\[85\]](#)

J. CUNNINGHAM/ATTY. FOR MV.

#### **Tentative Ruling**

As the court has granted the Chapter 13 trustee's motion to dismiss (DPC-2) and ordered the case converted to Chapter 7 the court denies this motion to dismiss as moot.



17. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[DNL-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
1-6-2025    [\[90\]](#)

J. CUNNINGHAM/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Robert J. Dronberger, Jr. and Judith Ann Dronberger object to the debtor's claim of exemptions on the assets listed in the debtor's Amended Schedule C.

The court has sustained the Chapter 13 trustee's objection (DPC-3) to the debtor's exemptions claimed in the Amended Schedule C, ECF No. 67. See Trustee's Objection to Exemptions, ECF No. 74.

Accordingly, the objection filed by the creditor is moot.

### **CIVIL MINUTE ORDER**

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

Robert J. Dronberger, Jr. and Judith Ann Dronberger's Objection to Exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

18. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[DPC-1](#)

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

RESPONSIVE PLEADING

### **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.

19. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[DPC-2](#)

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

### **Tentative Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from November 19, 2024

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 8, 2025

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency; Ineligibility under 11 U.S.C. § 109(e)

**Best Interests of Creditors/Estate:** Convert to Chapter 7

### **PROCEDURAL HISTORY**

On November 15, 2024, the debtor filed an opposition to the trustee's motion to dismiss. In her opposition the debtor requested a continuance of the hearing to consult with bankruptcy counsel regarding the issues raised in the trustee's motion to dismiss and objection to confirmation.

The court continued the hearing to allow the debtor time to consult with bankruptcy counsel and to file additional opposition, if any, to the motion. Civil Minutes, ECF No. 58. The debtor was ordered to file any additional opposition to the motion no later than December 23, 2024. Order, ECF No. 62. The Chapter 13 trustee was also ordered to file a status report. *Id.* The trustee has filed a status report as ordered.

However, the trustee's status report only addresses the issue of plan delinquency and eligibility under 11 U.S.C. § 109(e). The trustee has not updated the record regarding the status of the remaining bases raised in his motion. Accordingly, the court will rule on the issues indicated in the status report and need not consider the remaining issues raised by the trustee.

The debtor has filed no additional opposition to the motion. The debtor is a practicing attorney, licensed to practice law in the state of California. Opposition, 5:11-14, ECF No. 52.

### **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 status report filed January 8, 2025, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$6,000. The petition was filed on September 16, 2024. The Chapter 13 Plan filed December 4, 2024, calls for payments of \$2,000 per month. Chapter 13 Plan, § 2.01, ECF No. 68. Accordingly, the debtor should have made three plan

payments and the trustee reports that no plan payments have been made since the filing of the petition. Amended Status Report, ECF No. 106.

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

### **PLAN DELINQUENCY**

Plan payments are delinquent under the proposed Amended Chapter 13 Plan. This is cause under 11 U.S.C. § 1307(c)(1) to dismiss the case.

#### Amended Plan Filed

As noted previously in this ruling an amended Chapter 13 Plan was filed on December 4, 2024, resolving this basis for dismissal.

### **CHAPTER 13 ELIGIBILITY**

#### Generally

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, *unsecured debts of less than \$465,275 [originally "\$250,000", adjusted effective April, 1, 2022]* and noncontingent, liquidated, secured debts of less than \$1,395,875 [originally "\$750,000", adjusted effective April 1, 2022], or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$465,275 [originally "\$250,000", adjusted effective April, 1, 2022] and noncontingent, liquidated, secured debts of less than \$1,395,875 [originally "\$750,000", adjusted effective April 1, 2022] may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) (emphasis added).

The current debt limits for Chapter 13 eligibility under 11 U.S.C. § 109(e) for noncontingent liquidated debts for secured claims is \$1,395,875.00, and for unsecured claims is \$465,275.00. Here, the debtor's originally filed schedules show secured debts totaling \$2,049,177.04, which exceeds the secured debt limit. Summary of Assets and Liabilities, ECF No. 17.

## Debtor Opposition

The debtor filed amended schedules on December 4, 2024, ECF No. 67. The debtor's amended Schedule D removed the debts owed to (a) Robert J. and Judith Ann Dronberger (\$400,000.00); (b) PNC Bank (\$217,753.00); (c) Land Rover Financial (\$17,665.66); and (d) Chrysler Financial (\$15,562.00). The debtor contends these obligations are not properly included in her schedules and plan. Opposition, 2:11-23, 3:1-2, ECF No. 52.

The court notes that each of the removed creditors has filed secured claims in this case. As discussed below, while the debtor may dispute either the amounts, or the secured status of the debts the disputed amounts are not excluded from the calculation.

The Ninth Circuit has "simply and explicitly state[d] the rule for determining Chapter 13 eligibility under § 109(e) to be that eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001).

