

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: February 7, 2023**

**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.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**February 7, 2023 at 1:00 p.m.**

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1. [22-22551](#)-B-13 PAUL/VICKI MAINS MOTION TO CONFIRM PLAN  
[ES-1](#) Eric L. Seyvertsen 12-18-22 [[20](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

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 confirm the first amended plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtors did not plead with particularity the requirement for motions, including a motion to confirm plan, as required pursuant to Fed. R. Civ. P. 7(b). The Debtors fail to provide a brief description of the plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtors to a first amended plan.

The Debtors filed a supplemental declaration providing a brief description of the plan and what has changed between the original plan and the first amended plan.

There being no other objections, the amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

**February 7, 2023 at 1:00 p.m.**

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2. [22-23055](#)-B-13 ALBERT EGU OBJECTION TO CONFIRMATION OF  
[CJK](#)-1 Jennifer G. Lee PLAN BY DEUTSCHE BANK NATIONAL  
**Thru #3** TRUST COMPANY  
1-18-23 [[20](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 overrule the objection as moot but deny confirmation of the plan for reasons stated at RDG-1.

The plan filed December 12, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

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

The court will issue an order.

3. [22-23055](#)-B-13 ALBERT EGU OBJECTION TO CONFIRMATION OF  
[RDG](#)-1 Jennifer G. Lee PLAN BY RUSSELL D GREER  
1-17-23 [[16](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. 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 sustain the objection and deny confirmation of the plan.

First, Debtor's petition fails to reference the prior Chapter 13 bankruptcy filed on January 30, 2022. Accordingly, Debtor's plan has not been proposed in good faith and should not be confirmed. 11 U.S.C. § 1325(a)(3).

Second, the plan is contingent upon the sale of his primary residence by month 4 of the plan. There is no housing expenses on Debtor's Schedule J. Debtor has testified that he may rent or live with family after the sale of his residence. It is unclear what the impact of the sale will be on Debtor's budget and feasibility of the plan. 11 U.S.C. § 1325(a)(6).

Third, the plan provides for monthly payments of \$2,225.00 until his primary residence

is sold. Section 7.03 states that arrears shall be paid through the sale of the property. Debtor has proposed a 36-month plan and a zero dividend to general unsecured creditors. The plan fails to indicate what the plan payment will be in months 5 through 36. 11 U.S.C. § 1325(a)(6).

Fourth, the plan provides for attorney fees of \$1,000.00 to be paid a monthly dividend of \$20.00. Debtor's plan is a 36-month plan and the monthly dividend proposed for attorney fees will take 50 months to pay. 11 U.S.C. § 1325(a)(6).

Fifth, the plan fails the liquidation test of 11 U.S.C. § 1325(a)(4). Debtor's schedules list non-exempt assets totaling \$13,672.03 and unsecured priority claims totaling \$0. Based on a review and analysis of Debtor's schedules, Debtor has non-priority general unsecured claims totaling \$65,119.42. In order to meet the liquidation test, Debtor's plan must pay 21% to Debtor's general unsecured creditors. Debtor's plan pays 0% and therefore fails the liquidation test.

Sixth, the plan impermissibly modifies the first mortgage. 11 U.S.C. § 1322(b)(2). The plan provides for Select Portfolio Servicing Inc. (Deutsche Bank National Trust Company) as a Class 1 creditor to be paid a post-petition mortgage payment of \$2,000.00 per month as adequate protection until the property is sold. The monthly payment due for January 1, 2023, is \$3,615.70. See dkt. 20.

Seventh, the Debtor is delinquent \$2,225.00 in plan payments as of January 17, 2023. The Debtor has paid \$0.00 into the plan to date. All sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2).

