

**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: TUESDAY**  
**DATE: JANUARY 24, 2023**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

**RULINGS**

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

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

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

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

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

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

**ERRORS IN RULINGS**

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

1. [22-20300](#)-A-13     **IN RE: STEVEN AMBROSE**  
[DPC-1](#)

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7  
1-3-2023    [\[134\]](#)

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

**No Ruling**

2. [22-20300](#)-A-13     **IN RE: STEVEN AMBROSE**  
[WSS-1](#)

MOTION TO AVOID LIEN OF CITY OF LINCOLN  
12-5-2022    [\[117\]](#)

W. SHUMWAY/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The debtor seeks an order avoiding the lien of the City of Lincoln under 11 U.S.C. § 522(f). The motion will be denied without prejudice for the following reasons.

**SPECIAL NOTICE CREDITORS**

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Capital One Auto Finance, AIS Portfolio Services, LP 4515 N Santa Fe Ave. Dept. APS Oklahoma City, OK 73118. See ECF No. 11.

The Certificate of Service states the special notice parties were served with the motion. See Certificate of Service, p. 2, no. 5, ECF No. 121. However, all the addresses to Capital One Auto Finance were crossed off the matrix which is attached to the certificate.

Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

## NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

### Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

### LBR 9014-1(d) (3) (B) (iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d) (3) (B) (iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

#### Dismissal of Action for Failure to Comply with Local Rules

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

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

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

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

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

The docket control number used in this motion was also used in a previous motion to convert, filed by the debtor on September 19, 2022, ECF No. 84.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion is denied without prejudice.

3. [22-20300](#)-A-13     **IN RE: STEVEN AMBROSE**  
[WSS-2](#)

MOTION TO CONFIRM PLAN  
12-5-2022    [\[122\]](#)

W. SHUMWAY/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

**ORAL ARGUMENT NOT REQUIRED**

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary at this time for resolution of material, factual issues.

**PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan

proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.").” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,065.00. The trustee also notes that an additional payment of \$355.00 is due January 25, 2023. The debtor has made no plan payments since the filing of his plan. The plan cannot be confirmed if the plan payments are not current.

#### Failure To Provide Financial/Business Documents

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

On November 3, 2022, at the meeting of creditors the trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly review the debtor's case. The debtor failed to produce the following documents: 1) copies of all financial statements from the petition date until the date of conversion; 2) an accounting of all payments made from the debtor's non-filing spouse's accounts; and 3) an accounting of all payments made on each timeshare, from the time of filing until the case was converted to Chapter 13.

The debtor has failed to provide any accounting as requested. The trustee received correspondence from Debtor's counsel on December 20, 2022, indicating that payments had been made on credit card accounts and times shares from a deferred compensation account. The trustee was informed that the deferred compensation account now has a zero balance. See Opposition, 2:15-28, ECF No. 132. The deferred compensation account does not appear in the debtor's Schedules A/B, nor has the trustee received any statements from this account which would evidence payments made.

This is information which should have been provided to the trustee in advance of filing the motion to confirm, which was filed on December 5, 2022, ECF No. 122, and not in response to the trustee's opposition to the motion or the court's query regarding assets held by the debtor.

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

### Plan Relies on Motion to Avoid Lien

The proposed plan calls for payment of 7% to unsecured obligations totaling approximately \$246,105.58. See Chapter 13 Plan, Section 3.14, ECF No. 124. Without an order avoiding the judgment lien of the City of Lincoln, the calculation of unsecured obligations is speculative and the percentage to be paid to unsecured creditors cannot be accurately computed. The court has denied the debtor's motion to avoid judgment lien. As such the plan is not feasible under 11 U.S.C. § 1325(a)(6).

### **GOOD FAITH**

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

### Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith. The trustee contends that the following information and or assets have not been included in the debtor's statements and schedules as required:

1. MG Trust Company, Voya or AICPA payments deposited into debtor's bank accounts. It is unclear if the debtor has an ownership or community interest in these named accounts, or whether the debtor receives income payments from these accounts. None of the accounts are listed in Amended Schedules A/B, Amended Schedule I, or the Statement of Financial Affairs. See ECF Nos. 128, 13.
2. Amended Schedule J shows an expense of \$486.00 for life insurance, ECF No. 128, yet the Amended Schedule A/B does not list a life insurance policy as an asset. *Id.* Additionally, Form 122-C-2 lists the monthly life insurance expense as \$525.00.
3. The Declaration of Steven Ambrose filed in support of the motion to confirm plan does not address the issues raised by the trustee, nor does it explain the inconsistencies in the most currently filed schedules and statements. See Declaration, ECF No. 125.

Without detailed accountings regarding monies spent, and explanations regarding the existence or depletion of assets the trustee cannot determine whether the plan is proposed in good faith, satisfies the liquidation test, or is feasible. The debtor has met none of the hurdles to confirmation under 11 U.S.C. § 1325 (b)(3), (4), or (6).

## **LIQUIDATION**

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

The debtor has proposed a 7% payment to unsecured creditors. Because the debtor has failed to provide the requested accounting of payments to creditors the trustee cannot determine if the proposed plan passes the liquidation test. It is unclear to the trustee, without the accounting, if any of the payments tendered would appropriately be considered preferences. This in turn impacts the trustee's liquidation calculation.

