



**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: TUESDAY**  
**DATE: JUNE 18, 2024**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### 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. However, 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.

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1. [23-23501](#)-A-13     **IN RE: MARSHALL FINNEY**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-17-2024    [\[38\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to July 16, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** June 4, 2024

**Opposition Filed:** June 4, 2024 - timely

**Motion to Modify Plan Filed:** June 4, 2024 - 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.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 16, 2024, 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 July 16, 2024, 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.

2. [24-20101](#)-A-13     **IN RE: LINDA CATRON**  
[LC-7](#)

MOTION TO SET ASIDE  
4-25-2024    [\[71\]](#)

LINDA CATRON/ATTY. FOR MV.  
DEBTOR DISMISSED: 04/11/24

### **Final Ruling**

**Motion:** Vacate Dismissal of Case

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order vacating the dismissal of the Chapter 13 case. The Chapter 13 trustee opposes the motion. The motion will be denied without prejudice for the following reason.

### **SERVICE**

The court is unable to determine if the motion was served properly on any parties in interest. A certificate of service has not been filed with this motion as required. LBR 9014-1(e). The certificate must be filed within 3 days of the filing of the motion. *Id.*

Accordingly, 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 motion to vacate dismissal of her bankruptcy case 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.

3. [22-20602](#)-A-13     **IN RE: ADRIANA CHRISTIAN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[33\]](#)

MIKALAH LIVIAKIS/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:** June 4, 2024

**Opposition Filed:** June 3, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$1,182.51, with one payment(s) of \$395.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 37, 38. The debtor's declaration states that the debtor tendered \$1,600 to the trustee on May 31, 2024, and that the plan payments are current. See Declaration, ECF No. 38.

The court will grant the motion unless the Chapter 13 trustee confirms that the payments have been brought current. The debtor has provided no documentary proof that the payments were made nor does the declaration state the manner of payment.

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

On June 10, 2024, the trustee filed a timely request to dismiss 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).

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.

4. [23-23310](#)-A-13     **IN RE: CHRIS JOHNSON**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[42\]](#)

AUGUST BULLOCK/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:** June 4, 2024

**Opposition Filed:** May 31, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$1,492.00, with one payment(s) of \$746.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, and Exhibits, ECF Nos. 46, 47, 49. The debtor's declaration states that the debtor tendered two payments of \$746 to the trustee and that a further payment of \$746 would be submitted on May 31, 2024. See Declaration, ECF No. 47.

The court will grant the motion unless the Chapter 13 trustee confirms that the payments have been brought current. One of the payments was tendered on the date the declaration was filed, thus, the plan payments are still delinquent as of the filing of the opposition.

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

On June 10, 2024, the trustee filed a timely request to dismiss 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).

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.



5. [16-23414](#)-A-13     **IN RE: ALFREDO/LORENA MEDINA**  
[DPR-1](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC  
5-31-2024    [\[64\]](#)

DAVID RITZINGER/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 01/07/22

**\*[Since posting its original rulings, the court has changed its intended ruling on this matter].**

### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

**Subject:** 220 Fuller Lane, Dixon, California

**Judicial Lien Avoided:** \$6,272.23 - Midland Funding, LLC  
**All Other Liens:**  
- Deed of Trust \$221,579.00 - Wells Fargo Home Mortgage  
**Exemption:** \$91,221  
**Value of Property:** \$312,800

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 debtors seek an order avoiding the judicial lien of Midland Funding, LLC, under 11 U.S.C. § 522(f).

### **LIEN AVOIDANCE**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

6. [22-23014](#)-A-13     **IN RE: DANIEL/VICKI JACOBS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-10-2024    [\[79\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

At the request of the debtors the hearing on this motion is continued to July 2, 2024, at 9:00 a.m. Order, ECF No. 88.

Although the Chapter 13 trustee filed a status report indicating that a payment was pending through TFS, the court will not allow the motion to be withdrawn until the trustee confirms that he has received the payment. Trustee Status Report, ECF No. 89. Not later than 14 days prior to the continued hearing date, the trustee shall file a status report apprising the court of the status of plan payments received, and whether payments are current under the plan.

7. [21-22222](#)-A-13     **IN RE: ARMAR/MARICELA WALKER**  
[DWL-1](#)

MOTION TO INCUR DEBT  
6-3-2024    [\[78\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

**No Ruling**

8. [22-22222](#)-A-13     **IN RE: RODERICK SINGLETON**  
[DPC-3](#)

MOTION TO DISMISS CASE  
5-10-2024    [\[100\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

Motion: Trustee's Motion to Dismiss  
Notice: LBR 9014-1(f)(1); written opposition required  
Disposition: Continued to July 30, 2024, at 9:00 a.m.  
Order: Civil minute order

The Chapter 13 trustee moves for dismissal of the debtor's case contending plan payments are delinquent. On May 24, 2024, the debtor filed a request for continuance contending that a payment was made, yet was not indicated in the trustee's accounting. The court will continue the hearing on this matter to allow the parties to investigate the missed payment.