The initial schedules filed in this case indicate that the secured debt limits exceed those allowed by § 109(e). The debtor has not reasonably explained how debts which were omitted in the amended Schedule D were erroneous.

Moreover, the court notes that secured claims filed in the case total amount of \$1,828,232.43, which supports the original schedules filed by the debtor.

## Disputed Claims Are Not Excluded From Calculation

However, a disputed claim is still a "claim" under § 101(5). Section 109(e) excludes unliquidated and contingent debts from the eligibility calculation, but it does not exclude debts which are *merely disputed*. *In re Nicholes*, 184 B.R. at 88. Additionally, eligibility under § 109(e) is determined as of the petition date and is not based on post-petition events. *In re Fountain*, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020) citing *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001).

*In re Fountain*, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020) (emphasis added).

The court finds that the debtor is not eligible for chapter 13 relief as her secured debt exceeds the limits of 11 U.S.C. § 109(e).

## **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).

#### Trustee Analysis

2722 LATHAM \$95425.62; 820 EVERGREEN \$292247; 1221 S. PLEASANT AVE. \$381500; 2018 EDGEWOOD DR \$303,500; COMM BLDG 115 W. WALNUT ST \$400K; 2021 JEEP \$3438; 2022 LANDROVER \$22334.34; HHG \$5K; ELECTRONICS \$5K; SPORTS EQUIP \$2K; CLOTHES \$1K; WEDDING RING & JEWELRY \$15K; BK OF STOCKTON CKG \$1898; BMO CKG \$2273;

Amended Status Report, 2:9-12, ECF No. 106.

The trustee has listed the estimated equity in the assets listed in the debtor's schedules in his status report. A review of the debtors Schedule A/B, Summary of Assets and Liabilities indicates that the debtor has valued the estate assets in the amount of \$3,238,350.00. After subtracting the secured obligations in the amount of \$2,049,177, there remains approximately \$1,189,173 in equity in the assets.

The court sustained the trustee's objection to the debtor's claim of exemptions (DPC-3). Accordingly, the debtor has no claimed exemptions, and all the assets in the estate are not exempt.

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.

#### **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: (1) of the delinquency under the chapter 13 plan in this case; (2) because the debtor is not eligible under 11 U.S.C. § 109(e). The court hereby converts this case to Chapter 7.

20. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[DPC-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
12-16-2024    [\[74\]](#)

### **Final Ruling**

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

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The Chapter 13 trustee objects to the claim of exemptions in the assets listed in the debtor's Amended Schedule C filed on December 4, 2024, ECF No. 67.

Amended Schedule C indicates that the debtor is claiming "state and federal non-bankruptcy exemptions. 11 U.S.C. §522(b)(3)". The amended Schedule C lists only "CALIFORNIA 704; FEDERAL", under the "Specific laws that allow exemption".

The Debtor has failed to specify any specific laws that allow for a claim of exemption in any of the assets indicated in the amended schedule. Amended Schedule C, ECF No. 67. Moreover, the debtor has failed to claim any amount exempt in any asset listed. The debtor has only claimed "100 percent of the fair market value" exempt. California exemption statutes provide limited dollar amounts which may be exempted and the debtor has failed to indicate the amounts exempted in any asset indicated.

### Exemption Law in Bankruptcy

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201, 204 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 of Title 11 allows a debtor (1) to exempt property under § 522(d), unless a state does not so authorize, or (2) to exempt property under state or local law and federal law other than § 522(d). *Id.* § 522(b)(2)-(3)(A), (d). California has opted out of the federal exemption scheme. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11

U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 (“[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition.”); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). “In California, exemptions are to be construed liberally in favor of the debtor.” *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure (“special bankruptcy exemptions”) or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) (“regular non-bankruptcy exemptions”). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)–(3).

#### Burden of Proof

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that “where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.” *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

“[P]roperty passes to the estate automatically, and it is the debtor’s burden to make out the claim of exemption with adequate specificity.” *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985). Further, [a]mbiguities in matters of claims of exemption will be construed against the debtor because “it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor’s schedules.” *In re Mohring*, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992), *aff’d*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff’d*, 24 F.3d 247 (9th Cir. 1994) (internal quotation marks omitted).

The court is unable to determine the amount of the exemptions claimed by the debtor in any of the assets indicated in Amended Schedule C. Moreover, the laws under which the debtor purports to claim exemptions have not been specified. Accordingly, the court will sustain the trustee’s objection and disallow all the exemptions the debtor has claimed on the Amended Schedule C, ECF No. 67.

#### **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 sustained. The debtor's exemptions to all assets in Amended Schedule C, ECF No. 67 are disallowed.

21. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[JCW-1](#)

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

JENNIFER WONG/ATTY. FOR MV.

### **Final Ruling**

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

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

### **CIVIL MINUTE ORDER**

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

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

22. [24-24120](#)-A-13     **IN RE: KRISTINA FLUETSCH**  
[JLS-1](#)

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

JOSHUA SCHEER/ATTY. FOR MV.

