

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

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

**DAY: WEDNESDAY**  
**DATE: FEBRUARY 22, 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. [21-22506](#)-A-13     **IN RE: KEVIN KENNEDY**  
[DPC-3](#)

CONTINUED OBJECTION TO CLAIM OF STACEY MACDONALD, CLAIM  
NUMBER 7  
10-27-2022    [\[47\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition filed by claimant

**Disposition:** Sustained, claim allowed as general unsecured

**Order:** Civil minute order

The Chapter 13 trustee objects to the allowance of the claim of Stacey MacDonald, Claim No. 7, as a priority claim. The trustee requests instead that the claim be allowed as a general unsecured claim.

The hearing on this objection was continued under Fed. R. Bankr. P. 2002(p) to allow the claimant an opportunity to respond.

On February 1, 2023, the claimant filed a response to the trustee's objection, ECF Nos. 56, 57. Claimant is represented by counsel. The claimant agrees that her claim is not entitled to priority status and agrees that the claim should be allowed as a general unsecured claim.

The court will sustain the objection to Claim No. 7. The claim will be allowed as a general unsecured claim.

### **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 Claim of Stacey MacDonald has been presented to the court. Having considered the objection, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The claim of Stacey MacDonald, Claim No. 7 shall be allowed as a general unsecured claim.

2. [22-21207](#)-A-13     **IN RE: MANJIT SINGH**  
[DPC-3](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[65\]](#)

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:** February 8, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file plan

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case 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 \$8,372.02 with a further payment of \$2,815.00 due January 25, 2023.

The trustee also moves for dismissal as the debtor has failed to file an amended plan following a sustained objection to confirmation of the original plan on July 19, 2022. The court notes that the docket shows the debtor did propose an amended plan on September 29, 2022, ECF No. 43. However, the court denied confirmation of that plan on November 9, 2022, and the debtor has not filed a further amended plan since that date.

**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 and the debtor's failure to file an amended plan in this case. The court hereby dismisses this case.

3. [22-22307](#)-A-13     **IN RE: CARPIO GUINTU AND MARIA LAQUINDANUM**  
[FEC-1](#)

ORDER TO SHOW CAUSE  
1-26-2023    [\[56\]](#)

ARASTO FARSAD/ATTY. FOR DBT.  
DEBTORS DISMISSED: 1/26/23

**Final Ruling**

**Motion:** Order to Show Cause

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

**Order:** Civil minute order

This is the court's Order to Show Cause regarding the payment of, and possible disgorgement of, attorney fees to counsel in connection

with this Chapter 13 case considering the dismissal of the case prior to confirmation of any Chapter 13 plan.

In its order the court requested that debtors' counsel file and serve detailed written opposition in the form of admissible evidence (including time records for each timekeeper or, if not available, a detailed description of work undertaken on behalf of the clients and by name/capacity of each person undertaking that work). See Order to Show Cause, 3:16-20, ECF No. 56. The court also asked that the Chapter 13 trustee rise and be heard regarding this matter.

Both the Chapter 13 trustee and debtors' counsel responded to the Order to Show cause. See ECF Nos. 61, 63. However, neither party has provided sufficient information regarding legal services performed on behalf of the debtors by counsel, such that the court is able to determine the reasonableness of the compensation under 11 U.S.C. §§ 329, 330. The court's purpose in issuing the Order to Show Cause is to determine if the compensation received is reasonable under the provisions of the Bankruptcy Code.

Debtors' counsel has offered to refund the entire \$6,000.00 received from the debtors. However, the court believes that counsel should be fairly compensated for his work in this case and therefore requires that counsel and the Chapter 13 trustee file additional admissible evidence and argument which details the services performed on behalf of the debtors and the estimated value of those services.

The debtors, Carpio Garcia Guintu and Maria Rhoda Isip Laquindanum are invited to participate at the continued hearing on this matter.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on the Order to Show Cause is continued to April 4, 2023.

IT IS FURTHER ORDERED that no later than March 21, 2023, debtor's counsel and the Chapter 13 trustee shall file and serve responses and additional evidence in accordance with the court's ruling in this matter.

4. [20-23908](#)-A-13     **IN RE: COLE RUMFORD**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-23-2023    [\[31\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

### **DISMISSAL**

#### Plan Delinquency

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 \$8,921.22, with another payment of \$3,196.36 due January 25, 2023.

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

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).

#### Debtor Opposition

The opposition does not comply with LBR 9014-1(f)(1)(B). The opposition consists solely of an unsworn statement by debtor's counsel. A declaration by the debtor, and supporting exhibits, is required to prove the contentions in the opposition and to provide additional relevant information. For example, the opposition states that the debtor has tendered payments and will bring all payments current by February 2, 2023. The debtor is the proper declarant to establish these facts.

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

The court 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.

#### **TRUSTEE MOTION UNDER FED. R. CIV. P. 41**

On February 15, 2023, the trustee filed a request to withdraw his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 37.

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).

Absent the trustee's timely request to withdraw his motion, this case would be dismissed because the debtor's opposition to the motion is unsupported by evidence.

However, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion. In this instance 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.

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 withdrawn by the moving party.

5. [22-21008](#)-A-13     **IN RE: CYNTHIA PAYSINGER**  
[PGM-3](#)

MOTION TO CONFIRM PLAN  
1-12-2023    [\[78\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

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



### Schedules I and J

The debtor has provided pay advices to the trustee. The trustee contends that the pay advices he received do not support the debtor's income as indicated on Schedule I. The court notes that the most recently filed Schedules I and J were filed on July 27, 2022, ECF No. 42. The debtor has failed to amend Schedules I and J, or to provide pay advices to the trustee which support the information in Schedule I. The trustee indicates that the debtor's wages in Schedule I are approximately \$235.00 less per month than indicated in the provided pay advices.

The court considers accurate income information to be part of the debtor's prima facie case for confirmation. This is information which must be accurately proffered at the outset of the motion to confirm and not in response to the trustee's opposition.

### Third Party Support

Schedule I indicates that the debtor's son Mr. Shinn will contribute \$885.00 to the debtor each month. The feasibility of the proposed plan relies upon this income. See *id.*

Mr. Shinn has filed a declaration in support of the instant motion to confirm. See Declaration of Keenan Shinn, ECF No. 83. However, the declaration does not indicate the amount Mr. Shinn is willing and able to contribute each month. Additionally, the declaration states "[a]ttached to this declaration are my schedules I & J, which are true and accurate." *Id.*, 2:15-16. However, no budget schedules are attached to the declaration as indicated. The court is unable to assess Mr. Shinn's ability to assist his mother in making plan payments.

The court considers accurate income information to be part of the debtor's prima facie case for confirmation. This is information which must be accurately proffered at the outset of the motion to confirm and not in response to the trustee's opposition.

The court will deny the motion. The debtor has failed to prove that her proposed plan is feasible under 11 U.S.C. § 1325(a)(6).

### **DEBTOR REPLY**

On February 15, 2023, the debtor filed a reply to the trustee's opposition. See Reply, ECF No. 88. The reply consists of an unsworn statement by debtor's counsel. No admissible evidence was filed with the reply. None of the court's evidentiary concerns previously discussed in this ruling were addressed in the reply.

The court will deny the motion.