### **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 this objection will be continued to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A)    File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's motion is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than July 2, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B)    Respond in Writing to the Motion. If the debtor(s) disagree with the trustee's motion, the debtor(s) shall file and serve a written response to the motion not later than July 2, 2024; the response shall specifically address each issue raised in the trustee's motion, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position.

The trustee shall file and serve a reply, updating the court on the status of plan payments no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

(C)    File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's motion by filing a modified plan, not later than July 2, 2024, the debtor(s) shall: (1) file and serve a

modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's motion will be granted without further notice or hearing.

9. [20-24326](#)-A-13     **IN RE: THERESA LEWIS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[19\]](#)

JULIUS CHERRY/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:** June 4, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(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)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,008.00 with one payment(s) of \$402.00 due prior to the hearing on this 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.

#### **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.

10. [23-23828](#)-A-13     **IN RE: GARY DIETRICH**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-10-2024    [\[17\]](#)

ERIC SCHWAB/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:** June 4, 2024

**Opposition Filed:** June 4, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$5,388.39, with one payment(s) of \$5,388.39 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, and Exhibits, ECF Nos. 22, 23, 24. The debtor's declaration states that the debtor tendered payments to the trustee and that the plan payments are current. See Declaration, ECF No. 23.

The court will grant the motion unless the Chapter 13 trustee confirms that the payments have been brought current.

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

On June 10, 2024, the trustee filed a timely request to dismiss 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).

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.

11. [23-24329](#)-A-13     **IN RE: ALEXANDER/VANERY HAYMORE**  
[KPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-15-2024    [\[46\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
JONATHAN CAHILL/ATTY. FOR MV.  
ROCKY TOP RENTALS, LLC VS.; TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Rocky Top Rentals, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

### **SPECIAL NOTICE CREDITORS**

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: AIS Portfolio Services, LLC. See ECF No. 10.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 51. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

### **NOTICE**

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

### Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written

motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

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).

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

**MOTION NOT SERVED ON DEBTOR AS REQUIRED**

The moving party is required to serve the debtor with the motion for stay relief. Fed. R. Bankr. P. 9013. The certificate of service filed in this matter does not indicate that the debtor was served with the motion, nor is the debtor listed on any attachment to the certificate of service. Certificate of Service, p. 2, § 5, ECF No. 51. 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:

Rocky Top Rentals, LLC's Motion for stay relief 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.

12. [23-24329](#)-A-13     **IN RE: ALEXANDER/VANERY HAYMORE**  
[MOH-1](#)

MOTION TO CONFIRM PLAN  
4-18-2024    [\[36\]](#)

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

**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.

### **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).

### Opposition

The Chapter 13 trustee opposes confirmation contending that the plan provides for an improper amount in monthly payments for attorney compensation and that the claim of Capital One, secured by a Honda Civic, is improperly classified.

### Reply

As a courtesy to the court, on June 6, 2024, the debtors replied to the trustee's opposition. Reply, ECF No. 57. The debtors concede the trustee's opposition and state that they will file another Chapter 13 Plan and motion to confirm. Accordingly, the court will deny this 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.

13. [24-21730](#)-A-13     **IN RE: BILLY SPURGIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-31-2024    [\[38\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

14. [24-21730](#)-A-13     **IN RE: BILLY SPURGIN**  
[PGM-1](#)

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION  
5-16-2024    [\[20\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]  
**Notice:** LBR 9014-1(f)(1); written opposition filed by creditor  
**Disposition:** Denied  
**Order:** Civil minute order

**Purchase Contract Executed:** May 25, 2022  
**Petition Filed:** April 26, 2024

The debtor seeks an order valuing the collateral of The Golden One Credit Union. The creditor opposes the motion contending that the debtor is prohibited from valuing the collateral and cramming down the value because of the hanging paragraph of 11 U.S.C. § 1325.

## VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

### Opposition

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2019 Mercedes Benz. The creditor contends, that the debt owed to the respondent is secured by a purchase money security interest. See Opposition, ECF No. 44. See 11 U.S.C. § 1325(a) (hanging paragraph). The creditor supports this contention with the declaration of Mariano Velasquez, an employee of the Golden One Credit Union, and an Exhibit which consists of a copy of the financing agreement between the debtor and the opposing creditor. See Declaration, ECF No. 45; Exhibit A, ECF No. 46.

The purchase contract was executed on May 25, 2022, which was 703 days prior to the filing of the petition in this case. Thus, the hanging paragraph of § 1325 prevents the debtor from cramming down the value of the vehicle in this case.

### Debtor Reply

On June 11, 2024, the debtor filed a timely reply to the opposition, ECF No. 50.