### **DISPOSABLE INCOME § 1325(b)**

The plan may not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b).

The trustee either disputes or requires more information regarding the following expenses on Form 122-C-2: 1) a deduction in the amount of \$1,957.10 for the City of Lincoln, where the debtor intends to pay this debt as an unsecured creditor as evidenced by the filing of the motion to avoid judicial lien; 2) \$791.00 in additional health care expenses, which appears inconsistent with the additional information the trustee has received; 3) \$525 for life insurance where a life insurance policy is not listed in the debtor's Amended Schedules A/B.

### **DEBTOR'S REPLY**

On January 17, 2023, the debtor filed a reply addressing some of the issues raised in the trustee's opposition. The reply was accompanied by the declaration of the debtor. See ECF Nos. 145, 146. The court will deny the motion for the following reasons:

First, the reply states that an "amended schedule A/B is being filed to correct this error" regarding the disclosure of the life insurance policy. See Reply, 2:12-13, ECF No. 145. A review of the court's docket shows that no amended schedules have been filed. The most recently filed Schedules A/B were filed on December 8, 2022, ECF No. 128. The schedules do not list any life insurance. The



court considers the full disclosure of all assets to be part of the debtor's prima facie case for confirmation. Amended Schedules should be filed promptly upon discovery of an omission and not in response to the trustee's opposition to the motion to confirm. As the schedules have not yet been filed the plan is not ready for confirmation.

Second, the reply and declaration state that the debtor sent an accounting of funds spent from the debtor's 457 account with Orion and his spouse's deferred compensation account. Neither the declaration nor the motion indicates when the accounting was sent to the trustee. The court cannot determine if the information was sent to the trustee after the filing of the trustee's objection, promptly after the meeting of creditors, or at some other time. Moreover, it is unclear if the debtor holds a community property interest in his spouse's deferred compensation accounts.

Third, the reply and declaration do not address the plan delinquency alleged by the trustee.

Fourth, the court has previously ruled that the plan cannot be confirmed because of the debtor's failure to obtain an order avoiding the lien of the City of Lincoln. The plan is not ready for confirmation. LBR 3015-1(i).

The court will deny confirmation of the debtor's plan. The debtor has not made a prima facie case for confirmation of the plan.

#### **CIVIL MINUTE ORDER**

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

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

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

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

4. [22-22307](#)-A-13     **IN RE: CARPIO GUINTU AND MARIA LAQUINDANUM**  
[AF-2](#)

MOTION TO CONFIRM PLAN  
11-22-2022    [\[33\]](#)

ARASTO FARSAD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

The motion will be denied without prejudice for the following reasons.

**SERVICE AND NOTICE**

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

Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

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

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or

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

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

The debtors have failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

5. [22-23009](#)-A-13     **IN RE: THOMAS LAWSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-27-2022    [[22](#)]

CANDACE BROOKS/ATTY. FOR DBT.  
12/27/22 INSTALLMENT FEE PAID \$79

#### **Final Ruling**

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

6. [22-23009](#)-A-13     **IN RE: THOMAS LAWSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-21-2022    [\[16\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

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

In this case, the plan proposes to reduce the Class 2 secured claims of: 1) Franchise Tax board; 2) Internal Revenue Service; 3) Primus Automotive Financial Services, based on the value of the collateral securing such claims. But the debtor has not yet obtained favorable orders on these motions to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

### **GOOD FAITH**

To determine bad faith a bankruptcy judge must review the "totality of the circumstances." *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner." *Id.*, at 1390.

### Failure to File Accurate and Complete Schedules

The debtor is required to propose a plan in good faith under 11 U.S.C. § 1325(a)(3). Filing inaccurate schedules and statements and failing to promptly amend documents does not evidence that the plan is proposed in good faith.

The trustee contends that the debtor has failed to disclose an interest in the following vehicles: 1) 2007 Chevy Tahoe; 2) Ford Mach; and 3) Ford Escape. It is unclear if the debtor's interest consists of an ownership interest and if so the extent of the interest as it appears the vehicles may be leased. Without this information the trustee is unable to perform the calculations required to determine if the plan passes the liquidation test or the plan is feasible. 11 U.S.C. § 1325(a)(3), (6).

### **DISPOSABLE INCOME § 1325(b)**

The plan may not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b).

Form 122C-2 shows the debtor is currently repaying a retirement loan \$179.00 per month, and the balance will be paid in full prior to the completion of the plan. Once the retirement loan is paid in full, the trustee contends that the debtor will have an additional \$150.00 per month that must be paid into the plan. See Form 122-C-2, ECF No. 1. Because the proposed plan only calls for a 63% dividend to unsecured creditors the plan payment must increase after repayment of the retirement loan.

The court will sustain the trustee's objection to confirmation.

### **CIVIL MINUTE ORDER**

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

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

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

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

7. [19-26910](#)-A-13     **IN RE: DANITA BRYANT**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-19-2022    [\[35\]](#)

PETER MACALUSO/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 10, 2023

**Opposition Filed:** January 10, 2023 - timely

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that plan payments are delinquent in the amount of \$6,505.15, with another payment of \$3,282.24 due December 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 39, 40. 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. 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.

