

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

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

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: May 31, 2022**

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

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

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

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

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

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

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

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**May 31, 2022 at 1:00 p.m.**

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1.     [22-20214](#)-B-13     ALBERT EGU                             MOTION TO DISMISS CASE  
          [RDG-1](#)             Jennifer G. Lee                             5-13-22 [[22](#)]

**Final Ruling**

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

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

The court's decision is to **conditionally grant the motion to dismiss and continue the hearing to June 7, 2022 at 1:00 p.m.**

Debtor's plan was filed on February 28, 2022. Dkt. 17. To date, the Debtor has failed to file, set, and serve a motion to confirm the 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, June 3, 2022, 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 June 7, 2022, 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 June 7, 2022, at 1:00 p.m.

2. [21-22719](#)-B-13 ANTHONY MONTOYA MOTION TO DISMISS CASE  
[RDG-3](#) Charles L. Hastings 5-11-22 [[76](#)]

### **Final Ruling**

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

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

The court's decision is to deny the request for a continuance and conditionally deny the motion to dismiss.

The Debtor's case remains unconfirmed with no pending plan and motion to confirm. The Debtor's case was filed on July 28, 2021, and his case remains unconfirmed to date. Both the Chapter 13 Trustee ("Trustee") and Creditor NRA Pass-Through Trust XVIII filed objections to confirmation of Debtor's plan, RDG-1 and KAZ-1, both of which were heard and sustained on October 12, 2021. Dkts. 33 & 34. The Trustee's motion to dismiss case, RDG-2, was heard and conditionally granted on November 30, 2021. Dkt. 51. The condition being that Debtor was to file, set, and serve a motion to confirm amended plan by 5:00 p.m. on December 3, 2021. Dkt. 46. On December 1, 2021, Debtor filed a motion to confirm an amended plan, NAR-1, which was set for hearing on January 11, 2022. Trustee's opposition to confirmation of Debtor's plan was heard and sustained on January 11, 2022. Dkt. 47. On February 11, 2022, Debtor filed his second amended plan and motion to confirm, NAR-2, which was set for hearing on March 22, 2022. Dkts. 57 & 61. The Trustee's opposition and supplemental opposition to confirmation of Debtor's second amended plan were heard and sustained on March 22, 2022. Dkt. 75. The Debtor has failed to file, set, and serve an amended/modified plan to date.

The Debtor filed an opposition to the Trustee's motion to dismiss on May 26, 2022. Dkt. 80. In its opposition, Debtor's counsel requests a continuance of the hearing to July 12, 2022. Additionally, the Debtor is still awaiting the result of an ex parte probate hearing scheduled for May 31, 2022, which will rule on whether he will be appointed as administrator of the probate estate in question.

As an initial matter, the court is aware that the Trustee's motion to dismiss is filed, set, and served under Local Bankr. R. 9014-1(f)(2) which does not require a written opposition prior to a hearing but also provides that if opposition is made the court may continue the hearing or order further briefing. An opposition has been filed and neither a continuance nor further briefing (nor a hearing) are warranted.

Nothing has changed in this case since the day it was filed on July 28, 2021, and the opposition does not demonstrate otherwise. Despite assurances earlier this year as to the certainty of the Debtor's appointment as administrator in the pending probate proceeding and the filing of a feasible plan thereafter, for whatever reason, the Debtor remains unappointed and no amended plan has been filed. The Debtor now requests another continuance of another several months to obtain appointment and thereafter file a feasible plan.

If the court were to grant the continuance requested by the Debtor, this chapter 13 case would effectively be pending for over one year without a confirmed plan. That is unreasonable delay by the Debtor prejudicial to creditors. See 11 U.S.C. § 1307(c)(1); see also *In re Garcia*, 115 B.R. 169, 170-71 (Bankr. N.D. Ind. 1990) (court had ordered dismissal because after the Chapter 13 case "had been pending for more than one year, there was no plan before the court for consideration"). That said, the opposition represents as follows:

There is an ex parte hearing scheduled to be heard on May 31, 2022, for [the Debtor's] appointment as the

special administrator of the estate. Mr. Montoya has now obtained probate bond waivers, and he expects no other hindrances to his appointment as the personal representative the estate. Following his appointment, he will be in a position to propose a feasible plan based on his ability to obtain refinancing on behalf of the estate and to pay the lender/creditor, the largest creditor in this case. Additionally, he is current on his plan payments.

Dkt. 80 at 2:6-12.

Based on the statements in the opposition, the request for a continuance will be denied and the motion to dismiss will be conditionally denied with the conditions of denial as follows:<sup>1</sup>

(1) By **June 1, 2022**, the Debtor shall file a declaration which states whether he was a appointed administrator in the probate proceeding on May 31, 2022.

(2) If, for any reason including another continuance of the probate hearing, the Debtor **is not appointed** administrator in the probate proceeding on May 31, 2022, the motion to dismiss will be granted and the Trustee shall submit an order granting the motion to dismiss.

(3) If the Debtor **is appointed** administrator in the probate proceeding on May 31, 2022, the Debtor shall file, set, and serve an amended plan and motion to confirm it by **June 8, 2022**. If the Debtor fails to timely file, set, and serve an amended plan and motion to confirm it, the motion to dismiss will be granted and the Trustee shall submit an order granting the motion to dismiss.

(4) If an amended plan and motion to confirm it are timely filed, set, and served and the amended plan is not confirmed, this case will be dismissed.

The court will issue an order.

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<sup>1</sup>As to the request for a continuance, the court notes that the declaration filed in support of the opposition states that Ms. Ron is the Debtor's attorney in this case and that *she* is involved in a jury trial through June 22, 2022. See Dkt. 81 at ¶¶ 1, 3. The court also notes that Mr. Hastings is also a member of the same firm as Ms. Ron who regularly practices before this court and he apparently is not involved in the jury trial. There is therefore no need for a continuance when Mr. Hastings is equally capable of prosecuting this case if Ms. Ron is unable to do so because of the press of other business.

3. [21-23531](#)-B-13 DIANA QUIROGA MOTION TO DISMISS CASE  
[RDG-2](#) Richard L. Jare 5-13-22 [[70](#)]

**Final Ruling**

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

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

The court's decision is to **conditionally grant the motion to dismiss and continue the hearing to June 7, 2022 at 1:00 p.m.**

Debtor's motion to confirm plan, RJ-2, was heard on April 5, 2022 and confirmation was denied. Dkt. 65. Debtor has failed to file, set, and serve an amended/modified plan to date.

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, June 3, 2022, 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 June 7, 2022, 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 June 7, 2022, at 1:00 p.m.

4. [22-20079](#)-B-13 LILLY LUTOLF MOTION TO DISMISS CASE  
[RDG](#)-3 Matthew J. DeCaminada 5-11-22 [[38](#)]

**Final Ruling**

The Chapter 13 Trustee has filed a motion to dismiss its pending motion. The motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

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

5. [18-27085](#)-B-13 ANGELA EALY-HALE AND MOTION FOR RELIEF FROM  
[ASW](#)-1 DONNIE HALE AUTOMATIC STAY  
Peter G. Macaluso 4-14-22 [[55](#)]  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

**Final Ruling**

Deutsche Bank National Trust Company, having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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