The reply states:

The Debtor leased this vehicle from through the Creditor. *When the lease ended* after more than 910 days, the Creditor financed the same vehicle. As such, the claim is based on he (sic) lien on the vehicle's title secures a non-purchase-money loan incurred on May 25, 2022, more than 365 days prior to the filing

of the petition, with a balance of approximately \$31,655.3. (sic)

Id., 1:23-27, 2:1-2 (emphasis added).

The debtor does not dispute that the vehicle is for his personal use. Rather, the debtor appears to argue that because the debtor previously leased the vehicle prior to purchasing it from the creditor that the 910 period has expired and that the security interest is a non-purchase money security interest. However, the debtor has provided no legal authority for this argument, nor any facts which would indicate the propriety of such an argument. The purchase agreement is a separate contract from the previous lease agreement, which the debtor admits expired prior to the execution of the purchase contract.

The court finds that the vehicle was purchased within 910 days of the filing of the bankruptcy petition. Therefore, the court will deny the motion to value pursuant to the hanging paragraph of 11 U.S.C. § 1325.

#### **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 value collateral consisting of a motor vehicle 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 motion,

IT IS ORDERED that the motion is denied.

15. [24-21730](#)-A-13     **IN RE: BILLY SPURGIN**  
[PGM-2](#)

MOTION TO APPROVE LOAN MODIFICATION  
5-16-2024    [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

16. [23-20433](#)-A-13     **IN RE: EDMUNDO/SARINA MARTELL**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-17-2024    [\[38\]](#)

GEVA BAUMER/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:** June 4, 2024

**Opposition Filed:** June 3, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$2,756.58, with one payment(s) of \$5,508.43 due before the hearing on this motion.

### **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 debtor has filed opposition to the motion, ECF No. 42. The opposition consists of an unsworn statement by debtor's counsel and a printout from TFS showing that a payment had been processed.

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. For example, there is no evidence which states why the plan payments were delinquent, or how the debtor will remain current in plan payments in the future.

Moreover, the TFS information is not properly filed as an exhibit as required under LBR 9004-2(d). The exhibit was attached to the opposition which is not allowed under this rule.

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 REPLY – Fed. R. Civ. P. 41**

On June 10, 2024, the trustee filed a timely request to dismiss 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).

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.

17. [17-24834](#)-A-13     **IN RE: PATRICIA LEMKE**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-20-2024    [[135](#)]

PETER MACALUSO/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
DEBTOR DISCHARGED: 11/20/17

### **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:** June 4, 2024

**Opposition Filed:** June 4, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$3,700.00, with one payment(s) of \$1050.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 139, 140. The debtor's declaration states that the debtor has tendered one plan payment on June 3, 2024, and will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 140.

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.

18. [24-20935](#)-A-13     **IN RE: SIANG PETERS**  
[MS-2](#)

OBJECTION TO CLAIM OF SPECIALIZED LOAN SERVICING, LLC, CLAIM  
NUMBER 1  
4-22-2024    [\[35\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

19. [24-20935](#)-A-13     **IN RE: SIANG PETERS**  
[MS-3](#)

AMENDED OBJECTION TO CLAIM OF AMERICAN EXPRESS NATIONAL  
BANK, CLAIM NUMBER 2  
5-29-2024    [\[55\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

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 objects to the claim of American Express National Bank, Claim No. 2.

### **CLAIM OBJECTION**

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy

does not violate the FDCPA). “[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a “claim.” The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense.” *Id.* (citations omitted).

The applicable statutes of limitations in California bar an action (1) on a contract, obligation or liability founded on an instrument in writing after four years, see Cal. Civ. Proc. Code §§ 312, 337(1), or (2) on an oral contract after two years, see Cal. Civ. Proc. Code § 339.

The claimant has filed a proof of claim based on a credit account that is stale. The objection’s well-pleaded facts show that the debtor has made no payments or other transactions on this credit account within the four years prior to the petition date. Under either the statute of limitations for an oral contract or the statute of limitations for a written contract, the claimant’s claim based on this loan account is time barred and unenforceable under state law. The objection will be sustained. The claim will be disallowed.

20. [24-20540](#)-A-13     **IN RE: JAMES VAN PATTEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-20-2024    [\[39\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
5/21/2024 INSTALLMENT FEE PAID \$80

### **Final Ruling**

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending.

21. [23-22042](#)-A-13     **IN RE: CASSANDRA LUTTRELL**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[29\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** June 4, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(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)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,400.00 with one payment(s) of \$2,200.00 due prior to the hearing on this motion.

As a courtesy to the court the debtor filed a non-opposition to 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.

#### **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.

22. [24-21045](#)-A-13      **IN RE: DAVID LESSOR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-20-2024    [\[49\]](#)

#### **Final Ruling**

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

23. [24-21045](#)-A-13     **IN RE: DAVID LESSOR**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-17-2024    [\[45\]](#)

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** June 4, 2024

**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 the following reasons: (1) failure to appear at meeting of creditors; (2) failure to provide documents to the trustee as required; (3) failure to provide Social Security information to the trustee as required; (4) failure to commence timely plan payments. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

### **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. The court finds this constitutes unreasonable delay which is prejudicial to creditors.