8. [22-22110](#)-A-13     **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-27-2022    [[81](#)]

MARY TERRANELLA/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.

9. [22-22911](#)-A-13     **IN RE: JACQUELINE BUTTLE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-21-2022    [[25](#)]

DEBTOR DISMISSED: 01/04/23

### **Final Ruling**

This case was dismissed on January 4, 2023. This Objection is removed from the calendar as moot. No appearances are required.

10. [22-22911](#)-A-13     **IN RE: JACQUELINE BUTTLE**  
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
12-7-2022    [\[19\]](#)

JENNIFER WONG/ATTY. FOR MV.  
DEBTOR DISMISSED: 01/04/23

#### **Final Ruling**

This case was dismissed on January 4, 2023. This Objection is removed from the calendar as moot. No appearances are required.

11. [21-23812](#)-A-13     **IN RE: MAI TRANG LE**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[97\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**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 dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$10,000.00 with a further payment of \$2,500.00 due December 25,



2022. The trustee also argues the case should be dismissed as the debtor has failed to file an amended plan following the denial of a motion to confirm a plan on July 7, 2022.

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

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

12. [22-20612](#)-A-13     **IN RE: BRITTANY/STEVEN UREN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[25\]](#)

ASHLEY AMERIO/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 10, 2023

**Opposition Filed:** January 10, 2023 - timely

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

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that plan payments are delinquent in the amount of \$4,550.00, with another payment of \$1,850.00 due December 25, 2022. The trustee also moves to dismiss the case as the debtors have failed to file an amended plan following the court's order sustaining the trustee's objection to confirmation of plan on May 20, 2022. The court's docket shows that no amended plan has been filed timely in opposition to this motion.

### **OPPOSITION IS UNSUPPORTED BY EVIDENCE**

Every motion or other request for relief *shall be accompanied by evidence establishing its factual allegations* and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D) (emphasis added).

The debtors have filed a timely opposition, ECF No. 29. The opposition consists solely of an unsworn statement by debtors' counsel and is not accompanied by a declaration of the debtors or any admissible evidence. The opposition merely states that the debtors will be current under the proposed plan by the date of the hearing on this motion. See Opposition, 1:17-19, ECF No. 29. There is no pending plan.

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.

Moreover, 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 debtors have failed to properly present opposition to the motion. The court will grant the trustee's motion. LBR 1001-1(g).

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

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

13. [20-24713](#)-A-13     **IN RE: BONITA BROOKS**  
[MET-3](#)

MOTION TO SELL  
12-14-2022    [\[91\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

14. [22-23014](#)-A-13     **IN RE: DANIEL/VICKI JACOBS**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
12-14-2022    [\[13\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
THERON COVEY/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 7, 2023, at 9:00 a.m.

**Order:** Civil minute order

Creditor Federal Home Loan Mortgage Corporation objects to confirmation of the debtors' proposed Chapter 13 Plan, contending that its obligation is misclassified in the debtors' plan. The creditor argues that because arrears were owed on the date of the petition that its obligation belongs in Class 1 of the plan instead of Class 4. The court will continue the hearing on the motion for the following reason.

**OBJECTION IS NOT SUPPORTED BY EVIDENCE**

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

No declaration was filed with the objection supporting the allegation of mortgage arrears. The court notes that no claim has

yet been filed by the objecting creditor. The court gives no weight to unsubstantiated allegations contained in the objection.

The hearing on the objection will be continued to allow the objecting creditor to file and serve a supporting declaration and to file its claim. Additionally, the court will require a written response, if any, by the debtor. Should either party fail to file evidence and/or response as ordered the court may rule on the objection without further notice or 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.

Federal Home Loan Mortgage Corporation's objection to confirmation has been presented to the court. Having considered the objection,

IT IS ORDERED that the hearing on the objection is continued to March 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than February 14, 2023, the objecting creditor shall file and serve admissible evidence in support of its objection to confirmation;

IT IS FURTHER ORDERED that no later than February 21, 2023, the debtors and the Chapter 13 trustee shall file and serve a response, if any, to the objection;

IT IS FURTHER ORDERED that if the parties fail to file additional evidence or argument as required by this order the court may rule on this matter without further notice or hearing.

15. [19-27815](#)-A-13     **IN RE: IYANAH FLETCHER**  
[DPC-3](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[71\]](#)

RICHARD JARE/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 10, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1), (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).

### **SERVICE**

The debtor's attorney does not appear to have been served at the correct address. See Certificate of Service, ECF No. 74.

However, the debtor's attorney is a registered user of the Clerk's electronic filing system and received service pursuant to Fed. R. Bankr. P. 9036, LBR 9036-1.

### **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)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,750.00 with a further payment of \$350.00 due December 25, 2022.

### **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.

16. [19-23616](#)-A-13     **IN RE: MARK BRASHLEY**  
[DPC-3](#)

MOTION TO DISMISS CASE  
12-22-2022    [\[145\]](#)

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

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to February 7, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** December 29, 2022 - timely

**Motion to Modify Plan Filed:** December 29, 2022 - timely

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

debtor is delinquent in the amount of \$7,434.48, with another payment of \$2,456.58 due December 25, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is February 7, 2023, 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 7, 2023, 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.



