

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

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

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: February 28, 2023**

**CALENDAR: 1:00 P.M. CHAPTER 13**

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

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

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

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

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

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Modesto, California

**February 28, 2023 at 1:00 p.m.**

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1. [22-90201](#)-B-13 BALJEET SINGH MOTION TO DISMISS CASE  
[RDG](#)-1 David C. Johnston 2-10-23 [[43](#)]

**Final Ruling**

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

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

The court's decision is to conditionally dismiss the case and continue the matter to March 7, 2023, at 1:00 p.m.

First, payments are not current under the proposed plan. As of February 10, 2023, plan payments are delinquent in the sum of \$128,745.00. The last payment was received on January 24, 2023. 11 U.S.C. § 1307(c)(4).

Second, the court denied confirmation of Debtor's first amended plan on January 3, 2023. To date, the Debtor has failed to file a second amended plan and a motion to sell, which would be required if the Debtor still intends to sell his home and provide a lump sum payment.

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

**Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 3, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 7, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 7, 2023, at 1:00 p.m.

**February 28, 2023 at 1:00 p.m.**

2. [23-90017](#)-B-13 GREGORY NASH  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-1-23 [[12](#)]

DEBTOR DISMISSED: 2/6/23

**Final Ruling**

The case having been dismissed on February 6, 2023, the order to show cause is discharged as moot.

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

The court will issue an order.

### **Final Ruling**

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

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

The court's decision is to **conditionally dismiss the case and continue the matter to March 7, 2023, at 1:00 p.m.**

The Debtor has filed multiple plans, all of which have been denied confirmation. This is an unreasonable delay that is prejudicial to creditors since they are delayed in receiving payments. 11 U.S.C. § 1307(c)(1). The Chapter 13 Trustee objection to confirmation was heard and sustained on October 4, 2022. A hearing on confirmation of Debtor's first amended plan was held on January 17, 2023, and confirmation was also denied. The Debtor has not filed, set, or served a second amended plan.

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

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 3, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 7, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 7, 2023, at 1:00 p.m.

4. [22-90328](#)-B-13 NICASIO MALDONADO  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-19-23 [[62](#)]

DEBTOR DISMISSED: 2/3/23

**Final Ruling**

The case having been dismissed on February 3, 2023, the order to show cause is discharged as moot.

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

The court will issue an order.

5. [22-90428](#)-B-13 MERCEDES HERENAS CONTINUED OBJECTION TO  
[RAS](#)-1 Pro Se CONFIRMATION OF PLAN BY WELLS  
**Thru #7** FARGO BANK, NATIONAL  
ASSOCIATION  
1-18-23 [[21](#)]

**Final Ruling**

The case having been dismissed at RDG-2, the continued objection to confirmation of plan by Wells Fargo Bank, National Association is overruled as moot.

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

The court will issue an order.

6. [22-90428](#)-B-13 MERCEDES HERENAS CONTINUED OBJECTION TO  
[RDG](#)-1 Pro Se CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
1-18-23 [[24](#)]

**Final Ruling**

The case having been dismissed at RDG-2, the continued objection to confirmation of plan by the Chapter 13 Trustee is overruled as moot.

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

The court will issue an order.

7. [22-90428](#)-B-13 MERCEDES HERENAS MOTION TO DISMISS CASE  
[RDG](#)-2 Pro Se 2-10-23 [[35](#)]

**Final Ruling**

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

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

The court's decision is to **conditionally dismiss the case and continue the matter to March 7, 2023, at 1:00 p.m.**

First, payments are not current under the proposed plan. As of February 9, 2023, plan payments are delinquent in the sum of \$1,992.78. 11 U.S.C. § 1307(c)(4).

Second, the Debtor has failed to appear at the first meeting of creditors held January 11, 2023, a continued meeting of creditors on January 25, 2023, and another continued meeting of creditors on February 22, 2023. Given the Debtor's history of nonappearances, it is unlikely that the Debtor will appear at the continued meeting of creditors set for March 8, 2023. Cause exists to dismiss the case pursuant to 11 U.S.C. § 1307(c).

Third, the Debtor has not provided the Chapter 13 Trustee with her most recent federal income tax return no later than seven days before the date first set for the first

meeting of creditors as required by 11 U.S.C. § 521(e)(2).

Fourth, the Debtor has failed to provide the Trustee with copies of payment advices as required by 11 U.S.C. § 521(a)(1)(B)(iv) and LBR 1007-1, and accordingly breached the duties imposed by 11 U.S.C. §§ 521(a)(3) and (4) to cooperate with Trustee and provide him with financial records.

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

**Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 3, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 7, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 7, 2023, at 1:00 p.m.

8. [22-90446](#)-B-13 RENE LEDEZMA  
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-6-23 [[24](#)]

**Final Ruling**

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$78.00 due January 20, 2023. The court's docket reflects that the default has not been cured.

The order to show cause is ORDERED SUSTAINED for reasons stated in the minutes and the case is DISMISSED.

The court will issue an order.