### **SOCIAL SECURITY DOCUMENTATION**

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

Fed. R. Bankr. P. 4002 (emphasis added).

The debtor(s) failed to provide the required social security information to the trustee. The court finds this constitutes unreasonable delay which is prejudicial to creditors.

#### **SECTION 521(a), (e) & Rule 4002(b) DOCUMENTS**

The debtor has not provided the trustee the tax return and/or 60 day pay advices at least 7 days prior to the meeting of creditors. The court finds this constitutes unreasonable delay which is prejudicial to creditors.

#### **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 in this case. The court hereby dismisses this case.

24. [24-20647](#)-A-13     **IN RE: STEVEN SINGH**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
4-10-2024    [[50](#)]

**Final Ruling**

This matter will be removed from the calendar as moot. This case was converted to a Chapter 7 on June 5, 2024. No appearances are necessary.

25. [24-20647](#)-A-13     **IN RE: STEVEN SINGH**  
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ANGEL OAK  
MORTGAGE FUND EU TRUST  
3-14-2024    [[34](#)]

SEAN FERRY/ATTY. FOR MV.

**Final Ruling**

This matter will be removed from the calendar as moot. This case was converted to a Chapter 7 on June 5, 2024. No appearances are necessary.

26. [24-20647](#)-A-13     **IN RE: STEVEN SINGH**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ANGEL OAK MORTGAGE FUND  
EU TRUST  
5-22-2024    [[65](#)]

SEAN FERRY/ATTY. FOR MV.

**Final Ruling**

This matter will be removed from the calendar as moot. This case was converted to a Chapter 7 on June 5, 2024. No appearances are necessary.



27. [19-22149](#)-A-13     **IN RE: KIMBERLY MALLORY**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-17-2024    [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
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:** June 4, 2024

**Opposition Filed:** June 3, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$3,632.01 which is the amount due to complete the payments under the confirmed 60-month plan. The debtor is currently in month 61.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 25, 26. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 26.

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.

28. [23-23249](#)-A-13     **IN RE: DORIS/SARAH MCMAHON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[20\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

#### **Final Ruling**

The case was converted to Chapter 7. Accordingly, this matter is removed from the calendar. No appearance is required.

29. [23-23949](#)-A-13     **IN RE: TANGELA BABBITT**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[65\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

Motion: Dismiss Case  
Notice: LBR 9014-1(f)(1); written opposition filed by debtors  
Disposition: Continued to July 2, 2024, at 9:00 a.m.  
Order: Civil minute order

Opposition Due: June 4, 2024  
Opposition Filed: May 27, 2024 - timely  
Motion to Modify Plan Filed: May 27, 2024 - 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.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 2, 2024, 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 July 2, 2024, 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.

30. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[MBN-2](#)

CONTINUED OBJECTION/REBUTTAL TO DECLARATION OF JOSEPH LYNCH  
IN SUPPORT OF OPPOSITION TO MOTION TO AVOID LIEN AND  
OPPOSITION TO HOMESTEAD EXEMPTION  
4-18-2023    [[105](#)]

MARY TERRANELLA/ATTY. FOR DBT.

**No Ruling**

31. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[MBN-2](#)

CONTINUED OBJECTION TO HOMESTEAD EXEMPTION  
2-24-2023    [[64](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
ALAN NAHMIAS/ATTY. FOR MV.

**No Ruling**

32. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[MET-1](#)

CONTINUED MOTION TO AVOID LIEN OF RICHARD TEAGUE  
1-27-2023    [[23](#)]

MARY TERRANELLA/ATTY. FOR DBT.

**No Ruling**

33. [24-21153](#)-A-13     **IN RE: PATRICIA MELMS**  
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-21-2024    [\[36\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 Chapter 13 trustee objects to the debtor's claim of exemption in a 2004 Dodge Grand Caravan and a 2006 Glasson Boat. The objection will be sustained as follows.

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. *See In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

### **2004 DODGE CARAVAN**

"[P]roperty passes to the estate automatically, and it is the debtor's burden to make out the claim of exemption with adequate specificity." *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985). Further, [a]mbiguities in matters of claims of exemption will be construed against the debtor because "it is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules." *In re Mohring*, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (internal quotation marks omitted).

The debtor has claimed an exemption in a 2004 Dodge Caravan in an amount which is "100% of fair market value, up to any applicable statutory limit". Schedule C, ECF No. 15.

The trustee objects to the exemption contending that California law requires that the debtor claim a specific dollar amount as exempt up to the relevant statutory maximum.

The objection will be sustained. The claim of exemption is not specific as required.

#### **2006 GLASSON BOAT**

California law allows a debtor to claim an exemption in a motor vehicle in the amount of \$7,500.00. Cal. Code Civ. P. § 704.010.