### **CIVIL MINUTE ORDER**

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

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

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

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

6. [22-22110](#)-A-13     **IN RE: MANUEL SAUCEDO GONZALEZ AND REGINA SAUCEDO**  
[MET-2](#)

MOTION TO CONFIRM PLAN  
12-31-2022    [\[90\]](#)

MARY TERRANELLA/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 \$9,300.00. 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.

7. [20-25612](#)-A-13     **IN RE: CHESTER KATZ**  
[DPC-3](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[45\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The Chapter 13 trustee moves to dismiss the Chapter 13 case. The Amended Notice of Hearing was filed and served on January 26, 2023. See Amended Notice, ECF No. 49, Certificate of Service, ECF No. 50.

The motion is noticed pursuant to LBR 9014-1)f)(1) and states that the debtor must file opposition to the motion not later than February 8, 2023. See ECF No. 49.

The trustee has only provided 27 days' notice which contravenes LBR 9014-1(f)(1). Therefore, notice is insufficient. Accordingly, the court will deny the motion without prejudice.

### **CIVIL MINUTE ORDER**

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

The Chapter 13 trustee's Motion to Dismiss 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.

8. [22-20612](#)-A-13     **IN RE: BRITTANY/STEVEN UREN**  
[ALF-1](#)

MOTION TO CONFIRM PLAN  
1-18-2023    [\[32\]](#)

ASHLEY AMERIO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors move for confirmation of their Chapter 13 Plan. For the following reason the motion will be denied.

### **SERVICE**

In support of the motion the debtors filed an Amended Notice of Hearing on January 18, 2023, ECF No. 38. The amended notice changed the hearing date. A certificate of service was also filed which states that the amended notice of hearing was served on the trustee, the United States trustee, and all interested parties. See Certificate of Service, Section 5, ECF No. 39.

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

There are no attachments to the certificate of service. Thus, the court cannot determine which parties, if any, were served with the motion.

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:

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.

9. [19-21114](#)-A-13     **IN RE: LYNDA STOVALL**  
[PGM-6](#)

MOTION TO MODIFY PLAN  
1-18-2023    [\[136\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition filed by the trustee

**Disposition:** Denied

**Order:** Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

### **ORAL ARGUMENT**

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 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).

#### Additional Provisions

The Chapter 13 trustee contends that Section 7 of the plan contains erroneous provisions.

First, the plan states that the debtor has paid “\$212,258.42 through December 2022”. See First Modified Chapter 13 Plan, Section 7, ECF No. 140. Yet the trustee’s records show the debtor paid \$212,758.42 during the same period.

Second, the plan provides as follows:

Trustee is seeking the return of funds from SLS (Bank of New York) to comply with Bankruptcy Rule 3002.1. Due to the change in classification (sic).

Sls Bank was paid \$11,510.00 for on-going  
Sls Bank was paid \$4,969.17 for pre petition arerars (sic)

*Id.*

The trustee contends that payments were paid to Specialized Loan Servicing in Class 1 pursuant to a previously confirmed plan. The trustee argues that the debtor may not use Section 7 of the plan to force the trustee to retrieve payments properly made pursuant to a confirmed plan. The debtor is bound by the terms of the previously confirmed plan, 11 U.S.C. § 1327(a). Therefore, the proposed plan is not feasible, and a further modified plan must be filed.

It appears that any overpaid mortgage payments are a result of the debtor’s delay in filing the instant motion to modify after the court granted a motion to refinance the debtor’s mortgage on September 28, 2022. See Order, ECF No. 135. The instant motion to modify was not filed until January 18, 2023, over 3 months after the order authorizing the refinance.

The conflicting provisions in Section 7 of the proposed plan cannot be resolved without filing a further modified plan. Additionally, the court notes that the provisions in Section 7 of the plan are unclear and uncertain.

#### **DEBTOR REPLY**

On February 15, 2023, the debtor filed a reply to the trustee’s opposition, ECF No. 147. The additional provisions of the proposed plan are incorrect, unclear, and uncertain. Debtor’s counsel acknowledges that they are incorrect in the reply and attempts to

explain the intention of further provisions and make corrections to the plan. The terms of the proposed plan must be clear and certain to the court, the Chapter 13 trustee, and all creditors without explanation at the outset of the motion. A further modified plan is required.

The court will deny the motion.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to modify 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 modification of the chapter 13 plan.

10. [22-20417](#)-A-13     **IN RE: GREGORY/MELANIE WRIGHT**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[21\]](#)

NIKKI FARRIS/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:** February 8, 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 \$8,397.00 with a further payment of \$1,760.00 due January 25, 2023.

### **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.

11. [22-22222](#)-A-13     **IN RE: RODERICK SINGLETON**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-12-2023    [\[39\]](#)

ARETE KOSTOPOULOS/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:** February 8, 2023

**Opposition Filed:** Unopposed

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

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor has failed to file an amended plan within a reasonable time.

The debtor filed this case on August 31, 2022. The trustee objected to confirmation of the debtor's initial plan. The objection was sustained on November 8, 2022. See Order, ECF No. 26.

The court finds the debtor's failure to file an amended plan and motion to confirm the plan constitutes unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted because of the debtor's failure to file an amended plan and motion to confirm plan in this case. The court hereby dismisses this case.

12. [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, NATIONAL ASSOCIATION VS.

**No Ruling**

13. [22-22522](#)-A-13     **IN RE: JONATHAN KENYON**  
[MOH-1](#)

MOTION TO CONFIRM PLAN  
12-30-2022    [\[34\]](#)

MICHAEL HAYS/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.

For the following reasons the court will deny the motion without prejudice.

### **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).

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.

- (a) Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the *Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*
- (b) For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.
- (c) When a Clerk's Office Matrix is attached to the Certificate of Service, for the persons not served by

that method of service, the filer shall strike out the names of such persons not served by that method of service.

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

LBR 7005-1(a) (b) (c) (d) (emphasis added).

The debtor filed a certificate of service with the moving papers, ECF No. 39. The certificate of service filed by the debtor does not comply with LBR 7005-1.

First, Section 3 of the certificate incorrectly identifies this case as a Chapter 7. See Certificate of Service, Section 3, ECF No. 39.

Second, the certificate incorrectly indicates service of the motion is made pursuant to Fed. R. Bankr. P. 7004. This is incorrect. Service of this motion is properly made under Fed. R. Civ. P. 5. Moreover, had service been required under Rule 7004, the corporate creditors were not served pursuant to the requirements of that rule as indicated on the matrix attached to the certificate.

Third, LBR 7005-1 requires that the Clerk's Official Matrix must be attached to the certificate of service and dated not more than 7 days prior to the date of serving pleadings. There are two lists of creditors attached to the certificate. The first attached list is a typewritten list, the second is not the clerk's matrix. Neither list is dated as required. The certificate does not comply with LBR 7005-1.

Fourth, the Chapter 13 trustee and U.S. Trustee do not appear on any attachment to the certificate of service. Neither is the clerk's matrix of registered users of the electronic filing system attached to the certificate of service. Thus, the court cannot determine if and how these parties were served with the motion.

## 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 court will deny the motion without prejudice.

### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to 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.

14. [22-23323](#)-A-13     **IN RE: VICTOR CERVANTES CASTILLO**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
2-2-2023    [\[12\]](#)

MARIO BLANCO/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
STIPULATION FILED 2/8/2023

### **Final Ruling**

This matter was resolved by stipulation of the parties. On February 8, 2023, the court signed an order approving the stipulation. See Order, ECF No. 18. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

15. [21-20924](#)-A-13     **IN RE: TERRY NYGREN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-23-2023    [\[32\]](#)

MARC CARASKA/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:** February 8, 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 \$2,823.60 with a further payment of \$470.60 due January 25, 2023.