17. [22-21218](#)-A-13     **IN RE: CYNTHIA DURAN**  
[JCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-20-2022    [\[44\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
DEBTOR DISMISSED: 01/04/23; GUILD MORTGAGE COMPANY, LLC VS.

### **Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

**Case Dismissed:**    January 4, 2023

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief. 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:

Guild Mortgage Company, LLC's Motion for Relief from the Automatic Stay has been presented to the court. Given the dismissal of the case as discussed by the court in its ruling,

IT IS ORDERED that the motion is denied as moot.

18. [22-22222](#)-A-13     **IN RE: RODERICK SINGLETON**  
[DVW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-22-2022    [\[27\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
DIANE WEIFENBACH/ATTY. FOR MV.  
U.S. BANK, N.A. VS.

**No Ruling**

19. [19-27525](#)-A-13     **IN RE: JONATHON AKMAN**  
[AB-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH PG & E  
12-22-2022    [\[21\]](#)

AUGUST BULLOCK/ATTY. FOR DBT.

**No Ruling**

20. [19-22526](#)-A-13     **IN RE: KENNETH/ANN VALLIER**  
[DPC-4](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[132\]](#)

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

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** January 10, 2023 - timely

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to

make all payments due under the confirmed plan. The trustee contends that plan payments are delinquent in the amount of \$11,322.09 with another payment of \$3,774.03 due December 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 136, 137. The declaration states that the debtors became delinquent due to some unanticipated educational expenses related to employment and will file a modified plan by the date of the hearing on this motion. See Declaration, ECF No. 137.

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 file a modified plan is not equivalent to cure of the delinquency. Nor has a modified plan yet been filed by the debtors. 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.

21. [22-21426](#)-A-13     **IN RE: TAMI TRIHUB**  
[DPC-3](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[33\]](#)

THOMAS MOORE/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 10, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$17,805.65 with a further payment of \$3,561.13 due December 25, 2022.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

22. [20-22836](#)-A-13     **IN RE: TIFFANY TOTTEN-JACKSON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-19-2022    [[28](#)]

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 10, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$11,663.58 with a further payment of \$3,020.68 due December 25, 2022.

### **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.

23. [22-22936](#)-A-13     **IN RE: COURTNEY WILSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-21-2022    [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **FAILURE TO FILE TAX RETURNS**

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

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

If the debtor has not filed 2019, 2020, and 2021 tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308. Claim No. 1 filed by the Internal Revenue Service, and Claim No. 3 filed by the Franchise Tax Board, show that the debtor has failed to file tax returns for these tax years.

#### **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.

24. [17-27538](#)-A-13     **IN RE: RENE JARA**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-21-2022    [[73](#)]

RICHARD JARE/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**



25. [22-21644](#)-A-13     **IN RE: CASSANDRA VISCIA**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[33\]](#)

GARY FRALEY/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 10, 2023

**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 dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$4,400.00 with a further payment of \$2,200.00 due December 25, 2022.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

### **CIVIL MINUTE ORDER**

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

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

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

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

26. [22-22146](#)-A-13     **IN RE: JOSE ROMERO SOTO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-14-2022    [\[25\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

On January 12, 2023, the trustee filed a status report, ECF No. 42. In the report the trustee indicated his desire to withdraw his motion to dismiss. No opposition was filed to the motion and the court will allow the matter to be withdrawn. Fed. R. Civ. P. 41. No appearances are required.

### **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 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 withdrawn by the moving party.

27. [22-22746](#)-A-13     **IN RE: JEFFREY WOODWARD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-29-2022    [\[47\]](#)

MICHAEL HAYS/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.

28. [18-23651](#)-A-13     **IN RE: THOMAS HURST**  
[PGM-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH THE FIRE VICTIM TRUST AWARD  
12-22-2022    [\[95\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Approve Compromise or Settlement of Controversy

**Disposition:** Denied without prejudice

**Order:** Civil Minute Order

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

To show that a compromise is fair and equitable, the movant must provide specific factual information about the claims being compromised. Analysis of a compromise under the fair and equitable standard and its concomitant factors under *In re A & C Properties*

"is inherently fact-intensive, relative, and contextual." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 290 (B.A.P. 9th Cir. 2005).

The debtor has failed to support the motion with sufficient evidence as follows: 1) the motion fails to state whether the acts giving rise to the debtor's claim occurred pre-petition or post-petition; 2) the debtor's declaration refers to an Exhibit A, intended to outline the terms of the settlement, and no such Exhibit has been filed by the debtor in support of this motion, ECF No. 97.

The Chapter 13 trustee opposes the motion contending that: 1) it is unclear if the settlement proceeds are exempt; 2) the motion fails to identify which parcel of real property was impacted by the fire, or identify which fire, or type of fire, destroyed the debtor's property; 3) what, if any, impact the settlement of the claim will have on the debtor's confirmed chapter 13 plan.

The debtor has not filed a reply to the trustee's opposition.

#### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Compromise Controversy and Approve Settlement 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.