"A "motor vehicle" is a vehicle that is self-propelled", Cal. Veh. Code § 415(a).

The debtor has claimed an exemption in a 2006 Glasson Boat in the amount of \$500.00. Schedule C, ECF No. 15. The trustee reports that the debtor testified at the meeting of creditors that the boat does not have a motor.

The objection will be sustained. The claim of exemption in a motor vehicle is limited to vehicles which are propelled by a motor with limited exceptions. The Glasson Boat is not excepted under California law.

#### **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 the debtor's exemptions 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 objection,

IT IS ORDERED that the objection is sustained. The exemptions of the 2006 Glasson Boat and the 2004 Dodge Caravan are disallowed.

34. [24-20754](#)-A-13      **IN RE: SUSAN OLIVER**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL  
FINANCE GROUP, INC.  
4-11-2024    [\[36\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
ALAN WHITE/ATTY. FOR MV.

### **Final Ruling**

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

**Notice:** Continued from May 7, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

Global Finance Group's objection to confirmation was continued to allow the creditor to serve the objection on creditors which have filed a request for special notice and to allow the parties to augment the evidentiary record. Global Finance Group has complied with the court's order and served the objection as required.

The court notes that the additional argument, and additional notice documents, filed by the objecting creditor and the reply by the debtor regarding this matter were all filed with the docket control number DPC-1. This is the docket control number assigned to the trustee's objection to confirmation and should not have been used in conjunction with the creditor's objection. LBR 9014-1(c). Use of the incorrect docket control number creates difficulties for the court in locating all documents associated with a given motion.

### **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).

Global Finance Group objects to confirmation because the proposed Chapter 13 Plan calls for payment of interest at 8% on Global's secured claim. Chapter 13 Plan, § 3.08, ECF No. 12.

### **INTEREST RATE ON SECURED DEBT**

The plan's interest rate on a secured claim should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till*, 541 U.S. at 480.

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and

receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

"The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 479. Without deciding the issue of the proper scale of the risk adjustment, the plurality opinion noted that other courts have generally approved upward adjustments of 1% to 3% to the interest rate. See *id.* at 480.

The debtor's filed a response to the objection which states:

The parties have agreed on a value of \$64,000 for the collateral. As to the interest under "Till" the creditor is entitled to some additional percentage above Prime, not the contract rate of interest, which the creditor claims in the DECLARATION OF J. JEFFREY MORRIS on line 24 to be "13%" without providing a copy of the contract or a relevant page as an exhibit. Debtor had proposed 8% and hereby submits the matter without further argument or evidence.

Debtor's Response to Objection to Confirmation, 3:10-18, ECF No. 59.

Conversely, the creditor argues that the appropriate rate of interest is the contractual rate of 13%. No authority is cited for this proposition. Objection to Confirmation, ECF No. 50.

Here, the plan provides for an interest rate of 8% on the objecting creditor's class 2 secured claim. Yet prime interest rate is 8.5%.

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The court will sustain the objection to confirmation as the plan fails to propose an interest rate on the claim of Global Finance Group's claim which complies with the ruling in *Till*.

As the court has sustained the objection based upon the interest rate it need not consider any remaining issues raised by the creditor.



## **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.

Global Finance Group Inc.'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.

35. [24-20754](#)-A-13     **IN RE: SUSAN OLIVER**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P  
CUSICK  
4-11-2024    [[32](#)]

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

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

**Notice:** Continued from May 7, 2024

**Disposition:** Overruled as moot, confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

The court has sustained the objection to confirmation by Global Finance Group, Inc. Accordingly, the court need not consider the issues raised by the Chapter 13 trustee. The trustee's objection will be overruled as moot.

## **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 overruled as moot. The court denies confirmation of the chapter 13 plan.

36. [24-20754](#)-A-13     **IN RE: SUSAN OLIVER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL FINANCE GROUP,  
INC.

5-13-2024    [\[50\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
ALAN WHITE/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Final Ruling**

This is a duplicate of the objection to confirmation filed by the objecting creditor Global Finance Group, Inc. The creditor's initial objection was filed without a docket control number, in violation of LBR 9014-1(c). Supplemental documents were subsequently, and erroneously, filed with the docket control number DPC-1, which is the docket control number assigned to the Chapter 13 trustee's objection to confirmation in this case. The court has issued its ruling regarding the objection by Global Finance Group in the creditor's objection on the calendar which omits the docket control number to avoid confusing the ruling with that issued in the objection by the Chapter 13 trustee.

37. [24-20754](#)-A-13     **IN RE: SUSAN OLIVER**  
[MOH-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF GLOBAL FINANCE  
GROUP, INC.  
4-9-2024    [\[28\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Non-vehicular]

**Notice:** Continued from April 23, 2024

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2021 ASV RT120F (HE4032) (Business Equipment)

**Value:** \$64,000

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 respondent 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 an order valuing the collateral of Global Finance Group, LTD.