### **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. [22-21239](#)-A-7     **IN RE: MYRNA STICKLING**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[63\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
CASE CONVERTED: 2/6/23

### **Final Ruling**

This case was converted to Chapter 7 on February 6, 2023. See Notice of Conversion, ECF No. 71. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

17. [22-23039](#)-A-13     **IN RE: KAREN GARLINGTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-27-2023    [\[42\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
1/30/2023 INSTALLMENT FEE PAID \$78

### **Final Ruling**

The filing fee has been paid. The Order to Show Cause will be discharged, and the case will remain pending. A Civil Minute Order will be issued.



18. [21-22141](#)-A-13     **IN RE: RUBY CORNEJO**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[26\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

**Opposition Filed:** February 7, 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 \$828.00, with another payment of \$420.00 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 30, 31, 32. The debtor's declaration states that the debtor made a \$422.00 cashier's check payment on January 27, 2023, and an \$826.00 cashier's check payment on February 6, 2023. Exhibit A, ECF No. 32 shows the debtor tendered the payments.

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

On February 15, 2023, the trustee filed a timely request to withdraw his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 34.

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

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

## CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

19. [22-22343](#)-A-13     **IN RE: CHRISTIE LEWIS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[26\]](#)

MARK SHMORGON/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:** February 8, 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 \$4,134.00 with a further payment of \$1,378.00 due January 25, 2023.

### 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.

20. [20-21047](#)-A-13     **IN RE: PAUL DENNO AND SANDRA MURRAY**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-23-2023    [[175](#)]

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **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:** February 8, 2023

**Opposition Filed:** February 1, 2023 - timely

**Motion to Modify Plan Filed:** February 2, 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 plan. The trustee contends that the debtor is delinquent in the amount of \$81,000.00 as the debtor has

failed to sell real property according to the terms of the currently confirmed plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is April 4, 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 April 4, 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.

21. [20-21352](#)-A-13     **IN RE: BRETT TRAINA**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-23-2023    [\[29\]](#)

SETH HANSON/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:** February 8, 2023

**Opposition Filed:** February 7, 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 \$3,193.05, with another payment of \$2,568.61 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 33, 34. The debtor's declaration states that the debtor has made one payment to the trustee in the amount of \$2,700.00 via TFS and will bring the plan payment fully current by the date of the hearing on this motion. See Declaration, ECF No. 34.

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.

22. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
2-2-2023    [\[30\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

#### **Final Ruling**

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

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

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

**Order:** Civil minute order

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).

#### **MOTION TO AVOID LIEN**

LBR 3015-1(i) provides that "[t]he hearing on a motion to avoid lien 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."

One of the bases for the trustee's objection to confirmation is that the debtor has not yet obtained a favorable ruling on the motion to avoid the lien of Richard Teague. The hearing of this motion is

scheduled on March 7, 2023, at 9:00 a.m. The court will continue the hearing on the trustee's objection to coincide with the hearing on the motion to avoid lien. The court will also continue the objection to confirmation filed by Richard Teague to the same date and time.

#### **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 hearing on the objection is continued to March 7, 2023, at 9:00 a.m.

23. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
2-2-2023    [\[40\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

#### **Final Ruling**

This objection is a duplicate of the Chapter 13 trustee's objection to the confirmation of the debtor's plan. Accordingly, this matter will be removed from the calendar as a duplicate objection.

24. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[MBN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RICHARD TEAGUE  
2-2-2023    [\[34\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
ALAN NAHMIAS/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

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).

### **MOTION TO AVOID LIEN**

LBR 3015-1(i) provides that "[t]he hearing on a motion to avoid lien 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."

One of the bases for the creditor's objection to confirmation is that the debtor has not yet obtained a favorable ruling on the motion to avoid the lien of Richard Teague. The hearing of the motion to avoid lien is scheduled on March 7, 2023, at 9:00 a.m.

Objecting creditor has requested a continuance of the objection to confirmation to coincide with the hearing on the motion to avoid his lien. Given the related nature of the two matters the court will continue the hearing on this objection. The court will also continue the Chapter 13 trustee's objection to confirmation to the same date and time.

### **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.

Richard Teague'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 hearing on the objection is continued to March 7, 2023, at 9:00 a.m.

25. [19-23355](#)-A-13     **IN RE: STEVEN SLATER**  
[DPC-1](#)

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

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

### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from January 24, 2023

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued from January 24, 2023, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, RK-2, has been granted.

Accordingly, the court will deny the trustee's motion to dismiss.

### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

26. [19-23355](#)-A-13     **IN RE: STEVEN SLATER**  
[RK-2](#)

MOTION TO MODIFY PLAN  
1-8-2023    [\[69\]](#)

RICHARD KWUN/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); non-opposition filed by the trustee

**Disposition:** Granted

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

**Subject:** Modified Chapter 13 Plan, filed January 8, 2023

### **DEFAULT OF RESPONDENT**

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

The debtor seeks modification of his Chapter 13 Plan. The proposed plan is supported by Amended Schedules I and J filed January 8, 2023, ECF No. 73. The Chapter 13 trustee has filed non-opposition to the motion, ECF No. 77.

### **CHAPTER 13 PLAN MODIFICATION**

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof.  
The court will grant the motion and approve the modification.

27. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DBL-6](#)

MOTION TO AVOID LIEN OF JOSH MASON  
1-24-2023    [[80](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 1/26/23

**Final Ruling**

This case was dismissed on January 26, 2023. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

28. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DBL-7](#)

MOTION TO AVOID LIEN OF TYLER GARRETT  
1-24-2023    [[84](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 1/26/23

**Final Ruling**

This case was dismissed on January 26, 2023. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

29. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DBL-8](#)

MOTION TO AVOID LIEN OF SWISS RE CORPORATE SOLUTIONS PREMIER  
INSURANCE CO.  
1-24-2023    [[88](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 1/26/23

**Final Ruling**

This case was dismissed on January 26, 2023. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

30. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DCN-9](#)

MOTION TO CONFIRM PLAN  
1-25-2023    [[96](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 1/26/23

**Final Ruling**

This case was dismissed on January 26, 2023. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

31. [22-23161](#)-A-13     **IN RE: ARTHUR HODGES**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-24-2023    [[32](#)]

DEBTOR DISMISSED: 2/8/23

**Final Ruling**

This case was dismissed on February 8, 2023. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

32. [22-23161](#)-A-13     **IN RE: ARTHUR HODGES**  
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
1-25-2023    [[36](#)]

DEBTOR DISMISSED: 2/8/23

**Final Ruling**

This case was dismissed on February 8, 2023. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

33. [22-20062](#)-A-13     **IN RE: CHARMAINE RAY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-6-2023    [\[70\]](#)

DIANA CAVANAUGH/ATTY. FOR DBT.

**Final Ruling**

The filing fee for the Motion for Relief From Automatic Stay has been paid by the moving party. The Order to Show Cause is discharged and will be removed from the calendar. No appearances are required.

34. [22-20062](#)-A-13     **IN RE: CHARMAINE RAY**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-23-2023    [\[62\]](#)

DIANA CAVANAUGH/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
TOYOTA MOTOR CREDIT CORPORATION VS.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion is opposed by the debtor.