**Final Ruling**

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

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

**CIVIL MINUTE ORDER**

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

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

23. [23-22825](#)-A-13     **IN RE: KAREN JOHNSON**  
[PGM-1](#)

CONTINUED MOTION BY PETER G. MACALUSO TO WITHDRAW AS  
ATTORNEY  
10-1-2024    [\[57\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DEBTOR DISMISSED: 12/19/24

**Final Ruling**

This case was dismissed on December 19, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

24. [20-20128](#)-A-13     **IN RE: BEATRICE POLLESEL**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING  
TRANSFER OF CLAIM  
12-27-2024    [[36](#)]

MICHAEL HAYS/ATTY. FOR DBT.  
1/7/25 TRANSFER FEE PAID \$28

**Final Ruling**

As the fee has been paid in full, the order to show cause is discharged.

25. [24-22629](#)-A-13     **IN RE: RUMMY SANDHU**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-9-2024    [[81](#)]

PETER MACALUSO/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to February 19, 2025, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** January 8, 2025

**Opposition Filed:** January 8, 2025 - timely

**Motion to Modify Plan Filed:** January 6, 2025 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1).

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is February 19, 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 February 19, 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.

26. [24-20130](#)-A-13     **IN RE: KENNETH SHERMAN AND KATHY OLIVER**  
SHERMAN  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[32\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

#### **Final Ruling**

On January 14, 2025, the Chapter 13 trustee filed a request to dismiss his motion pursuant to Fed. R. Civ. P. 41, ECF No. 36. As no other parties have appeared the motion is dismissed, and the matter removed from the calendar. No appearances are required.

27. [24-25032](#)-A-13     **IN RE: ARASH RAHIMI AND NOOSHIN NAMI**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-23-2024    [\[15\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to March 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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. [21-21833](#)-A-13     **IN RE: VANESSA GRIFFITH**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[48\]](#)

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:** January 8, 2025

**Opposition Filed:** January 8, 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 \$3,220.00, with one payment(s) of \$1,610.00 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. 52, 53. The debtor's declaration states that the debtor has tendered \$2,500 to the trustee and has scheduled a further payment of \$2,330.00 to the trustee. The combined payments will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 53.

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.

29. [24-24736](#)-A-13     **IN RE: JOSEPH/RACHELLE FILSTRUP**  
[CRG-1](#)

MOTION TO CONFIRM PLAN  
11-26-2024    [\[17\]](#)

CARL GUSTAFSON/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:** Continued to February 19, 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).

### TRUSTEE OPPOSITION

The Chapter 13 trustee opposes the motion on two bases: (1) the plan fails liquidation; and (2) the trustee has not yet examined the debtor at the meeting of creditors. The trustee seeks a continuance of the hearing on this motion to examine the debtor and believes a resolution regarding the liquidation test may also be resolved at the meeting of creditors.

The debtors filed a reply stating that they do not oppose the requested continuance. Accordingly, the court will continue the hearing. Should the parties resolve the matter a stipulation shall be filed and a proposed order confirming the plan which is approved by the Chapter 13 trustee shall be lodged with the court.

Should the parties fail to resolve the matter by stipulation, a joint status report shall be filed with the court no later than 14 days prior to the continued hearing date.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is continued to February 19, 2025, at 9:00 a.m. No later than 14 days prior to the continued hearing the parties shall file a joint status report regarding this motion. Alternatively, should the parties resolve the trustee's opposition to the motion, then a stipulation shall be filed and a proposed order confirming the plan which is signed by the Chapter 13 trustee shall be lodged with the court.

30. [24-24939](#)-A-13     **IN RE: NICHOLE PIKE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-23-2024    [\[31\]](#)

RHONDA WALKER/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 March 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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.

31. [24-24939](#)-A-13     **IN RE: NICHOLE PIKE**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
12-26-2024    [\[35\]](#)

RHONDA WALKER/ATTY. FOR DBT.  
CASSANDRA RICHEY/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 March 4, 2025, at 9:00 a.m.

**Order:** Civil minute order

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

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

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

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued  
to March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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).

32. [24-24939](#)-A-13     **IN RE: NICHOLE PIKE**  
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
12-16-2024    [\[27\]](#)

RHONDA WALKER/ATTY. FOR DBT.

### **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 March 4, 2025, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Ally Bank, 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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).

33. [20-22143](#)-A-13     **IN RE: JODI/ROBERT GALLAGHER**  
[MC-13](#)

MOTION TO MODIFY PLAN  
11-22-2024    [\[178\]](#)

MUOI CHEA/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:** Fourth Modified Chapter 13 Plan, filed November 22, 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 November 22, 2024, ECF Nos. 184, 185, 186. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 188.

In his response to the motion the trustee requests that the amount paid into the plan be clarified in the order confirming the modified plan. The trustee reports that \$107,052.58 has been paid into the plan instead of \$105,664.58 which has been stated in the plan. As the change presents no detriment to any party the court will allow the correct in the order confirming the modified plan. The debtor shall submit an order confirming the modified plan which contains the modified number indicated by the trustee. The order shall be approved by the Chapter 13 trustee.