9. [22-90259](#)-B-13 MARTHA MARTIN  
[RDG-2](#) T. Mark O'Toole

MOTION TO DISMISS CASE  
2-10-23 [[53](#)]

### **Final Ruling**

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

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

The court's decision is to **conditionally dismiss the case and continue the matter to March 7, 2023, at 1:00 p.m.**

First, payments are not current under the proposed plan. As of February 9, 2023, plan payments are delinquent in the sum of \$7,920.00. The last payment was received on September 2, 2022. 11 U.S.C. § 1307(c)(4).

Second, the court denied confirmation of Debtor's plan on January 3, 2023. To date, the Debtor has failed to file, set, and serve an amended plan. This is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c).

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

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 3, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 7, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 7, 2023, at 1:00 p.m.

10. [22-90378](#)-B-13 ROBERT HARDING MOTION TO DISMISS CASE  
[RDG](#)-2 Charles L. Hastings 2-10-23 [[39](#)]

**Final Ruling**

The Chapter 13 Trustee has filed a motion to dismiss its pending motion, and it is consistent with the Debtor's opposition filed to the motion. The motion is therefore dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041. The case will proceed in this court.

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

11. [22-90279](#)-B-13 DEBORAH KIRKLE  
[RDG](#)-1 David C. Johnston

MOTION TO DISMISS CASE  
2-10-23 [[44](#)]

### **Final Ruling**

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

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

The court's decision is to **conditionally dismiss the case and continue the matter to March 7, 2023, at 1:00 p.m.**

First, payments are not current under the proposed plan. As of February 9, 2023, plan payments are delinquent in the sum of \$60.00. The last payment was received on January 19, 2023. 11 U.S.C. § 1307(c)(4).

Second, the court denied confirmation of Debtor's plan on December 13, 2022. To date, the Debtor has failed to file, set, and serve an amended plan. This is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c).

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

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 3, 2023, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 7, 2023, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 7, 2023, at 1:00 p.m.

12. [21-90535](#)-B-13 EDUARDO BARAJAS AND ERIKA CONTINUED MOTION FOR RELIEF  
[MMJ](#)-1 HERRERA FROM AUTOMATIC STAY  
T. Mark O'Toole 1-19-23 [[54](#)]  
CAPITAL ONE AUTO FINANCE VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from automatic stay.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Dodge Charger R/T Sedan 4D (the "Vehicle"). The moving party has provided the Declaration of Jeanne Scharf to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Scharf Declaration states that there are 0.99 pre-petition payments in default totaling \$526.22. Additionally, there are 5.41 post-petition payments in default totaling \$2,873.77.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$13,606.06, as stated in the Scharf Declaration, while the value of the Vehicle is determined to be \$18,615.00, as stated in Schedules A/B and D filed by Debtor.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Although there is equity in the Vehicle, it is eroded due to the continual default on monthly payments. A review of Debtors' confirmed plan filed February 22, 2022, shows that the Movant is classified in Class 4 and that the Vehicle is Debtors' son's and that he makes monthly payments. Therefore, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

13. [22-90447](#)-B-13 HECTOR ALVAREZ  
[RDG](#)-1 Brian S. Haddix

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
1-31-23 [[18](#)]

### **Final Ruling**

This objection to confirmation was continued in light of the continued meeting of creditors held February 22, 2023, at which debtor Hector Alvarez ("Debtor") appeared and the meeting was concluded. No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtor's schedules list non-exempt assets totaling \$14,482.24 and unsecured priority claims totaling \$0. Based on a review and analysis of Debtor's schedules, the Debtor has non-priority general unsecured claims totaling \$28,168.00. Thus, in order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), the Debtor's plan must pay 51% (\$14,482.24 divided by \$28,168.00) to general unsecured creditors. The proposed plan pays only 29.64% and therefore fails the liquidation test.

Second, Debtor and his attorney have failed to file a Statement of Rights and Responsibilities. As such, the payments of attorney fees cannot be made pursuant to Local Bankruptcy Rule 2016-1(c) or Debtor's plan (Sections 3.05 and 3.06).

The plan filed December 1, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

14. [21-90557](#)-B-13 DUANE SHUGART  
[EML](#)-6 Evan Livingstone

CONTINUED OBJECTION TO CLAIM OF  
U.S. BANK TRUST NATIONAL  
ASSOCIATION, CLAIM NUMBER 3  
1-5-23 [[80](#)]

**Final Ruling**

This matter was continued from February 21, 2023, to provide debtor Duane Shugart ("Debtor") additional time to file supporting documentation by 5:00 p.m. Friday, February 24, 2023. Debtor filed a timely declaration with supporting exhibits showing that the California Mortgage Relief Program approved his application and sent payment to his loan servicer. The objection to claim of U.S. Bank Trust National Association, Claim No. 3, is therefore sustained.

The court's conditional ruling at dkt. 93 and the continued hearing on February 28, 2023, at 1:00 p.m. are vacated. The objection to claim is sustained.

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

The court will issue an order.