The currently confirmed plan provides for the movant's claim in Class 4. See Amended Chapter 13 Plan, Section 3.10, ECF No. 36.

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of

the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract . . . ."

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. 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:

Toyota Motor Credit Corporation's Motion for Relief From the Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot.

35. [19-21063](#)-A-13     **IN RE: ANGELA BOOTH**  
[DPC-3](#)

MOTION TO DISMISS CASE  
1-9-2023    [\[98\]](#)

ERIC SCHWAB/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 the debtor

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

**Opposition Filed:** January 20, 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 \$1,100.00, with another payment of \$375.00 due January 25, 2023.

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

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).

Debtor Opposition

The debtor has filed a timely opposition, ECF No. 103. However, the opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information.

The opposition filed by the debtor consists of an unsworn statement by counsel indicating that the plan payments will be brought current by the date of the hearing.

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

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

On February 15, 2023, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 106.

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).

Absent the trustee's timely request to withdraw his motion, this case would be dismissed because the debtor's opposition to the motion is unsupported by evidence.

However, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion. In this instance 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.

36. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KB-5](#)

MOTION TO CONFIRM PLAN  
1-8-2023    [\[161\]](#)

KIM BEATON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 9014-1(f) (Written opposition filed by trustee and creditor)

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors seek an order confirming their Chapter 13 Plan. The motion will be denied without prejudice for the following reasons.

#### **ORAL ARGUMENT**

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 for resolution of material, factual issues.

#### **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 used in a motion to value collateral filed concurrently with this motion. See ECF No. 165. Additionally, it is the same docket control number assigned to an objection to claim also filed concurrently with this motion. See ECF No. 170. Pursuant to LBR-9014-1 each motion must have a separate and distinct docket control number.

The court notes that counsel filed amended documents with new docket control numbers for the Motion to Value Collateral and the Objection to Claim. However, that does not resolve the confusion on the court's docket as it relates to the instant motion to confirm plan. When entering the motion control number in the court's docket multiple motions are listed, making the review of this motion difficult, confusing, and inconvenient for the court.

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).

The court has previously denied multiple motions filed by counsel, in part for failure to properly designate a docket control number to her motions. See ECF Nos. 128, 129, 130, 178.

The court will deny the motion without prejudice for counsel's failure to fully comply with LBR 9014-1(c).

#### **CIVIL MINUTE ORDER**

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

The debtors' 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. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KB-6](#)

AMENDED OBJECTION TO CLAIM OF FRANKLIN CREDIT MANAGEMENT,  
CLAIM NUMBER 10  
1-15-2023    [[186](#)]

KIM BEATON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Objection to Claim No. 10

**Notice:** LBR 3007-1(b)(1), opposition filed by trustee and creditor

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtor objects to the claim of Franklin Credit Management, Claim No. 10. For the following reasons the objection will be overruled without prejudice.

### **SERVICE**

#### Certificate of Service Contains No Attachments

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

In support of the objection the debtors filed a Certificate of Service, ECF No. 192. The certificate states that all creditors and parties in interest were served with the objection. *Id.*, Section 5. However, there is no attachment to the certificate showing which creditors were served, or where they were served.

Because the certificate of service contains no attachments, the court cannot determine which parties, if any, were served with the objection.

#### Certificate of Service Not Timely Filed

Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e) (1), (2).

The Certificate of Service indicates that the objection was served on January 8, 2023. The certificate is signed by debtors' counsel. See Certificate of Service, Section 7, ECF No. 192. Yet the Certificate of Service was not filed with the court until January 15, 2023. This contravenes LBR 9014-1(e) (1) and (2).

The objection will be denied without prejudice.

#### **NOTICE**

In support of the objection the debtors filed an Amended Notice of Hearing, ECF No. 187. The notice was filed on January 15, 2023.

The Notice provides as follows:

This motion is being heard on regular notice pursuant to LBR 9013-1. If you oppose this motion, you must file a written opposition with the court and serve a copy of it upon the Debtor or Attorney for Debtor at the address set forth above no later than 14 days before the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Id., 2:4-9.

The notice cites LBR 9013-1 as the applicable rule governing notice of the objection. The Local Rules of Practice for the Eastern District contain no such rule. Moreover, the notice requirements for an Objection to Claim are governed by LBR 3007-1 (amount of notice, and whether written opposition is due) and 9014-1 (content of notice).

#### Deficient Content in Notice

The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

LBR 9014-1(d) (3) (B) (iii).

The Amended Notice of Hearing failed to advise responding parties of the location and time to review the court's prehearing dispositions. This contravenes LBR 9014-1(d)(3)(B)(iii).

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).

**CIVIL MINUTE ORDER**

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

The debtor's Objection to claim of Franklin Credit Management has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

38. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KB-7](#)

AMENDED MOTION TO VALUE COLLATERAL OF FRANKLIN CREDIT CORPORATION  
1-15-2023    [[182](#)]

KIM BEATON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Value Collateral

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order valuing the collateral of Franklin Credit Corporation. For the following reasons the motion will be denied without prejudice.

## **SERVICE**

### Certificate of Service Contains No Attachments

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

In support of the motion the debtors filed a Certificate of Service, ECF No. 185. The certificate states that all creditors and parties in interest were served with the motion. *Id.*, Section 5. However, there is no attachment to the certificate showing which creditors were served, or where they were served.

Because the certificate of service contains no attachments, the court cannot determine which parties, if any, were served with the motion.

### Certificate of Service Not Timely Filed

Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e)(1), (2).

The Certificate of Service indicates that the motion was served on January 8, 2023. The certificate is signed by debtors' counsel. See Certificate of Service, Section 7, Attestation, ECF No. 192. Yet the Certificate of Service was not filed with the court until January 15, 2023. This contravenes LBR 9014-1(e)(1) and (2).

The objection will be denied without prejudice.

## **NOTICE**

In support of the objection the debtors filed a Notice of Hearing, ECF No. 183. The notice was filed on January 15, 2023.

The Notice provides as follows:

This motion is being heard on regular notice pursuant to LBR 9013-1. If you oppose this motion, you must file a written opposition with the court and serve a copy of it upon the Debtor or Attorney for Debtor at the address set forth above no later than 14 days before the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

*Id.*, 2:4-9.

The notice cites LBR 9013-1 as the applicable rule for notice for the objection. The Local Rules of Practice for the Eastern District contain no such rule. Moreover, the notice requirements for a Motion to Value Collateral are governed by LBR and 9014-1.

#### Deficient Content in Notice

The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

LBR 9014-1(d) (3) (B) (iii).

The Amended Notice of Hearing failed to advise responding parties of the location and time to review the court's prehearing dispositions. This contravenes LBR 9014-1(d) (3) (B) (iii).

#### 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).

### **DEBTOR REQUEST TO WITHDRAW MOTION**

On February 13, 2023, the debtor filed a Notice of Withdrawal of this motion. See Notice of Withdrawal, ECF No. 212.

Both the Chapter 13 trustee and creditor Franklin Credit Corporation have filed opposition to the motion. Absent court approval the debtor may not unilaterally withdraw the motion after opposition has been filed. See Fed. R. Civ. Proc. 41. The court declines to allow withdrawal of the motion.

For the reasons indicated in this ruling 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 Objection to claim of Franklin Credit Management has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

IT IS FURTHER ORDERED that the debtors' withdrawal of this motion is disallowed.