### Debtor Response

The debtors consent to the trustee's request to correct the total amount paid into the plan. Reply, ECF No. 190.

### **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. The debtors shall submit an order confirming the modified plan which is consistent with this ruling, and which has been approved by the Chapter 13 trustee.

34. [24-20344](#)-A-13      **IN RE: RANDY HOWARD**  
[DPC-2](#)

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

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

The hearing on the trustee’s motion to dismiss was continued from November 19, 2024, to allow the debtor to file another motion to incur debt and to modify the plan. The debtor has filed neither motion. However, the debtor has filed opposition to the motion indicating that he intends to file a modified plan. Opposition, ECF No. 95

The Chapter 13 trustee has filed a status report, ECF No. 96. The trustee reports that he is holding funds pursuant to a prior order of this court and that should the debtor fail to obtain an order modifying the plan or reinvest the proceeds of the sale of the debtor’s previous residence that the trustee will propose a modified plan and file a motion to confirm same. As such the trustee contends that the withdrawal of his motion to dismiss is in the best interests of the bankruptcy estate and the creditors. The court agrees.

Notwithstanding the debtor’s opposition in this matter the court will allow the withdrawal of the motion under Fed. R. Civ. P. 41.

IT IS ORDERED that the trustee’s motion to dismiss is withdrawn by the moving party pursuant to Fed. R. Civ. P. 41.

35. [19-21347](#)-A-13     **IN RE: FELICIA HUDSON**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-2-2024    [\[138\]](#)

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

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 8, 2025

**Opposition Filed:** January 8, 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 \$3,005.44, with one payment(s) of \$2,514.77 due before the hearing on this motion.

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

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

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

The debtor has filed a timely opposition, ECF No. 142. The opposition consists of an unsworn statement by debtor's counsel and is not accompanied by any admissible evidence. The opposition states that the debtor needs additional time to bring the plan payments current.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating how the debtor will bring the plan

payments current or when she might have the ability to bring payments current.

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

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.

The court will grant the motion.

#### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the 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.



36. [24-24247](#)-A-13     **IN RE: NEERAJ BHARDWAJ**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
11-13-2024    [\[30\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

### **Tentative Ruling**

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

**Notice:** Continued from December 3, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

**Attorney Scott Johnson is ordered to appear in this matter at 9:00 a.m. on January 22, 2025, in Department A. The appearance may be made by telephone or Zoom.**

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

### **DEBTOR FAILED TO RESPOND AS ORDERED**

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

LBR 1001-1(g).

On December 4, 2024, the court ordered:

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

*IT IS FURTHER ORDERED that no later than December 17, 2024, the debtor(s) shall do one of the following:*

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition to the objection. L.R. 230(c) ("A responding party who

has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

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

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

Order, ECF No. 36, (emphasis added).

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

The court's ruling required the debtor to file a pleading in this matter by December 17, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

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

#### **CONFIRMATION**

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

#### **TRUSTEE SUPPLEMENTAL PLEADING**

The court notes that the Chapter 13 trustee has not filed a reply as ordered.

## **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).

### Incomplete Schedules

The debtor has failed to file the business income and expense attachment to Schedule I despite earning \$4,185.00 per month from business income. While the income is attributed to the debtor's non-filing spouse the information is necessary for the court to find that the proposed plan is feasible.

Accordingly, the court will sustain the objection and need not consider the remaining issues 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 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.

37. [24-24247](#)-A-13     **IN RE: NEERAJ BHARDWAJ**  
[PPR-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FLAGSTAR  
BANK, N.A.  
10-28-2024    [\[23\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
LEE RAPHAEL/ATTY. FOR MV.

### **Tentative Ruling**

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

**Notice:** Continued from December 3, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

**Attorney Scott Johnson is ordered to appear in this matter at 9:00 a.m. on January 22, 2025, in Department A. The appearance may be made by telephone or Zoom.**

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

### **DEBTOR FAILED TO RESPOND AS ORDERED**

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

LBR 1001-1(g).

On December 4, 2024, the court ordered:

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

*IT IS FURTHER ORDERED that no later than December 17, 2024, the debtor(s) shall do one of the following:*

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition to the objection. L.R.

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree 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 trustee shall file and serve a reply, if any, no later than January 7, 2025. The evidentiary record will close after January 7, 2025; or

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

Order, ECF No. 37, (emphasis added).

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

The court's ruling required the debtor to file a pleading in this matter by December 17, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

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

#### **CONFIRMATION**

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

#### **CREDITOR SUPPLEMENTAL PLEADING**

The court notes that the objecting creditor has not filed a reply as ordered.