The plan filed December 12, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

4. [22-21460](#)-B-13 SAMUEL/NOREEN TABOFUNDA MOTION TO RECONVERT CASE FROM  
[RDG-1](#) G. Michael Williams CHAPTER 13 TO CHAPTER 7  
1-13-23 [[62](#)]

### **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 reconvert the case from chapter 13 to chapter 7 and continue the matter to February 14, 2023, at 1:00 p.m.**

This motion has been filed by the Chapter 13 Trustee. The Trustee asserts that the case should be converted based on Debtors' failure to file, set and serve an amended plan after their motion to confirm was heard and denied on November 22, 2022, and because they have failed to file Form 122C-1, which was required to be filed by September 30, 2022. Debtors' failure to perform their duties is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Conversion appears to be the better option based on the chapter 7 trustee's notice of assets filed in the pre-converted chapter 7 case. See dkt. 29.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The motion will be granted and the case will be reconverted to a case under chapter 7.

### **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 10, 2023, 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 14, 2023, 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 14, 2023, at 1:00 p.m.

5. [22-23273](#)-B-13 MARK JOHNSON  
[EJS](#)-1 Eric John Schwab

MOTION TO VACATE DISMISSAL OF  
CASE  
1-12-23 [[17](#)]

CASE DISMISSED: 01/11/2023

### **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. And given the circumstances explained below, the court has determined that to avoid irreparable harm to the Debtor and his property further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to grant the motion to vacate dismissal.

Debtor filed this bankruptcy case to save his home from an imminent foreclosure.

Debtor seeks to have the court vacate the dismissal order based on the unforeseen intervention of mother nature late January 7 or early January 8, 2023, in which Debtor's counsel's office suffered a loss of all electrical power and access to computers, phone service, and internet due to locally violent storm activity. Although by January 9, 2023, lighting had been restored to the office, network and internet services were not restored until January 11, 2023. Because of this, Debtor's counsel was unable to file amended schedules, statements, and a chapter 13 plan by January 10, 2023 - the extended deadline in which the court allowed the Debtor to file required documents.

As such, the court issued an order dismissing the case on January 11, 2023.

### **Discussion**

Filed less than 14 days after the entry of judgment, the Debtor's motion is governed by Civil Rule 59(e) applicable by Bankruptcy Rule 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, \*1-2 (Bankr. E.D. Cal. 2012). There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

The first, second, and fourth grounds are inapplicable. That leaves the third ground, *i.e.*, to prevent manifest injustice. Inasmuch as the Debtor filed this bankruptcy case to avoid the loss of his home due to an imminent foreclosure, it would be a manifest injustice for the Debtor to lose the protection of bankruptcy, the ability to reorganize his financial affairs, and the opportunity to save home because of weather-related circumstances beyond his control or the control of his attorney.

The court finds that, the Debtor has demonstrated that extraordinary relief under Civil Rule 59(e) is warranted. For all the foregoing reasons, the Debtor's motion to vacate the order dismissing this chapter 13 case will be granted.

The motion is ORDERED GRANTED for the reasons stated in the minutes.

The court will issue an order.

6. [19-23081](#)-B-13 FREDDIE FRAZIER MOTION TO MODIFY PLAN  
[PGM](#)-3 Peter G. Macaluso 12-21-22 [[60](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

7. [21-23801](#)-B-13 ROBERT MOLINA  
[RDG](#)-3 Nicholas Wajda

CONTINUED MOTION TO DISMISS  
CASE  
1-13-23 [[134](#)]

**Final Ruling**

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 138, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 138.

The court will issue an order.



8. [22-21609](#)-B-13 FRANCISCO/MARIA PADILLA CONTINUED MOTION TO DISMISS  
[RDG](#)-3 Peter G. Macaluso CASE  
1-17-23 [[44](#)]

**Final Ruling**

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Although the Debtors did not file a response, a review of the court's docket shows that they filed a first amended plan with a scheduled confirmation hearing date of March 14, 2023, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 51 and the continued hearing on February 7, 2023, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

9.     [21-22917](#)-B-13   STEVEN/EMELDA CLYMER                   CONTINUED MOTION TO DISMISS  
          [RDG](#)-3            G. Michael Williams               CASE  
  1-17-23 [[121](#)]

**Final Ruling**

This matter was continued from January 31, 2023, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, February 3, 2023. Nothing was filed. Therefore, the court's conditional ruling at dkt. 125, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on February 7, 2023, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes at dkt. 125.

The court will issue an order.