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as business equipment, a 2021 ASV RT120F (HE4032). The debt secured by such property was not incurred within

the 1-year period preceding the date of the petition. Claim has been filed in the amount of \$67,102, Claim No. 7. However, the parties have indicated that they agree that the value to be paid through the plan is \$64,000.

Although neither party filed any additional evidence of a stipulation with the court, or any further documents under this motion control number the court notes that the parties have reached an apparent agreement regarding the value of the property for plan purposes. That value appears to be \$64,000. See Creditor's Objection to Confirmation, ECF No. 50; Debtor's Response to Creditor's Objection to Confirmation, ECF No 59.

Accordingly, the court values the collateral at \$64,000.

#### **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 value non-vehicular, personal property collateral 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 motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2021 ASV RT120F (HE4032) has a value of \$64,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$64,000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

38. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[BRL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FOOTHILL MORTGAGE FUND  
OF OLYMPIA, LLC  
5-22-2024    [\[25\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
BENJAMIN LEVINSON/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 July 30, 2024, at 9:00 a.m.  
Order: Civil minute order

Creditor, Foothill Mortgage Fund of Olympia, LLC, objects to  
confirmation of the debtor(s) plan.

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).

The court will continue the hearing on this objection to allow the  
parties to augment the evidentiary record.

### **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 this objection will be continued  
to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the  
following:

(A) File a Statement of No Opposition. If the debtor(s) agree  
that the creditor's objection is well taken, the debtor(s) shall  
concede the merits and file a statement of non-opposition no later  
than July 2, 2024. L.R. 230(c) ("A responding party who has no  
opposition to the granting of the motion shall serve and file a  
statement to that effect..."); LBR 1001-1(c)-(d) (omitting the  
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)  
disagrees with the creditor's objection, the debtor(s) shall file  
and serve a written response to the objection not later than July 2,  
2024; the response shall specifically address each issue raised in

the creditor's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than July 2, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

39. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[CCR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL JACOB AND  
DENISE MEIER, TRUSTEES OF THE JACOB-MEIER FAMILY TRUST  
5-23-2024    [\[35\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
CHERYL ROUSE/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 July 30, 2024, at 9:00 a.m.  
Order: Civil minute order

Creditor, Michale Jacobs and Denise Meier, trustees of the Jacob-Meier Family Trust, objects to confirmation of the debtor(s) plan.

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).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

### **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 this objection will be continued to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than July 2, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than July 2, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than July 2, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

40. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
5-22-2024    [\[31\]](#)

GABRIEL LIBERMAN/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 July 30, 2024, at 9:00 a.m.  
Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s)  
plan.

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).

The court will continue the hearing on this objection to allow the  
parties to augment the evidentiary record.

### **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 this objection will be continued  
to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the  
following:

(A) File a Statement of No Opposition. If the debtor(s) agree  
that the Chapter 13 trustee's objection is well taken, the debtor(s)  
shall concede the merits and file a statement of non-opposition no  
later than July 2, 2024. L.R. 230(c) ("A responding party who has  
no opposition to the granting of the motion shall serve and file a  
statement to that effect..."); LBR 1001-1(c)-(d) (omitting the  
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)  
disagree with the trustee's objection, the debtor(s) shall file and  
serve a written response to the objection not later than July 2,  
2024; the response shall specifically address each issue raised in  
the trustee's objection to confirmation, state whether the issue is  
disputed or undisputed, **and include admissible evidence in support**



**of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than July 2, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

41. [24-21361](#)-A-13      **IN RE: JOSHUA WILLIAMS**  
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA  
INC.

5-17-2024    [\[20\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Creditor's Objection to Confirmation of Plan

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

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

Santander Consumer, USA objects to confirmation of the debtor's plan. For the following reason the objection will be overruled without prejudice.

### **SERVICE**

The court is unable to determine if the objection and supporting papers were served properly on the debtors or any other parties in interest. A certificate of service has not been filed with this motion as required. LBR 9014-1(e).

Accordingly, 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:

Santander Consumer, USA's objection to confirmation of the debtor's plan 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.

42. [23-21263](#)-A-13     **IN RE: PHILIP LEONE**  
[SMJ-1](#)

MOTION TO SELL O.S.T.  
5-31-2024    [[41](#)]

SCOTT JOHNSON/ATTY. FOR DBT.

**No Ruling**

43. [20-23867](#)-A-7     **IN RE: MARIA MANGANDID AND OSCAR MANGANDID**  
GARCIA  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-13-2024    [[25](#)]

SETH HANSON/ATTY. FOR DBT.  
CASE CONVERTED: 05/24/24

**Final Ruling**

The case converted to Chapter 7. Accordingly, this motion is removed from the calendar. No appearance is required.

44. [24-21567](#)-A-13     **IN RE: SANDRA GROOM**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
5-22-2024    [\[16\]](#)

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **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 July 30, 2024, at 9:00 a.m.  
Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s)  
plan.