39. [22-20967](#)-A-13     **IN RE: JONATHAN EMMONS**  
[DPC-3](#)

MOTION TO DISMISS CASE  
1-30-2023    [\[56\]](#)

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

**No Ruling**

40. [22-21567](#)-A-13     **IN RE: CARLETON/STACIE HYATT**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[30\]](#)

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

**Opposition Filed:** February 7, 2023 - timely

**Modified Plan:** filed February 14, 2023 - untimely timely filed

**Cause:** 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

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

### **DISMISSAL**

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$17,570.00, with another payment of \$5,525.00 due January 25, 2023.

The debtor has filed a timely opposition which is the Declaration of the Debtor, ECF No. 37. The declaration states that the debtor will file a modified plan to resolve the delinquent plan payments. See Declaration, ECF No. 37.

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

### **UNTIMELY OPPOSITION - MOTION TO MODIFY**

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

On February 7, 2023, the debtors filed an opposition to the motion to dismiss, ECF No. 37. The opposition consists of a declaration indicating the debtors' intention to file a modified plan by the date of the hearing on the trustee's motion. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.



### Untimely Modified Plan and Motion

The court notes that on February 14, 2023, the debtors filed a modified plan and a motion to modify the plan. See ECF Nos. 39 - 43, 45, 46. The filing of a modified plan is offered as opposition to the motion to dismiss. *As such it must be filed prior to the opposition deadline under LBR 9014-1.* Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed January 25, 2023, giving the debtor only 28 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses.

First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days' notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here. The debtor may not unilaterally change the date opposition is due without leave of court.

### **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.

41. [22-22867](#)-A-13     **IN RE: ANDREW/ELIZABETH XIMENEZ**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
12-12-2022    [\[27\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.

#### **Final Ruling**

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

**Notice:** Continued from January 10, 2023

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the trustee's objection to confirmation was continued from January 10, 2023, to allow the debtor to obtain an order avoiding the lien of creditor Law Offices of Robert M. Merritt. The court has denied the motion to avoid the lien, JTN-1.

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).

#### **MOTION TO AVOID LIEN**

LBR 3015-1(i) provides that "[t]he hearing on a motion to avoid lien 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."

The debtors have failed to obtain an order avoiding the lien of Law Offices of Robert M. Merritt. The court will sustain the trustee's objection on that basis and need not reach the remaining issues raised by the trustee.

## **CIVIL MINUTE ORDER**

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

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

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

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

42. [22-22867](#)-A-13     **IN RE: ANDREW/ELIZABETH XIMENEZ**  
[JTN-1](#)

CONTINUED MOTION TO AVOID LIEN OF LAW OFFICES OF ROBERT M. MERRITT  
11-17-2022    [\[20\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** Continued from January 10, 2023

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order avoiding the judicial lien of the Law Offices of Robert M. Merritt. The hearing on this matter was continued to allow the debtor to provide notice of the motion to parties which have filed requests for special notice. For the following reasons the court will deny the motion without prejudice.

### **NOTICE**

#### Deficient Content in Notice

The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

LBR 9014-1(d) (3) (B) (iii).

The Amended Notice of Hearing failed to advise responding parties of the location and time to review the court's prehearing dispositions. See Amended Notice, ECF No. 39. This contravenes LBR 9014-1(d)(3)(B)(iii).

The court notes that the notice was similarly deficient in the original Notice of Hearing, ECF No. 21. The original Notice of Hearing is the only notice served on the lienholder, Law Offices of Robert M. Merritt.

#### Notice of Continued Hearing Not Provided to Lienholder

While the amended notice of hearing was served on the Chapter 13 trustee, the U.S. Trustee, and the special notice parties, it was not served on the lienholder, which is the party impacted by the hearing. See Certificate of Service, ECF No. 26. This contravenes Fed. R. Bankr. P. 9014(a).

#### **SERVICE**

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

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

There are problems with the Certificate of Service in this matter.

First, as previously noted the party against which relief is being sought was not served with the amended notice of hearing as required by Fed. R. Bankr. P. 9014(a).

Second, the Certificate of Service indicates that service was made upon the Chapter 13 trustee, the U.S. Trustee, and the special notice parties pursuant to Fed. R. Bankr. P. 7004. This is incorrect. These parties are properly served under Fed. R. Civ. P. 5. Only the lienholder is required to be served under Rule 7004, and the lienholder was not served with the Amended Notice of Hearing. Therefore, Section 6 of the certificate is improperly completed.

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion objection is denied without prejudice.

43. [22-21968](#)-A-13     **IN RE: LYNITA HARRIS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
12-13-2022    [[51](#)]

CHAD JOHNSON/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**Final Ruling**

This objection appears to be a duplicate of item number 44 and the court will remove this matter from the calendar on that basis.

44. [22-21968](#)-A-13     **IN RE: LYNITA HARRIS**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
12-13-2022    [[51](#)]

CHAD JOHNSON/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**No Ruling**

45. [22-21968](#)-A-13     **IN RE: LYNITA HARRIS**  
[TJS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
12-15-2022    [[59](#)]

CHAD JOHNSON/ATTY. FOR DBT.  
TIMOTHY SILVERMAN/ATTY. FOR MV.

**No Ruling**

46. [21-23769](#)-A-13     **IN RE: ELIZABETH CHAN-MAYETTE**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[56\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

### **DISMISSAL**

#### Plan Delinquency

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 \$4,164.14, with another payment of \$2,929.56 due January 25, 2023.

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

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).

#### Debtor Opposition

The opposition does not comply with LBR 9014-1(f)(1)(B). The opposition consists solely of an unsworn statement by debtor's counsel and exhibits. A declaration by the debtor, and supporting exhibits, is required to prove the contentions in the opposition and to provide additional relevant information.

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.

## **TRUSTEE MOTION UNDER FED. R. CIV. P. 41**

On February 15, 2023, the trustee filed a request to withdraw his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 63.

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).

Absent the trustee's timely request to withdraw his motion, this case would be dismissed because the debtor's opposition to the motion is unsupported by *admissible* evidence.

However, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion. In this instance 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.

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 withdrawn by the moving party.

47. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[DPC-2](#)

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

MARK BRIDEN/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
DEBTORS DISMISSED: 1/24/23

**No Ruling**

48. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[KMT-3](#)

MOTION TO SET ASIDE DISMISSAL OF CASE  
1-27-2023    [[168](#)]

MARK BRIDEN/ATTY. FOR DBT.  
GABRIEL HERRERA/ATTY. FOR MV.  
DEBTORS DISMISSED: 1/24/23

**No Ruling**

49. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[MWB-4](#)

MOTION TO CONFIRM PLAN  
1-4-2023    [[147](#)]

MARK BRIDEN/ATTY. FOR DBT.  
DEBTORS DISMISSED: 1/24/23

**No Ruling**

50. [20-20970](#)-A-13     **IN RE: LESLIE BAKER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-23-2023    [[47](#)]

MARC VOISENAT/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:** February 8, 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 \$ 11,398.81 with a further payment of \$2,868.92 due January 25, 2023.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

## **CIVIL MINUTE ORDER**

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

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

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

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

51. [22-22071](#)-A-13     **IN RE: SERGEY/ELENI MALKO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[38\]](#)

MIKALAH LIVIAKIS/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:** February 8, 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 \$1,170.00 with a further payment of \$1,170.00 due January 25, 2023.