## **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).

### Incomplete Schedules

The court sustains the objection because the plan as proposed is not feasible. As the court held in the objection raised by the Chapter 13 trustee the debtor has failed to file the business income and expense attachment to Schedule I despite earning \$4,185.00 per month from business income. While the income is attributed to the debtor's non-filing spouse the information is necessary for the court to find that the proposed plan is feasible.

Accordingly, the court will sustain the objection and need not consider the remaining issues raised in the creditor'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.

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

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

38. [24-23348](#)-A-13     **IN RE: LAUREN MILLER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [[21](#)]

MOHAMMAD MOKARRAM/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:** January 8, 2025

**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 \$2,670.00 with one payment(s) of \$1,960.00 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.

39. [24-20754](#)-A-13     **IN RE: SUSAN OLIVER**  
[MOH-4](#)

MOTION TO CONFIRM PLAN  
11-26-2024    [[105](#)]

MICHAEL HAYS/ATTY. FOR DBT.

### **Final Ruling**

The hearing on this matter will be continued. The evidentiary record is closed, and no further pleadings may be filed without further order of the court.

IT IS ORDERED that the hearing on the debtor's motion to confirm is continued to February 4, 2025, at 9:00 a.m.

40. [24-24454](#)-A-13     **IN RE: LILIT MARTIROSYAN**  
[MS-1](#)

MOTION TO CONFIRM PLAN  
11-19-2024    [[27](#)]

MARK SHMORGON/ATTY. FOR DBT.  
DEBTOR DISMISSED: 01/02/25

### **Final Ruling**

This case was dismissed on January 2, 2025. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.



41. [24-24257](#)-A-13     **IN RE: JAIME ARMENDARIZ**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P  
CUSICK  
11-13-2024    [\[16\]](#)

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

### **Final Ruling**

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

**Notice:** Continued from December 3, 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 has no basis to oppose the objection. Response, ECF No. 30. Accordingly, the court will sustain this objection because the Chapter 13 trustee contends the plan is mathematically infeasible. The plan is currently projected to take 68 months to complete which violates 11 U.S.C. 1322(d).

### **CIVIL MINUTE ORDER**

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

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

The trustee's 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.

42. [24-25158](#)-A-13     **IN RE: DIANE GARCIA**  
[JDS-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-12-2024    [[12](#)]

HARRY ROTH/ATTY. FOR DBT.  
JACQUELINE SERRAO/ATTY. FOR MV.  
SELENE FINANCE LP VS.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

**Petition filed:** November 14, 2024

**Bankruptcy Filings Within One Year:** *In re Diane Garcia*, Case No. 24-23981-A-13, E.D. Cal. Bankr. (2024); *In re Diane Garcia*, Case No. 23-23131-E-13, E.D. Cal. Bankr. (2023)

The moving party seeks relief from the automatic stay. This case, however, is subject to the Bankruptcy Code provisions that terminate or negate the stay in cases involving repeat individual bankruptcy filers. See 11 U.S.C. § 362(c)(3)-(4).

The debtor has filed the following Chapter 13 bankruptcy cases which were pending and dismissed within the last year: (1) *In re Diane Garcia*, Case No. 24-23981-A-13, E.D. Cal. Bankr. (2024) - filed September 5, 2024, dismissed September 23, 2024; and (2) *In re Diane Garcia*, Case No. 23-23131-E-13, E.D. Cal. Bankr. (2023) - filed September 9, 2023, dismissed August 15, 2024.

The petition in this case was filed November 14, 2024. No motion to impose the automatic stay was filed.

### **PRIOR BANKRUPTCY CASES**

(4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) *if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all*

creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

11 U.S.C. § 362(c)(4) (emphasis added).

The debtor has had two previous cases pending within the one-year period prior to filing the instant case, and such cases were dismissed. Accordingly, the stay did not go into effect when the instant case was filed.

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had 2 or more previous bankruptcy cases pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(4)(B). However, the motion requesting imposition of the stay must be filed within 30 days of the petition in the later case. *Id.*

The petition in this case was filed on November 14, 2024. But no motion to impose the stay was filed, and a motion to extend the stay must be filed within 30 days of the filing of the later case. 11 U.S.C. § 362(c)(4)(B). Accordingly, the automatic stay is not in effect. The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

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

Selene Finance, LP's Motion for Stay Relief has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot. The court confirms that there is no automatic stay in this case.

43. [21-22861](#)-A-13     **IN RE: MEGAN EKOMAYE**  
[DPC-4](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[102\]](#)

CHAD JOHNSON/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:** January 8, 2025

**Opposition Filed:** January 6, 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 \$790.00, with one payment(s) of \$390.00 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. 106, 107. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 107.

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.

44. [20-24065](#)-A-13     **IN RE: KAREN KNECHT**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[77\]](#)

HELGA WHITE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 8, 2025

**Opposition Filed:** January 7, 2025 - timely

**Modified Plan Filed:** 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 \$1,990.81 with one payment(s) of \$1,990.81 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. 81, 82, 83. The opposition states that the debtor intends to modify the Chapter 13 plan to allow the debtor to complete the plan. A modified plan has not been filed as required.