29. [19-23355](#)-A-13     **IN RE: STEVEN SLATER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-22-2022    [\[62\]](#)

RICHARD KWUN/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to February 22, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** January 8, 2023 - timely

**Motion to Modify Plan Filed:** January 8, 2023 - timely

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

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is February 22, 2023, 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 22, 2023, 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.

30. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[74\]](#)

BRUCE DWIGGINS/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 10, 2023

**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 dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$3,344.40 with a further payment of \$3,366.15 due December 25, 2022.

### Motion is Unopposed

*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 failed to file and serve any opposition to the trustee's motion to dismiss as required under LBR 9014-1(f)(f)(B).

The debtor filed an Amended Chapter 13 Plan on January 10, 2023, ECF No. 78. No motion to confirm the amended plan has been filed, served, and set for hearing as required by LBR 3015-1(d)(2). The mere filing of the amended plan is not a sufficient opposition to the motion.

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

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

31. [22-20961](#)-A-13     **IN RE: DAVID WILLIAMS**  
[DFPC-2](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[43\]](#)

COLBY LAVELLE/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** January 10, 2023 - timely

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

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$1,188.97, with another payment of \$ 767.71 due December 25, 2022.

The trustee also moves to dismiss the case as the debtor failed to submit an order confirming the plan as required.

### **UNSUPPORTED OPPOSITION**

Every motion or other request for relief *shall be accompanied by evidence establishing its factual allegations* and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D) (emphasis added).

The debtor filed a timely opposition, ECF No. 47. The opposition consists solely of an unsworn statement by debtor's counsel and is not accompanied by a declaration of the debtor or any admissible evidence.

Moreover, the opposition indicates that the debtor will file an amended plan prior to the hearing on this motion. See *id.*, 2:3-5. The court notes that no amended plan has been filed.

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.



Moreover, 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 file an amended plan on a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

The debtor has failed to properly present opposition to the motion. The court will grant the trustee's motion. LBR 1001-1(g).

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

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

32. [22-20862](#)-A-13      **IN RE: NOEL PETALVER AND MARITES FLORES**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[51\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

33. [22-20862](#)-A-13      **IN RE: NOEL PETALVER AND MARITES FLORES**  
[TJW-1](#)

MOTION TO CONFIRM PLAN  
1-3-2023    [\[57\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

The motion will be denied without prejudice for the following reasons.

**NOTICE**

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), *parties in interest shall be*

*served at least thirty-five (35) days prior to the hearing.*

LBR 3015-1(d)(1) (emphasis added).

The debtors move for confirmation of their Amended Chapter 13 Plan. The Amended Plan, notice of hearing, and motion were served on January 2, 2023. See Certificate of Service, ECF No. 60. This provides only 21 days' notice to all parties in interest, which contravenes LBR 3015-1(d)(1).

The debtors did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires at least 21 days' notice of the time fixed for filing objections to a proposed modification of a plan. To comply with both Federal Rule of Bankruptcy Procedure 3015-(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(1). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

#### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

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

#### Dismissal of Action for Failure to Comply with Local Rules

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

default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

34. [22-22263](#)-A-13      **IN RE: JARVIS GARNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-3-2023    [\[61\]](#)

DEBTOR DISMISSED: 01/04/23

#### **Final Ruling**

This case was dismissed on January 4, 2023. This motion is removed from the calendar as moot. No appearances are required.

35. [22-22263](#)-A-13      **IN RE: JARVIS GARNER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-22-2022    [\[57\]](#)

DEBTOR DISMISSED: 01/04/23

#### **Final Ruling**

This case was dismissed on January 4, 2023. This motion is removed from the calendar as moot. No appearances are required.

36. [22-22866](#)-A-13     **IN RE: ANDREA/LELAND SMITH**  
[BLG-2](#)

MOTION TO CONFIRM PLAN  
12-21-2022    [\[23\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors' motion to confirm their Chapter 13 Plan will be denied for the following reasons.

### **NOTICE**

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), *parties in interest shall be served at least thirty-five (35) days prior to the hearing.*

LBR 3015-1(d)(1) (emphasis added).

The debtors move for confirmation of their Amended Chapter 13 Plan. The Amended Plan, notice of hearing, and motion were served on December 21, 2022. See Certificate of Service, ECF No. 29. This provides only 34 days' notice to all parties in interest, which contravenes LBR 3015-1(d)(1).

The debtors did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires at least 21 days' notice of the time fixed for filing objections to a proposed modification of a plan. To comply with both Federal Rule of Bankruptcy Procedure 3015-(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(1). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

## CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

37. [22-20967](#)-A-13     **IN RE: JONATHAN EMMONS**  
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK  
12-14-2022    [\[50\]](#)

MARK BRIDEN/ATTY. FOR DBT.