The trustee also moves for dismissal as the debtors have failed to file an amended plan following a sustained objection to confirmation of the original plan on November 23, 2022. The court's docket shows that the debtors have not filed an amended plan and motion to confirm.

Each of these bases constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). The court will grant the motion and dismiss the case.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

52. [19-24273](#)-A-13     **IN RE: CHRISTINE CROWNOVER**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-18-2023    [\[70\]](#)

CATHERINE KING/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
THE BANK OF NEW YORK MELLON VS.; TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 11425 Mathew Street, Fort Jones, California

**Cause:** post-petition delinquency; 42 payments totaling \$15,331.20

The Bank of New York Mellon seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

The debtor has filed an opposition to the motion, ECF No 79. The opposition is unsupported by any evidence and consists solely of

unsworn assertions by debtors' counsel. Neither does the debtor's opposition proffer any legal defense to the motion. LBR 9014-1(d)(3)(A), (D). The opposition merely states as follows.

The Debtor is in the process of negotiating a settlement with Specialize Loan Servicing. I am in communication with the Movant's attorney as we believe we will be able to come to an agreement within two (2) weeks.

Opposition, 1:26-28, ECF No. 79.

The Chapter 13 trustee has filed a non-opposition to the motion. See ECF No. 76. The trustee reports that the confirmed plan does not provide for the obligation to Bank of New York Mellon. Schedule D fails to list the obligation to the creditor. See Schedule D, ECF No. 1.

### **STAY RELIEF**

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

Alternatively, because the plan which has been confirmed does not provide for the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

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

### **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 Bank of New York Mellon's motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion, the opposition filed in this matter, and oral argument, if any,

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 11425 Mathew Street, Fort Jones, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with

standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

53. [22-22974](#)-A-13     **IN RE: GREGORY BUSH**  
[DPC-2](#)

MOTION TO DISMISS CASE  
2-7-2023    [\[50\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to attend 341 Meeting of Creditors; Failure to Provide Documents

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

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 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.

### **DISMISSAL**

#### Plan Delinquency

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 \$4,139.90, with another payment of \$2,069.95 due February 25, 2023.

#### Failure to Attend Meeting of Creditors

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the proposed plan. This constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1).

#### Failure to Provide Documents

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 debtor has not provided the trustee the most recently filed tax return at least 7 days prior to the meeting of creditors as required under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).

For each of these reasons, the case is 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. 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; has failed to provide documents as required; and failed to attend the meeting of creditors. Each of these bases constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

54. [22-20175](#)-A-13     **IN RE: DARRIN/KRISTINA DEMELLO**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
12-14-2022    [\[78\]](#)

D. ENSMINGER/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Final Ruling**

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

**Notice:** Continued from January 10, 2023

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the trustee to serve creditors which filed requests for special notice with the objection and for the debtors to respond to the objection. The trustee has served the omitted creditors and the debtors have filed opposition to the trustee's objection, ECF No. 89. The timely opposition is accompanied by a declaration of the debtors, ECF No. 90.

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**

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 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).

The Chapter 13 trustee objects to confirmation under 11 U.S.C. §1325(b) contending that the debtors have failed to include bonuses paid to them through employment in determining disposable income.

The debtors contend that the bonuses were not included in determining their monthly disposable income because the funds are needed for significant dental work required by one of the debtors. The debtors' declaration indicates that \$18,000.00 of dental work is projected for debtor, Darrin Demello.

This case was converted from Chapter 7. On October 31, 2022, the debtors filed the Official Form 122C required to calculate income in a Chapter 13 case. See ECF No. 69. Similarly, the debtors filed Amended Schedules I and J on October 31, 2023, ECF No. 70.

The debtors' declaration in opposition to the objection states as follows:

For example, although Darrin Demello did recently receive a \$5,400 end of year bonus from his employer, that is the first such bonus that this new employer has paid him and there is no certainty that such a bonus in such an amount or any amount will be received in the future. More importantly, although those funds had been intended to be used to commence the estimated \$18,000 of non-optional dental work needed for Darrin Demello, we instead were required to spent (sic) on dementia care expenses associated with bringing Kristina Demello's elderly mother home to live with us.

Declaration of Debtors, 2:4-12, ECF No. 90.

A review of the Amended Schedule I and J, shows that the debtors anticipate only \$200.00 per month in medical and dental expenses. No reference to the anticipated dental work appears in the Amended Schedule J. Schedule J, ECF No. 70. Similarly, Schedule I does not list debtor Kristina Demello's elderly mother as an individual living in the household as now indicated in the declaration. Schedule I, ECF No. 70.

The court need not reach the issue raised by the trustee under 11 U.S.C. § 1325(b) at this time. The documents filed in support of confirmation show that the plan as proposed is not feasible under 11 U.S.C. § 1325(a)(6). The debtors have failed to explain how they will afford to pay for the anticipated \$18,000.00 in medical expenses, nor have they accounted for expenses and/or income



anticipated for Ms. Demello's elderly mother who now resides in the debtors' household.

Schedules I and J do not accurately reflect the debtors' current financial circumstances. The court considers accurate budget schedules to be part of the debtors' prima facie case for confirmation.

The court finds the debtors' plan is not feasible under 11 U.S.C. § 1325(a)(6). The court will sustain the trustee's objection to confirmation on that basis.

#### **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.

55. [19-26277](#)-A-13     **IN RE: JUAN MONGALO AND MILAGROS MONGALO**  
ROBLETO  
[DPC-2](#)

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

MICHAEL NOBLE/ATTY. FOR DBT.

**No Ruling**

56. [19-26277](#)-A-13     **IN RE: JUAN MONGALO AND MILAGROS MONGALO**  
ROBLETO  
[MMN-8](#)

MOTION TO MODIFY PLAN  
1-4-2023    [\[184\]](#)

MICHAEL NOBLE/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Modification of Chapter 13 Plan

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors move for modification of their chapter 13 plan. An amended notice of hearing, which changed the date of the hearing on the proposed plan was served on January 6, 2023. See Amended Notice of Hearing, ECF No. 193.

### **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).

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.

### Attachment

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it *the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*

LBR 7005-1.

A certificate of service was filed indicating that the amended notice of hearing had been served. See Certificate of Service, ECF No. 194. There are no attachments to the certificate of service. Thus, the court is unable to determine which, if any, parties were served with the amended notice of hearing.

The court will deny the motion without prejudice.

#### **VIOLATION OF LBR 9014-1(c) - INCORRECT DOCKET CONTROL NUMBER**

The docket control number given for the certificate of service, ECF No. 194, violates the court's Local Rules, LBR 9014-1(c)(4), regarding proper use of docket control numbers.

*Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number. However, motions for reconsideration and counter motions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.*

LBR 9014-1(c)(4) (emphasis added).

The docket control number assigned to the debtor's motion to confirm plan is MMN-8. The docket control number typed on the Certificate of Service supporting the amended notice of hearing is DPC-2, which is incorrect. Counsel is reminded that the court locates documents on its docket by use of the docket control number assigned to each specific motion. An incorrect docket control number assigned to any pleading will cause that pleading to be omitted from the court's review of a given matter.

#### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Modify 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.