## **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 January 7, 2025, the debtor(s) filed an opposition to the motion to dismiss. The opposition states the debtor's intention to file a modified plan. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

### Modified Plan Required as Opposition

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 the filing of a modified plan is opposition--albeit of the de facto variety--has not been filed, it is late. The debtor's intention to file a modified plan will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed December 11, 2024, giving the debtor only 27 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. Neither does the opposition state why the debtor has not yet filed a modified plan and motion to modify.

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.

45. [24-25266](#)-A-13     **IN RE: SCOTT WENDORF AND SUZANNE TOLMICH**  
WENDORF

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-3-2025    [\[32\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

#### **Tentative Ruling**

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

46. [22-20867](#)-A-13     **IN RE: BROOKE WAITS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
11-22-2024    [[28](#)]

MICHAEL HAYS/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:** January 8, 2025

**Opposition Filed:** January 8, 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 \$5,267.00, with two payment(s) of \$1,783.00 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. 32, 33. The opposition contends that the debtor has made payment of \$3,566.00 to the trustee and that the remaining balance will be paid prior to the hearing on this motion.

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.

Given that the plan term is nearly completed the court will consider a conditional order if the payments are not current by the date of the hearing.

### **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.

47. [24-24467](#)-A-13     **IN RE: STEPHEN SHAIDELL**  
[DPC-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7  
12-4-2024    [\[26\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Convert Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 8, 2025

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - 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 convert this Chapter 13 case to Chapter 7 for delinquency in payments under the chapter 13 plan.

For the reasons stated in the motion, cause exists under § 1307(c)(1) to convert the case. Payments under the plan are delinquent in the amount of \$2,623.00 with one payment(s) of \$2,623.00 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).

#### Significant Equity in Non-Exempt Asset

The debtor lists a business property valued at \$1,600,000. Schedules A/B, D, ECF No. 12. The property is subject to two liens totaling \$547,988.67. *Id.*, Schedule D. Claims 11 and 12 have also been filed which support the schedules. Accordingly, the court finds that there is non-exempt equity exceeding \$1,000,000, in the business property.

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.

#### **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.

48. [21-23769](#)-A-13     **IN RE: ELIZABETH CHAN-MAYETTE**  
[DPC-3](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[67\]](#)

MARY TERRANELLA/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:** January 8, 2025

**Opposition Filed:** January 6, 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 \$5,844.79, with one payment(s) of \$3,667.49 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. 71, 72. The debtor's declaration states that the debtor has tendered several payments to the Chapter 13 trustee totaling \$9,876.41 which exceeds the alleged delinquency. See Declaration, ECF No. 72.

The Chapter 13 trustee shall be prepared to apprise the court regarding the status of plan payments.

The court is unable to deny the motion given the trustee has not yet verified receipt of the payments as outlined by the debtor in her opposition.

### **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.

49. [23-21169](#)-A-13     **IN RE: HOLLY PLICHTA**  
[DPC-4](#)

MOTION TO DISMISS CASE  
11-22-2024    [\[90\]](#)

THOMAS AMBERG/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:** January 8, 2025

**Opposition Filed:** January 8, 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 \$8,128.00, with two payment(s) of \$4,143.00 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. 94, 95. The opposition states that on December 17, 2024, the debtor paid the Chapter 13 trustee \$12,500. Declaration of Holly Plichta, ECF No. 95. The debtor seeks a conditional order allowing her to pay the remaining \$3,914.00 if she is unable to bring the plan payment current by the date of the hearing on this motion.

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.

50. [24-20872](#)-A-13     **IN RE: LINDA OLKOWSKI**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[45\]](#)

CATHERINE KING/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:** January 8, 2025

**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 \$1,709.00 with one payment(s) of \$975.00 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.

51. [24-25072](#)-A-13     **IN RE: KEITH GROTE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-23-2024    [\[13\]](#)

GABRIEL LIBERMAN/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 March 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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.



52. [24-20174](#)-A-13     **IN RE: TARA ALOOT**  
[CYB-1](#)

MOTION TO MODIFY PLAN  
11-27-2024    [\[21\]](#)

CANDACE BROOKS/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:** First Modified Chapter 13 Plan, filed November 27, 2024

### **DEFAULT OF RESPONDENT**

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on November 29, 2024, ECF No. 26. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 28.