### Final Ruling

**Motion:** Objection to Discharge

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

**Disposition:** Sustained

**Order:** Civil minute order

**Instant Petition Filed:** April 18, 2022

**Previous Chapter:** 7

**Previous Petition Filed:** July 24, 2018

**Previous Discharge:** December 12, 2018

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

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

### OBJECTION TO DISCHARGE - 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,

- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4-year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

*Boukatch v. MidFirst Bank (In re Boukatch)*, 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)(1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on July 24, 2018, debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

## **CIVIL MINUTE ORDER**

The court finds that the debtor is not entitled to a discharge in this case. 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 Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

38. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-3-2023    [[140](#)]

MARK BRIDEN/ATTY. FOR DBT.  
1/5/23 FILING FEE PAID \$25

### **Final Ruling**

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



39. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[DPC-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7  
12-19-2022    [\[134\]](#)

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

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to February 22, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** January 4, 2023 - timely

**Motion to Modify Plan Filed:** January 4, 2023 - timely

The chapter 13 trustee moves to convert this case, asserting that cause exists under § 1307(c)(1) as the debtors have failed to prosecute the chapter 13 case and move for confirmation of the Chapter 13 Plan. The trustee also disputes the debtors' Chapter 13 eligibility under 11 U.S.C. § 109(e).

A Chapter 13 Plan has been timely filed and set for hearing in this case. The scheduled confirmation hearing is February 22, 2023, at 9:00 a.m. The court will continue the hearing on this motion to convert to coincide with the hearing on the plan confirmation. If confirmation is denied, and the motion to convert has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

The court notes that the trustee's motion contains an error. The motion alleges that this case has not been previously converted from another chapter. See Motion, 1:18-20, ECF No. 134. This is incorrect as the case was previously converted by the court, at the debtors' request, from a Chapter 12.

### **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 22, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to confirm, then not later than 14 days prior to the

continued hearing date the trustee shall file a status report updating this motion to convert. 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 confirm the debtor's plan.

40. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[DPC-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
12-19-2022    [\[130\]](#)

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

### **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 debtors claim of exemptions under C.C.P. § 704.070.

### **EXEMPTION OF EARNINGS**

A debtor may claim an exemption in paid earnings under California Code of Civil Procedure section 704.070. Cal. Civ. Proc. Code § 704.070(a)(2), (b). The term "paid earnings" means "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy." *Id.* § 704.070(a)(2). The term "earnings" means "compensation made payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise." *Id.* § 706.011(a) (emphasis added).

The exemption for earnings is limited to all or a percentage of earnings paid to an employee within the 30-day period prior to the date of levy, which translates in the bankruptcy context to the 30-

day period preceding the date of the petition. See Cal. Civ. Proc. Code §704.070(a)(2); *In re Moffat*, 119 B.R. 201, 204 n.3 (B.A.P. 9th Cir. 1990) ("The debtor's exemption rights under state law are determined as of the date of the petition.").

The debtor claims as exempt the following amounts on deposit in banking accounts pursuant to C.C.P. § 704.070: 1) US Bank Savings account - \$1,619.00; 2) Banner Bank Checking account - \$549.03; and 3) Banner Bank "Saings" (sic) account - \$3,358.00. The amounts total \$5,526.00, and the debtors have claimed 100% of the funds on deposit as exempt. See Amended Schedules A/B, C, ECF No. 31.

The debtors have not provided sufficient evidence to the trustee or to the court to substantiate the claimed exemption. Given that the debtors' combined gross monthly income from wages is \$3,506.00, it is unclear how the sum of \$5,526.00 is traceable to the debtors' income earned in the 30-day period prior to the filing of the petition. See Schedule I, ECF No. 1.

The court will sustain the trustee's objection and disallow the exemptions claimed by the debtors under C.C.P. 704.070 in their entirety.

#### **CIVIL MINUTE ORDER**

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

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

The Chapter 13 trustee's Objection to the Debtors' Claim of Exemptions 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 objection,

IT IS ORDERED that the objection is sustained. The claims of exemption under C.C.P. 704.070 are disallowed in their entirety.

41. [22-21871](#)-A-13     **IN RE: CLAIR/BARBARA CRAWFORD**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[28\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
DEBTOR DISMISSED: 09/20/2022

### **Final Ruling**

**Motion:** Dismiss Case  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Opposition Due:** January 10, 2023  
**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 dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$2,306.96 with a further payment of \$576.74 due December 25, 2022.

The court notes that on September 20, 2022, an order of dismissal was granted as to debtor, Clair Crawford. This motion for dismissal is brought by the trustee against debtor, Barbara Crawford. See Order, ECF No. 20.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

42. [22-21973](#)-A-13     **IN RE: BEATRICE EATON**  
[RDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR RELIEF  
FROM CO-DEBTOR STAY AND/OR MOTION FOR ADEQUATE PROTECTION  
1-5-2023    [\[38\]](#)

MARC VOISENAT/ATTY. FOR DBT.  
REILLY WILKINSON/ATTY. FOR MV.  
PERITUS PORTFOLIO SERVICES II, LLC VS.

#### **Tentative Ruling**

**Motion:** Relief from Stay and Co-Debtor Stay  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Subject:** 2017 Jeep Compass  
**Delinquency:** Three post-petition payments totaling \$2,683.35  
**Value:** \$17,000.00  
**Balance Owed:** \$21,990.48  
**Equity:** \$0

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

Peritus Portfolio Services II. LLC, seeks an 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). The confirmed Chapter 13 Plan provides for payment of the movant's obligation in Class 4 with payments to be tendered directly to the movant by co-debtor Barbara Cluster. See Chapter 13 Plan, Section 3.10, ECF No. 20.

### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

Three post-petition payments due on the debt secured by the moving party's lien have been missed. This constitutes cause for stay relief.

### **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).

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.

In this case, the confirmed 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.

### **NOTICE AND SERVICE**

While service of the motion was correct in this matter the Certificate of Service was improperly completed in this matter. See Certificate of Service, ECF No. 44. Service of the motion on the debtor and debtor's counsel is governed by Fed. R. Bankr. 4001(a), which indicates that Rule 9014 is applicable in motions for relief from stay. Rule 9014(b) requires service in accordance with Rule 7004. While service on the debtor is accomplished by first class mail in both instances the Certificate of Service should indicate

that service is made on the debtor and debtor's counsel pursuant to Rule 7004. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for the special notice creditors, and the United States 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.

Peritus Portfolio Services II. LLC's motion for relief from 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 is vacated with respect to the property described in the motion, commonly known as 2017 Jeep Compass, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

IT IS FURTHER ORDERED that the co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

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.

43. [22-21976](#)-A-13     **IN RE: STEPHEN GLOVER**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[47\]](#)

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 10, 2022

**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 dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$234.00 with a further payment of \$78.00 due December 25, 2022.

The trustee also moves to dismiss the case because: 1) the debtor has failed to attend the initial meeting of creditors or the continued meeting of creditors; and 2) the debtor has also failed to file an amended plan following a hearing wherein the trustee's objection to confirmation was sustained.

For each of these reasons the case will be dismissed.

### **11 U.S.C. § 1307(c)**

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

...



11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, and the debtor's failure to attend the meeting of creditors, and file an amended plan. The court hereby dismisses this case.

44. [19-26277](#)-A-13     **IN RE: JUAN MONGALO AND MILAGROS MONGALO**  
ROBLETO  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-21-2022    [[180](#)]

MICHAEL NOBLE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to February 22, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** January 4, 2023 - timely

**Motion to Modify Plan Filed:** January 4, 2023 - timely

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

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is February 22, 2023, 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 22, 2023, 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.

45. [22-22878](#)-A-13     **IN RE: GEORGE KOZEL**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[22\]](#)

#### **Tentative Ruling**

**Motion:** Dismiss Chapter 13 Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Petition Filed:** November 7, 2022

**Tax Return & 60 Day Pay Advice Deadline:** December 8, 2022

**Other § 521(a)Rule 4002(b) Documents Deadline:** December 15, 2022

**Date of Chapter 13 trustee's § 521(a)(3) Demand:** December 7, 2022

The Chapter 13 trustee moves to dismiss this case. 11 U.S.C. §§ 1307(c)(1), 521(a)(3), (4). The trustee contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties

#### **DISMISSAL**

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. *See In re Robertson*, 2010 WL 5462500

(Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

#### Section 521(a), (e) & Rule 4002(b) Documents

The debtor has failed to provide the trustee the tax return and/or 60 day pay advices as required at least 7 days prior to the meeting of creditors.

#### Section 521(a)(3) Documents

The trustee has requested the following additional documentation from the debtor: Completed Business Questionnaire; 2 years of tax returns; 6 months of profit and loss statements; 6 months of bank statements; proof of license and insurance or written statements that no such documentation exists. More than 42 days have passed since that demand and the debtor has not provided those documents. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation in that the requested

documents bear on whether the debtor's proposed plan is feasible and proposed in good faith as required under 11 U.S.C. § 1325(a)(3), (6). The court finds that the debtor has had a reasonable time to cooperate, and has not done so.

#### Failure to Confirm Plan

Debtor's plan was filed on December 5, 2022, and has not been served on all interested parties and no Motion to Confirm Plan is pending. The petition in this case was filed on November 7, 2022. No plan was filed with the petition.

Because the plan was filed more than 14 days after the filing of the petition the debtor is required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1). The failure to file a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

For each of these reasons, the case is dismissed.

#### **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, opposition and ancillary documents thereto the motion,

IT IS ORDERED that the motion be granted, and the case dismissed.

46. [22-22782](#)-A-13      **IN RE: RONALD AHLERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-3-2023    [\[37\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Tentative Ruling**

If the remaining \$1.00 filing fee from the initial installment payment has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

47. [22-22782](#)-A-13     **IN RE: RONALD AHLERS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-21-2022    [\[29\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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

### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$4,500.00 and a further \$4,500.00 due December 25, 2022. The plan cannot be confirmed if the plan payments are not current.

### **CIVIL MINUTE ORDER**

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

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

The 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.

48. [22-22782](#)-A-13     **IN RE: RONALD AHLERS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to April 4, 2023, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** January 10, 2023 - timely

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

The court has reviewed the debtor's opposition and declaration, stating that he intends to file an amended plan. Given the circumstances the court will continue the hearing on this motion to April 4, 2023, at 9:00 a.m. See Opposition and Declaration, ECF Nos. 43, 44.

## 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 April 4, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss.

49. [22-22782](#)-A-13     **IN RE: RONALD AHLERS**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEW RESIDENTIAL  
MORTGAGE LOAN TRUST 2017-2  
12-19-2022    [\[26\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
EDWARD TREDER/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **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).