57. [22-22378](#)-A-13     **IN RE: MELINDA AGDIPA**  
[DPC-3](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[38\]](#)

D. ENSMINGER/ATTY. FOR DBT.  
KRISTEN KOO/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

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

**Amended Chapter 13 Plan Untimely:** - filed February 13, 2023

**Motion to Confirm Untimely:** filed February 15, 2023

**Cause:** 11 U.S.C. § 1307(c)(1) - failure to file amended plan

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

### **DISMISSAL**

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor failed to file an amended plan after the court sustained objections to the original plan filed in the case. The objections were sustained on December 6, 2022. The trustee further moves to dismiss because the debtor has failed to amend her bankruptcy schedules to disclose a secured obligation to Vistana Management, Inc., a creditor which had also filed an objection to the debtor's initial plan.

The debtor has filed a timely opposition which consists solely of an unsworn statement by debtor's counsel that is accompanied by an exhibit. The exhibit is a copy of a proposed, unfiled amended Chapter 13 plan. See ECF Nos. 42, 43. The court notes that the debtor filed an Amended Chapter 13 Plan on February 13, 2023. The debtor filed a motion to confirm the plan on February 15, 2023.

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

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

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

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration by the debtors is required to prove the contentions in the opposition and to provide additional relevant information.

The debtor's opposition does not fully resolve the grounds for dismissal. An amended plan, although prepared in time to oppose the motion, has not been filed. A statement of intent to file the plan is not equivalent filing the plan and motion to confirm the plan. The court notes that counsel was out of the country during the last two weeks of December. However, there is no explanation why an amended plan was not filed in January.

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.

**UNTIMELY OPPOSITION - MOTION TO MODIFY**

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

On February 8, 2022, the debtor(s) filed an opposition to the motion to dismiss, ECF No. 42. The opposition consists of an unsworn statement by the debtor(s)' attorney stating his intention to file a modified plan as follows: "but one is now being filed along with a Motion to Approve Amended Plan which will be set for hearing on March 21, 2023." See *id.*, 2:2-4. A statement indicating that the debtor(s) will take future action to resolve the failure to file the amended plan is not a resolution of the motion to dismiss.

Untimely Amended Plan and Motion

The court notes that on February 13, 2023, the debtor filed an amended plan. See ECF No. 48. On February 15, 2023, the debtor filed a motion to confirm the amended plan. See ECF No. 50. The proposed plan and motion are untimely filed.

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

The court is aware that the motion to dismiss was filed January 18, 2023, and gave the debtor only 35 days to resolve the grounds for dismissal and file an amended plan and a motion to confirm. To such an argument there are two responses.

First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days' notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of an amended plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here. The debtor may not unilaterally alter the deadlines for filing opposition. Leave of court is required.

The court finds that the debtor's failure to timely file a modified plan and motion to confirm that plan constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

The court will grant the motion.

#### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

## CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to timely file an amended plan after the court sustained objections to confirmation on December 6, 2022. This constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

58. [20-20580](#)-A-13     **IN RE: ALEKSANDR POKATILOV**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-24-2023    [\[50\]](#)

MARK SHMORGON/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:** February 8, 2023

**Opposition Filed:** January 24, 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 \$6,125.40, with another payment of \$2,041.90 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and supporting Exhibits, ECF Nos. 54, 55, 56. The debtor's declaration states that the debtor has tendered a payment of \$6,125.40 to the trustee in the form of a cashier's check. A copy of the check was submitted as Exhibit A. The debtor further states that he will bring the plan payment fully current by the date of the hearing on this motion. See Declaration, ECF No. 55.

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.



59. [19-24481](#)-A-13     **IN RE: KIMBERLY BIGGS-JORDAN**  
[DPC-3](#)

MOTION TO DISMISS CASE  
1-9-2023    [\[73\]](#)

GARY FRALEY/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

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

**Modified Chapter 13 Plan:** unfiled

**Motion to Confirm Plan:** unfiled

**Cause:** 11 U.S.C. § 1307(c)(1), (6) - plan delinquency

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

### **DISMISSAL**

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 plan payments pursuant to the currently confirmed plan. The trustee contends that plan payments are delinquent in the amount of \$3,375.00 with an additional payment of \$657.00 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by a declaration of the debtor and the debtor's adult daughter counsel. See ECF Nos. 79, 80, 81. The Reply indicates that the debtor will file a proposed modified plan well in advance of the hearing. See Reply, 3:1-2, ECF No. 79.

### **UNTIMELY OPPOSITION - MOTION TO MODIFY**

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

On February 8, 2022, the debtor(s) filed an opposition to the motion to dismiss, ECF No. 79. The opposition indicates that the debtor(s) will file a modified plan well before the hearing on the motion to dismiss. A statement indicating that the debtor(s) will take future action to resolve the plan delinquency is not a resolution of the motion to dismiss.

### Untimely Modified Plan and Motion

The court notes that a modified plan has not yet been filed.

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

The court is aware that the amended notice of hearing for the motion to dismiss was filed and served January 17, 2023, and gave the debtor only 36 days to resolve the grounds for dismissal and file an amended plan and a motion to confirm. To such an argument there are two responses.

First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days' notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of an amended plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here. The debtor may not unilaterally alter the deadlines for filing opposition. Leave of court is required.

The court finds that the debtor's failure to timely file a modified plan and motion to confirm that plan constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

The court will grant the motion.

#### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to file an amended plan after the court sustained objections to confirmation on December 6, 2022. This constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

60. [21-23083](#)-A-13     **IN RE: JOSEPH JENKINS**  
[BLG-3](#)

MOTION FOR COMPENSATION FOR CHAD M. JOHNSON, DEBTORS  
ATTORNEY(S)  
1-10-2023    [\[37\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

#### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Approved

**Order:** Civil minute order

**Additional Compensation Requested:** \$0 - waived per motion

**Interim Compensation Approved:** \$4,839.00

**Interim Reimbursement of Expenses Approved:**    \$9.96

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

#### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Chad Johnson has applied for an allowance of final compensation and reimbursement of expenses. The applicant has waived any compensation and expenses since the court's previous interim order approving compensation. The applicant also asks that

the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

The court notes that: 1) the total fees and expenses already approved in this case are \$4,848.96; 2) counsel for the debtor is not seeking any additional fees or costs; and 3) counsel for the debtor has waived any additional fees and costs incurred during the period of November 12, 2021, through January 10, 2023. Counsel for the debtor is only seeking final approval of the fees and costs previously approved. See Motion, 2:12-17, ECF No. 37.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

#### **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.

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

IT IS ORDERED that the application is approved on a final basis. The court allows no additional compensation or reimbursement of expenses as counsel has waived such in his motion. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

61. [18-20687](#)-A-13      **IN RE: ROBERT WILSON AND PATRICIA KING**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-9-2023    [\[40\]](#)

JUSTIN KUNEY/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Case

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

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

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

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

### **ORAL ARGUMENT**

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument at this time. 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 for resolution of material, factual issues.

### **DISMISSAL**

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtors have failed to make all payments due under the plan. The trustee contends that payments are delinquent in the amount of \$3,404.02, with another payment of \$620.00 due January 25, 2023.

The debtors have filed an opposition to the trustee's motion. The opposition is accompanied by a declaration of the debtors. See ECF Nos. 46, 47. The debtors state that they have made a partial payment toward the plan delinquency. The debtors further state that the payment due February 25, 2023, is the final payment due under the plan and request a continuance of the hearing on the motion to dismiss to complete the plan. Given this circumstance the court will continue the hearing on the trustee's motion until March 7, 2023, at 9:00 a.m. to allow the debtors to complete plan payments.