### **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.

53. [24-21277](#)-A-13     **IN RE: MARTIN MANCILLA GUTIERREZ**  
[PSB-1](#)

MOTION TO MODIFY PLAN  
12-12-2024    [[23](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

#### **Final Ruling**

This case was dismissed on January 14, 2025. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

54. [24-21277](#)-A-13     **IN RE: MARTIN MANCILLA GUTIERREZ**  
[PSB-2](#)

MOTION TO INCUR DEBT  
12-13-2024    [[31](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

#### **Final Ruling**

This case was dismissed on January 14, 2025. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

55. [24-21277](#)-A-13     **IN RE: MARTIN MANCILLA GUTIERREZ**  
[PSB-3](#)

MOTION TO INCUR DEBT  
12-13-2024    [[34](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

#### **Final Ruling**

This case was dismissed on January 14, 2025. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

56. [24-21277](#)-A-13     **IN RE: MARTIN MANCILLA GUTIERREZ**  
[PSB-4](#)

MOTION TO INCUR DEBT  
12-13-2024    [\[37\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

**Final Ruling**

This case was dismissed on January 14, 2025. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

57. [24-23477](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[DPC-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7  
12-6-2024    [\[69\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

**Final Ruling**

This case was dismissed on January 14, 2025. Order, ECF No. 78. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

58. [24-25077](#)-A-13     **IN RE: DARIN/BRENDA MILLER**  
[KSH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
12-26-2024    [\[14\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
KRISTIN SCHULER-HINTZ/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 March 4, 2025, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Ally Bank, 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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).

59. [24-24378](#)-A-13     **IN RE: CARLA JOHNSON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-9-2024    [\[12\]](#)

GEORGE BURKE/ATTY. FOR DBT.

**Final Ruling**

On January 14, 2025, the Chapter 13 trustee filed a request to dismiss his motion pursuant to Fed. R. Civ. P. 41, ECF No. 21. As no other parties have appeared the motion is dismissed, and the matter removed from the calendar. No appearances are required.

60. [23-24379](#)-A-13     **IN RE: GRACE LEE**  
[JLK-3](#)

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

JAMES KEENAN/ATTY. FOR DBT.

**Final Ruling**

The hearing on this matter was continued to allow the parties to resolve the issues raised in the trustee's opposition. The parties submitted a stipulated order. The court has signed the order confirming the plan. Order Confirming Plan, ECF No. 73. Accordingly, this matter is removed from the calendar. No appearances are required.

61. [22-22380](#)-A-13     **IN RE: JOSEPH/MARYLOU LUTISAN**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[28\]](#)

MARK WOLFF/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

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

the plan payments are delinquent in the amount of \$1,712.00, with one payment(s) of \$856.00 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. 33, 34, 35. The opposition states that the debtor tendered payments to the trustee and that payments under the plan are current. The debtor contends payments were made: (1) November 21, 2024, in the amount of \$856.00; and December 8, 2024, two payments of \$856.00 each.

The Chapter 13 trustee has not confirmed that the plan payments have been received.

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

#### **TRUSTEE REPLY – Fed. R. Civ. P. 41**

On January 14, 2025, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

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

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

62. [24-25084](#)-A-13      **IN RE: CINDY HOLLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-23-2024    [\[21\]](#)

12/26/24 FILING FEE PAID \$34

**Final Ruling**

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

63. [24-25084](#)-A-13      **IN RE: CINDY HOLLEY**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIRSTKEY MASTER FUNDING  
2021-A COLLATERAL TRUST  
12-24-2024    [\[23\]](#)

DANE EXNOWSKI/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 March 4, 2025, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Firstkey Master Funding 2021-A Collateral Trust, 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 March 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 February 4, 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 February 18, 2025. The evidentiary record will close after February 18, 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).



64. [23-22887](#)-A-13     **IN RE: ALBERTO CONDINO**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[35\]](#)

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:** January 8, 2025

**Opposition Filed:** January 8, 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 \$2,000.00, with one payment(s) of \$1,000.00 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. 39, 40, 41. The debtor's declaration states that the debtor paid \$1,000 to the trustee, which was received on December 23, 2024. The debtor also states that he has scheduled two additional payments of \$1,000.00 each which will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 40.

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.

65. [23-24687](#)-A-13     **IN RE: RAFAEL CHAVEZ AND YAQUELIN REYES**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-11-2024    [\[42\]](#)

MATTHEW DECAMINADA/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:** January 8, 2025

**Opposition Filed:** January 8, 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 \$3,632.00, with one payment(s) of \$2,044.00 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. 46, 47, 48. The debtor's declaration states that the debtor will modify the plan.

A modified plan has not yet been filed. Accordingly, the debtor has not satisfied the requirement that the modified plan must be filed by the date opposition is due. Under most circumstances the court

would dismiss this case. In this case, given the extraordinary reasons leading to the plan default the court will consider a conditional order which requires the debtors to file a modified plan and motion to modify the plan by a date certain. In the future counsel must request an extension of time to file the modified plan. Fed. R. Bankr. P. 9006(b).

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.

66. [24-24888](#)-A-13     **IN RE: ANGELA BEASLEY**  
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-24-2024    [\[30\]](#)

GORDON BONES/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.  
KENT M. KITSELMAN & NANCY KITSELMAN,  
TRUSTEES OF THE KENT M. KITSELMAN FAMILY TRUST VS.