New Residential Mortgage Loan Trust 2017-2 objects to confirmation of the debtor's plan contending that the plan is not feasible.

The objecting creditor has filed a claim which states that \$66,045.98 is owed in mortgage arrears. See Claim No. 5.

The proposed plan calls for the following payment on the mortgage arrears.

Lump-Sum Payment from Sale or Refinance of real property in amount sufficient to pay all lien holders in full Class 1 Claim for New Residential Mortgage arrears shall be paid a lump-sum payment on or before 18th month

Chapter 13 Plan, Additional Provisions, ECF No. 16.

The plan does not provide any payment to the objecting creditor for arrears during the first 18 months of the plan.

The court finds that 18 months is too long to wait for payment of arrears by the sale or refinance of the debtor's property. Whether a refinance or sale of the property can be accomplished and net sufficient proceeds to pay the objecting creditor after an extended period is speculative. Therefore, the debtor has failed to prove that the proposed plan is feasible under 11 U.S.C. § 1325(a)(6). The court also notes that the trustee has objected to confirmation because plan payments have not been made which also proves the plan is not feasible.

The court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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



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

New Residential Mortgage Loan Trust 2017-2'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.

50. [20-20483](#)-A-13     **IN RE: NORMA MATTINGLY**  
[KMM-1](#)

MOTION TO APPROVE LOAN MODIFICATION  
12-21-2022    [\[52\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/06/23

### **Final Ruling**

On December 16, 2022, an order was entered Approving the Final Report and Account and Discharging Trustee. See Order, ECF No. 50. Additionally, on January 6, 2023, the debtor was granted a discharge. See ECF No. 57. As such, this matter will be removed from the calendar as moot. No appearances are required.

51. [20-21786](#)-A-13     **IN RE: MONNALISSA O'DELL**  
[DPC-6](#)

MOTION TO DISMISS CASE  
12-19-2022    [\[110\]](#)

SCOTT 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 10, 2023

**Opposition Filed:** January 10, 2023 - timely

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (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 \$2,100.00, with another payment of \$350.00 due December 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 114, 115. The declaration states that a partial payment in the amount of \$1,300.00 will be tendered to the trustee by January 10, 2023, and that the debtor will bring the plan payment fully current by the date of the hearing on this motion. See Declaration, ECF No. 115.

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.

52. [21-22486](#)-A-13     **IN RE: ANNA MURPHY**  
[PGM-6](#)

CONTINUED OBJECTION TO CLAIM OF CHARLEY SMITH FAMILY TRUST,  
CLAIM NUMBER 14-3  
7-29-2022    [[214](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

As Attorney Shumway informed the court that he is in trial on this hearing date, this matter will be continued to February 7, 2023, at 9:00 a.m. A Civil Minute Order will issue.

53. [22-21388](#)-A-13     **IN RE: KATHY ADAMS-BERRY**  
[DPC-4](#)

MOTION TO DISMISS CASE  
12-16-2022    [\[50\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Withdrawn

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** December 27, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$ \$23,313.24 with another payment of \$7,771.08 due on December 25, 2022. The trustee also moves for dismissal as the debtor has failed to file an amended Chapter 13 Plan after failing to confirm the most recently filed plan.

The debtor has filed a timely opposition, ECF No. 59. The debtor also filed an amended plan and set it for hearing. The court has denied the motion to confirm the amended plan for procedural deficiencies.

On January 3, 2023, the trustee filed a request to dismiss his motion to dismiss, stating that the debtor was current with plan payments under the newly proposed amended plan and had paid the sum of \$23,313.24. See ECF No. 61.

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

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. The debtor has made payment to the trustee and is current under the proposed amended plan. 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.

54. [22-21388](#)-A-13     **IN RE: KATHY ADAMS-BERRY**  
[PLC-1](#)

MOTION TO CONFIRM PLAN  
12-16-2022    [\[54\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**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).

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).

#### **UNSIGNED CERTIFICATE OF SERVICE**

The motion will be denied without prejudice for insufficient service. The Certificate of Service is unsigned. This contravenes Fed. R. Civ. P. 4(1)(1). See Certificate of Service, p. 4, ECF No. 58.

## CIVIL MINUTE ORDER

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

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

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

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

55. [20-20691](#)-A-13     **IN RE: DON MICHAEL LUMAQUIN**  
[DPC-1](#)

MOTION TO DISMISS CASE  
12-21-2022    [\[60\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

## Final Ruling

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** January 10, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$23,010.00 with a further payment of \$3,835.00 due December 25, 2022.

As a courtesy to the court the debtor has filed a non-opposition to the motion. See Response and Declaration, ECF Nos. 64, 65.

**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.

56. [22-22598](#)-A-13     **IN RE: MAYRA PALACIOS**  
[MMM-1](#)

MOTION TO CONFIRM PLAN  
12-14-2022    [\[20\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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



### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,300.00. The plan cannot be confirmed if the plan payments are not current.

### **CIVIL MINUTE ORDER**

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

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

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

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

57. [22-22699](#)-A-13     **IN RE: CHRISTINE BONILLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-27-2022    [[43](#)]

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

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