### **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 March 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than February 28, 2023, the Chapter 13 trustee shall file a status report apprising the court of status of payments received under the plan, and whether the plan is completed.

62. [18-22995](#)-A-13     **IN RE: YOUNG YOO**  
[DPC-1](#)

MOTION TO DISMISS CASE  
1-9-2023    [\[24\]](#)

H. AHN/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 the debtor

**Disposition:** Withdrawn by the moving party

**Order:** Civil minute order

The Chapter 13 trustee moves for dismissal of this case under 11 U.S.C. § 1307(c). On February 7, 2023, the trustee filed a Supplemental Ex Parte Document requesting that his motion be dismissed as the plan payments had been brought current. See ECF No. 30.

On February 8, 2023, the debtor filed opposition to the trustee's motion, ECF No. 32. While the opposition is unsupported by any evidence, the debtor contends that the plan payments are now current.

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

The trustee filed a timely request to withdraw 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).

Absent the trustee's timely request to withdraw his motion, this case would be dismissed because the debtor's opposition to the motion is unsupported by evidence.

However, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has

expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request in this instance.

#### **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.

63. [21-22195](#)-A-13     **IN RE: OKHARINA HOLMES**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-25-2023    [\[53\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** February 8, 2023

**Opposition Filed:** February 7, 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 \$7,708.76, with another payment of \$3,855.88 due January 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 57, 58. The debtor's declaration states that the debtor has made a partial payment towards the plan delinquency and will bring the plan payment fully current by the date of the hearing on this motion. See Declaration, ECF No. 58.

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

Given the circumstances described in the opposition regarding the reasons for the payment default the court is willing to issue a conditional order in this matter.

**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.



64. [22-21996](#)-A-13     **IN RE: GUADALUPE JOHNSON**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-11-2023    [\[48\]](#)

DAVID FOYIL/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:** February 8, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file amended plan

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

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

### **CASE DISMISSAL**

#### Plan Delinquency

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 \$3,027.00 with a further payment of \$3,030.00 due January 25, 2023.

#### Failure to File Amended Plan

The trustee also moves for dismissal as the debtor has failed to file an amended plan following a sustained objection to confirmation of the original plan on November 22, 2022. The court's docket shows that the debtor has not filed a further amended plan since that date.

Each of these are bases for dismissal of the case for unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may

convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that 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, and the debtor's failure to file an amended plan in this case. The court hereby dismisses this case.

65. [22-23198](#)-A-13     **IN RE: TRACY THIBODEAU**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
1-25-2023    [\[13\]](#)

JOSEPH ANGELO/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to March 21, 2023, at 9:00 a.m.

**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).

#### **MEETING OF CREDITORS**

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor(s) did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor(s) regarding the issues raised in this motion. The court notes that the debtor attended the continued meeting of creditors on February 9, 2023.

#### **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).

#### **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).

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 prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: 1) Completed Business Questionnaire; 2) 2020 tax return; 3) 6 months of profit and loss statements; 4) 6 months of bank statements; 5) proof of business license and insurance or written statements that no such documentation exists.

Additionally, the debtor lists \$4,591.77 of net income from rental property and/or operation of a business on Schedule I. See Schedule I, ECF No. 1. The debtor has failed to file the attachment required to Schedules I and J which details gross income, ordinary and necessary business expenses, and the total monthly net income for each property and/or business.

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).

#### Schedules I and J

Schedules I and J do not show plan payment is feasible. The plan payments are \$960.00. The schedules show the debtor has only \$932.44 to make the payment. See Schedules I/J, ECF No. 1.

The court notes that the debtor filed a supplemental Schedule I on February 14, 2023, ECF No. 17. However, this does not resolve the remaining issues in the trustee's objection.

#### Third Party Contribution

Schedule I states that the debtor receives \$750.00 per month from his girlfriend. Without this income the plan is not feasible. A declaration with supporting evidence has not been filed by the third party evidencing her willingness and ability to contribute such a sizeable sum each month for the duration of the plan. As such the debtor has failed to prove the feasibility of the plan.

#### **TRUSTEE STATUS REPORT**

On February 15, 2023, the trustee filed a status report updating his objection. The trustee reports that the debtor attended the meeting of creditors on February 9, 2023, and that the debtor has provided all business documents requested.

The remaining unresolved issues are: 1) failure to file a declaration and supporting evidence from the debtor's girlfriend showing her ability to provide monthly support in the amount of \$750.00; and 2) the recently filed amended Schedules I and J do not support the plan payment of \$960.00.

The court will continue the hearing on this objection to allow the debtor to file evidence addressing the remaining issues and for the trustee to file a further status report.

The court notes that on February 16, 2023, the debtor filed a declaration regarding third party support and a further Amended Schedule J. See ECF Nos. 20, 21. These documents were filed after the date replies were due in this matter which was February 15, 2023. The court will allow the trustee to consider this evidence when preparing his status report for 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 hearing on the trustee's objection is continued to March 21, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than March 7, 2023, the debtor shall file and serve evidence in support of the proposed plan as indicated in this ruling. Should the debtor fail to timely file and serve additional evidence the court will rule on the objection without further notice or hearing.

IT IS FURTHER ORDERED that no later than March 14, 2023, the Chapter 13 trustee shall file a status report apprising the court of his position regarding plan confirmation.

66. [22-22699](#)-A-13     **IN RE: CHRISTINE BONILLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-24-2023    [\[61\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DEBTOR DISMISSED: 1/26/23

#### **Final Ruling**

This case was dismissed on January 26, 2023. Accordingly, the Order to Show Cause will be removed from the calendar as moot. No appearances are required.

67. [22-22699](#)-A-13     **IN RE: CHRISTINE BONILLA**  
[DPC-2](#)

MOTION TO DISMISS CASE  
1-18-2023    [\[55\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DEBTOR DISMISSED: 1/26/23

**Final Ruling**

This case was dismissed on January 26, 2023. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

68. [23-20002](#)-A-13     **IN RE: AMANDA CASTORENA AND SUMMER PRATT**  
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-8-2023    [\[15\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
KAREL ROCHA/ATTY. FOR MV.  
THE GOLDEN 1 CREDIT UNION VS.

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion requests relief from the automatic stay of 11 U.S.C. § 362(a). For the following reasons the motion will be denied without prejudice.

**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).

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.

- (e) Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the *Clerk of the Court's Official Matrix*, as appropriate: (1) for the case or the adversary

*proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.*

- (f) For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.
- (g) When a Clerk's Office Matrix is attached to the Certificate of Service, for the persons not served by that method of service, the filer shall strike out the names of such persons not served by that method of service.
- (h) Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(a) (b) (c) (d) (emphasis added).

The certificate of service filed by the moving party does not comply with LBR 7005-1.

There is an improper attachment to the certificate of service, which is signed under penalty of perjury, ECF No. 21.

The certificate contains an attachment labeled "6AB". It appears to be an attachment indicating the list of registered users of the clerk's electronic filing system. However, the attachment is not the official clerk's matrix which is available for download on the court's website. Section 6B1 states that the attachment is the clerk's matrix for such electronic users. See *id.*, Section 6B1.

Use of the clerk's matrix is required under LBR 7005-1. Moreover, the statement that the clerk's matrix was used and labeled "Attachment 6B1" is incorrect.

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 court will deny the motion without prejudice.

**CIVIL MINUTE ORDER**

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

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

The Golden One Credit Union's motion for relief from the automatic stay 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.