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).

The court will continue the hearing on this objection to allow the  
parties to augment the evidentiary record.

### **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 this objection will be continued  
to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the  
following:

(A) File a Statement of No Opposition. If the debtor(s) agree  
that the Chapter 13 trustee's objection is well taken, the debtor(s)  
shall concede the merits and file a statement of non-opposition no  
later than July 2, 2024. L.R. 230(c) ("A responding party who has  
no opposition to the granting of the motion shall serve and file a  
statement to that effect..."); LBR 1001-1(c)-(d) (omitting the  
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)  
disagree with the trustee's objection, the debtor(s) shall file and  
serve a written response to the objection not later than July 2,  
2024; the response shall specifically address each issue raised in  
the trustee's objection to confirmation, state whether the issue is

disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than July 2, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

45. [24-21179](#)-A-13     **IN RE: CHRISTOPHER WHITLOCK**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-17-2024    [\[15\]](#)

DEBTOR DISMISSED: 05/30/24

### **Final Ruling**

This case was dismissed on May 30, 2024. Accordingly, this motion is removed from the calendar as moot. No appearances are required.

46. [21-21480](#)-A-13     **IN RE: THANH TRAN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[38\]](#)

MATTHEW DECAMINADA/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:** June 4, 2024

**Opposition Filed:** June 4, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$460.05, with one payment(s) of \$155.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 42, 43. The debtor's declaration states that the debtor will file a modified plan. See Declaration, ECF No. 43. However, no modified plan has been filed.

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 plan is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

### **TRUSTEE REPLY**

On June 11, 2024, the trustee filed a motion to dismiss his motion, ECF No. 45. Fed. R. Civ. P. 41. The trustee further states:

Debtor paid 5/28/24 is now within 2 payments of completion and has 1 payment pending. The Trustee does not believe the default is material based on Debtor's response, (DN 42.)

*Id.*, 1:24-25.

The trustee's request is not accompanied by any evidence. The motion under Rule 41 lacks sufficient evidence to allow the court to dismiss the motion.

First, the trustee does not state the amount of the pending payment through TFS. Second, the trustee does not state

whether the trustee has received any other payments since the filing of the motion, although he appears to allude to a payment on May 28, 2024. Thus, the court presumes that payments are still in default in the amount of \$460.05 with a total amount due by the hearing date of \$615.05. The trustee contended that this amount constituted a material default in his initial motion, which was supported by evidence indicating the lack of payment by the debtor. In his request to dismiss his motion the trustee contends that the identical default is not material.

#### **DEBTOR'S SUBSEQUENT DECLARATION**

On June 11, 2024, the debtor filed a supplemental declaration, ECF No. 47. The declaration indicates that the debtor no longer intends to file a modified plan but rather will pay the amounts which are due. The declaration states:

I have a payment pending through TFSbillpay.com in the amount of \$310. This payment represents the final two payments that I owe on my Chapter 13 Plan.

*Id.*, 1:25-26.

The payment of \$310.00 is not sufficient to cure the default alleged by the trustee. As such, the court presumes the payments are still in default.

The court denies the trustee's request to dismiss his motion. The court will hear the matter. At the hearing the trustee shall be prepared to apprise the court of the status of plan payments including any amounts received since the filing of this motion, and the amounts still due, if any, to bring the plan payments current.

Given that the debtor is near the end of the plan term, the court will consider a conditional order if the trustee reports that the plan payments are still delinquent.

#### **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.

47. [24-20680](#)-A-13      **IN RE: THOMAS GALLARDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-28-2024    [\[28\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
6/4/2024 FINAL INSTALLMENT FEE PAID \$156

### **Final Ruling**

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

48. [20-20882](#)-A-13     **IN RE: HEATHER MONTANO**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[24\]](#)

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:** June 4, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(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)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$940.00 with one payment(s) of \$470.00 due prior to the hearing on this 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.



## **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.

49. [24-20684](#)-A-13     **IN RE: SAMUEL THOMPSON**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
4-10-2024    [\[15\]](#)

MARK WOLFF/ATTY. FOR DBT.

## **Final Ruling**

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

**Notice:** Continued from May 7, 2024

**Disposition:** Overruled as moot

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation of the debtor's plan was continued to allow the parties to augment the evidentiary record. The debtor has failed to file evidence as ordered by the court.

The court has granted the Chapter 13 trustee's motion to dismiss (DPC-2) the case under 11 U.S.C. § 1307(c)(1). Accordingly, the objection to confirmation is overruled as moot.