### **Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

**Petition filed:**    October 29, 2024

**Previous case pending within one year:**    *In re Angela Beasley*, Case No. 24-24148-E-13, E.D. Cal. Bankr. (2024), filed September 17, 2024, dismissed October 16, 2024

The moving party seeks relief from the automatic stay. This case, however, is subject to the Bankruptcy Code provisions that terminate or negate the stay in cases involving repeat individual bankruptcy filers. See 11 U.S.C. § 362(c)(3)-(4).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). In such a case, the automatic stay may be extended only if both notice and the hearing on such motion are "completed before the expiration of" the 30-day period after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

The debtor has had a previous case pending within the one-year period prior to the filing of this case and such case was dismissed. The petition in this case was filed on October 29, 2024. But no motion to extend the stay has been filed, and the hearing on a motion to extend the stay has not been completed before the expiration of the 30-day period after the petition date. Accordingly, the automatic stay terminated 30 days after the petition date. See 11 U.S.C. § 363(c)(3)(A). The motion will be denied as moot.

### **CIVIL MINUTE ORDER**

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

Kent M. Kitselman & Nancy Kitselman's Motion for Stay Relief has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot. The court confirms that the automatic stay has terminated in this case.

67. [24-22594](#)-A-13     **IN RE: PATRICK SETT**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-17-2024    [\[24\]](#)

SETH HANSON/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
CENLAR FSB VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 117 Tatiana Court, Roseville, California

**Cause:** Post petition delinquency; 1 Month; \$2,554.24

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).

Cenlar FSB seeks and order for relief from the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a).

### **STAY RELIEF**

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

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

## **CO-DEBTOR STAY OF § 1301**

The scope of the automatic stay is broader in chapter 13 cases than it is in chapters 7 and 11 cases. Section 1301(a) creates a co-debtor stay applicable in chapter 13 cases. 11 U.S.C. §§ 1301(a).

"After a Chapter 12 or 13 petition is filed, the stay extends to individuals who are "codebtors" with the debtor on a consumer debt—e.g., relatives, friends and others who cosigned or guaranteed a note (or other obligation) with the debtor." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:145 (rev. 2018). "The codebtor stay only applies where the codebtor is liable on the consumer debt and liable with the debtor to a third party. Stated otherwise, both the debtor and the codebtor must be liable to a third party and liable on the particular debt the third party is trying to collect." *Id.* ¶ 8:147.

## **RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c) (2)**

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c) (2), 1201(c) (2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

When the plan pays only a fraction of the amount owed to the creditor on the claim for which the co-debtor is liable, the creditor is nevertheless entitled to relief from the co-debtor stay. The bankruptcy appellate panel has held that the co-debtor stay should be lifted when the plan provided for only 15% of the creditor's claim. The panel reasoned, "There is no limitation on the creditor's right to sue the co-debtor for the amount not provided for by the plan. There is no requirement that suit be deferred while the debtor pays under the plan during a period of years." *In re Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982).

"It would make little sense to defer such relief when it is known that the creditor will never receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the debtor has in effect stated [in the plan] the respective dimensions of his liability and that of the co-maker. Section 1301(a) (2) provides the creditor with freedom to pursue, to the latter extent, its claim against a co-debtor." *Id.*

In this case, the proposed plan fails to provide for payment of the movant's claim. As a result, the movant is entitled to relief from the co-debtor stay in this 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.

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

IT IS ORDERED that the motion is granted. The automatic stay, and the co-debtor stay, is vacated with respect to the property described in the motion, commonly known as 117 Tatiana Court, Roseville, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

68. [21-22195](#)-A-13     **IN RE: OKHARINA HOLMES**  
[DPC-4](#)

MOTION TO DISMISS CASE  
11-22-2024    [\[81\]](#)

CANDACE BROOKS/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:** January 8, 2025

**Opposition Filed:** January 7, 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 \$3,852.40, with two payment(s) of \$3,855.88 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. 85, 86. The debtor's declaration states that the debtor has tendered 3 payments totaling \$11,565.00 to the trustee and that plan payments are current.

The Chapter 13 trustee has not reported that the plan payments are current.

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.



69. [24-24195](#)-A-13     **IN RE: BRANDAN GRIEGO**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
11-13-2024    [[30](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.

### **Final Ruling**

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

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

### **CIVIL MINUTE ORDER**

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

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

70. [24-24195](#)-A-13     **IN RE: BRANDAN GRIEGO**  
[WLG-1](#)

MOTION TO CONFIRM PLAN  
12-12-2024    [\[45\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Chapter 13 Plan, filed December 12, 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. 47. The plan is supported by Schedules I and J filed, at the inception of the case on September 20, 2024. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 61.

### **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.

71. [24-25771](#)-A-13     **IN RE: WILLIAM/FRANCES MEROSHNEKOFF**  
[FF-2](#)

MOTION TO EXTEND AUTOMATIC STAY O.S.T.  
1-14-2025    [[21](#)]

GARY FRALEY/ATTY. FOR DBT.

**No Ruling**