

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

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: January 30, 2024

CALENDAR: 1:00 P.M. CHAPTER 13

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

January 30, 2024 at 1:00 p.m.

1. [23-90502](#)-B-13 LYNNE ERNST CONTINUED MOTION TO CONFIRM
[KLG](#)-1 Arete Kostopoulos PLAN
11-22-23 [[32](#)]

CONTINUED TO 2/27/24 AT 1:00 P.M. IN MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 2/21/24.

Final Ruling

No appearance at the January 30, 2024, hearing is required. The court will issue an order.

2. [23-90520](#)-B-13 DIANE VARGAS
[LGT](#)-1 Pro Se
Add on #8

MOTION TO DISMISS CASE
1-9-24 [[26](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion, convert this case to a chapter 7 case, and continue the matter to February 6, 2024, at 1:00 p.m.**

First, payments to the Chapter 13 Trustee are not current under the proposed plan. As of January 9, 2024, plan payments are delinquent in the sum of \$1,500.00 and no payments have been received in this case. This is an unreasonable delay that is prejudicial to creditors who are delayed in receiving payments. 11 U.S.C. § 1307(c)(1).

Second, the Debtor failed to set a hearing on confirmation of the plan filed December 1, 2023.

Third, the Debtor has opted to use California Code of Civil Procedure § 704 exemptions and a review of Debtor's Schedules A/B, C and D shows that the Debtor has non-exempt equity in real and personal property. Even if the Debtor amended her exemptions, there would remain non-exempt equity that may be available for the benefit of unsecured creditors making conversion rather than dismissal in the best interest of creditors and the estate.

This is the Debtor's second unsuccessful Chapter 13 case filed within the past year and the third unsuccessful Chapter 13 case filed since 2019. The Debtor's most recent case, case no. 23-90257, was filed on June 5, 2023, and dismissed on August 29, 2023, for failure to pay court fees. This case was filed a little over two months later on November 3, 2023. Prior to that, case no. 19-91121 was filed on December 28, 2019, and dismissed on May 18, 2021, for failure to make plan payments. It appears the Debtor is unable to make payments required to successfully prosecute a Chapter 13 case.

Cause exists to convert this case. The motion is conditionally granted and the case will be converted to a chapter 7 case.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, February 2, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 6, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on February 6, 2024, at 1:00 p.m.

3. [23-90336](#)-B-13 ERIC/DANIELLE CONNOLLY MOTION TO DISMISS CASE
[LGT](#)-2 Simran Singh Hundal 1-9-24 [[43](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny the motion to dismiss case.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtors are delinquent in plan payments, do not have pending plan and motion to confirm, and have non-exempt equity in personal property that may be available for the benefit of unsecured creditors.

The Debtors filed a response stating that they have filed a first amended plan and that a confirmation hearing has been set for March 5, 2024. This resolves the issues raised by the Trustee at this time.

Cause does not exist to dismiss this case. The motion is denied and the case will not be dismissed.

The motion to dismiss case is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

4. [23-90543](#)-B-13 ALISON CHARTER-SMITH
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-19-23 [[25](#)]

DEBTOR DISMISSED: 12/27/23

Final Ruling

The case having been dismissed by the debtor, the order to show cause for failure to pay fees is discharged as moot.

The order to shw cause is ORDERED DISCHARGED AS MOOT for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to February 6, 2024, at 1:00 p.m.**

First, the Debtor has failed to appear at the first meeting of creditors held on January 3, 2024, and his continued meeting of creditors held January 10, 2024, as required by 11 U.S.C. § 343. Given his history of non-appearances, it is unlikely that he will appear at the continued meeting of creditors set for February 7, 2024.

Second, the Debtor has failed to file credit counseling certificates evidencing that he obtained the credit counseling mandated by 11 U.S.C. § 109(h). Without a credit counseling certificate, it cannot be determined if Debtor is eligible to be Debtor under Title 11 of the United States Code.

Third, the Debtor has failed to provide copies of 6 months of profit and loss statements and copies of Debtor's liability riders and workers' compensation riders, if applicable, for Debtor's business. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(i). The Debtor has also failed to provide copies of his 2022 federal and state income tax returns. 11 U.S.C. §§ 1325(a)(6), (b)(1).

Fourth, the Debtor has failed to accurately file Form 122C-1, Statement of Financial Affairs, and Section 3.07 of the plan.

Fifth, a review of Debtor's Schedules A/B, C, and D shows that Debtor has non-exempt equity in real property that may be available for the benefit of unsecured creditors.

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, February 2, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 6, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on February 6, 2024, at 1:00 p.m.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to February 6, 2024, at 1:00 p.m.**

First, payments to the Chapter 13 Trustee are not current under the proposed plan. As of January 9, 2024, plan payments are delinquent in the sum of \$1,000.00. The last payment was received on December 4, 2023. This is an unreasonable delay that is prejudicial to creditors who are delayed in receiving payments. 11 U.S.C. § 1307(c)(1).

Second, the Debtor has failed to file, set, and serve an amended plan and confirm a plan in over a year. This is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, February 2, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on February 6, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on February 6, 2024, at 1:00 p.m.

7. [23-90487](#)-B-13 FRANCISCO TOSTADO MOTION TO DISMISS CASE
[LGT](#)-1 Flor De Maria A. Tataje 1-9-24 [[33](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally deny the motion to dismiss case.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor is delinquent in plan payments and has failed to file, set, and serve a motion to confirm a plan filed November 27, 2023.

Although the Debtor has not filed a response, a review of the court's docket shows that the Debtor filed a first amended plan on January 10, 2024. A confirmation hearing still needs to be set.

Provided that the Debtor sets, by 5:00 p.m. on February 2, 2024, a confirmation hearing date, the court will not find cause to dismiss this case. If the Debtor fails to set a confirmation hearing date, the court will find this to be an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

The motion is conditionally denied and the case will not be dismissed.

The motion to dismiss case is ORDERED CONDITIONALLY DENIED for reasons stated in the minutes.

The court will issue an order.

8. [23-90520](#)-B-13 DIANE VARGAS
[RAS](#)-1
See Also #2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
DEUTSCHE BANK NATIONAL TRUST
COMPANY
12-22-23 [[24](#)]

Final Ruling

The case having been converted at Item #2, LGT-1, the objection to confirmation of plan by Deutsche Bank National Trust Company is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will enter an order.