## **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 overruled as moot.

50. [24-20684](#)-A-13     **IN RE: SAMUEL THOMPSON**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-21-2024    [\[25\]](#)

MARK WOLFF/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:** June 4, 2024

**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 because the debtor has failed to: (1) provide required documents under § 521; (2) make timely payments under the Chapter 13 Plan; and (3) provide requested business documents. The trustee contends that the debtor's failure to provide information and make plan payments constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

#### Failure to Provide § 521 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 list of documents that a chapter 13 debtor must surrender to the trustee is long. It includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); and (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

The debtor has failed to provide tax returns for 2021, 2022, and 2023. The debtor indicated at the meeting of creditors that he had not filed tax returns for 2021, and 2022. The trustee continued the meeting of creditors to allow the debtor to file the tax returns. The trustee reports that the debtor failed to attend the continued meeting of creditors or to provide the tax trustee with the missing tax returns.

The court finds that the debtor's failure to provide tax returns and then provide them to the trustee constitutes unreasonable delay which is prejudicial to creditors.

#### Failure to Provide Additional Documents

The statutorily required documents do not define the outer limits of documentation of the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation).

The trustee has requested the following documentation from the debtor: (1) 2 years of tax returns; (2) 6 months of profit and loss statements; (3) 6 months of bank statements; (4) proof of business license and insurance or written statements that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).

Additionally, the trustee mailed a business questionnaire and request for documents to the debtor on April 4, 2024. To date, the debtor has failed to provide the requested documents. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation in that the requested documents have a bearing on whether the debtor's proposed plan complies with the requirements of 11 U.S.C. § 1325. The court finds that the debtor's failure to provide the requested information to the trustee constitutes unreasonable delay which 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.

**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 in this case. The court hereby dismisses this case.

51. [23-22085](#)-A-13     **IN RE: JULIAN PEREZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[29\]](#)

PAULDEEP BAINS/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:** June 4, 2024

**Opposition Filed:** June 4, 2024 - timely

**Modified Plan:** not filed - untimely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$5,891.13, with one payment(s) of \$5,891.13 due before the hearing on this motion.

### **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 June 4, 2024, the debtor filed an opposition to the motion to dismiss, ECF No. 33. The opposition consists of a unsworn statement by the debtor(s)' attorney stating his intention to file a modified plan concurrently with the opposition which was filed. A modified plan has never been filed. Nor has counsel requested an extension of time to file a modified plan.

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 May 13, 2024, giving the debtor only 35 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 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.

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.

#### **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.

52. [19-23987](#)-A-13     **IN RE: JULIE QUESTA**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-17-2024    [\[25\]](#)

CANDACE BROOKS/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 debtors

**Disposition:** Continued to July 30, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** June 4, 2024

**Opposition Filed:** June 4, 2024 - 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 \$1,356.01, with two payment(s) of \$453.00 due prior to the hearing date on this motion.

On June 4, 2024, debtor's counsel filed a timely opposition and requested a continued hearing in this matter. Given the extraordinary health concerns experienced by the debtor the court will continue the hearing and allow the debtor to augment the evidentiary record. Fed. R. Bankr. P. 9006(b).

### **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 chapter 13 trustee's motion to dismiss is continued to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor shall do one of the following:

- (A) If the debtor(s) disagree with the trustee's motion, the debtor(s) shall file and serve a written opposition to the motion not later than July 9, 2024; the opposition shall specifically address each issue raised in the trustee's motion **and include admissible evidence in support of the debtor's position.** If the debtor(s) file opposition, then the trustee shall file and serve a reply, if any, no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

- (B) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's motion by filing a modified plan, not later than July 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

53. [24-21588](#)-A-13     **IN RE: ANGELA/KEITH THORNTON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
5-29-2024    [\[17\]](#)

MICHAEL HAYS/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 July 30, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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).

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

### **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 this objection will be continued to July 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than July 2, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);



(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than July 2, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than July 16, 2024. The evidentiary record will close after July 16, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than July 2, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

54. [24-21689](#)-A-13      **IN RE: ANNETTE MATTHEWS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-29-2024    [\[22\]](#)

#### **Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

55. [24-21889](#)-A-13     **IN RE: CANDACE CLARK**  
[MOH-1](#)

MOTION TO VALUE COLLATERAL OF FOURSIGHT CAPITAL LLC  
6-4-2024    [\[17\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2020 Mitsubishi Outlander SP

**Value:** \$14,918.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the respondent 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 an order valuing the collateral of Foursight Capital, LLC.

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2020 Mitsubishi Outlander SP. The debt secured by the vehicle was not incurred within the 910-day period

preceding the date of the petition. The court values the vehicle at \$14,918.00.

#### **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 value collateral consisting of a motor vehicle 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 motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2020 Mitsubishi Outlander SP has a value of \$14,918.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$14,918.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

56. [22-21299](#)-A-13     **IN RE: DAMON TURNER**  
[DPC-4](#)

MOTION TO DISMISS CASE  
5-13-2024    [\[103\]](#)

MATTHEW DECAMINADA/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:** June 4, 2024

**Opposition Filed:** June 4, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(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)(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 \$4,336.25, with one payment(s) of \$4,336.25 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 107, 108. The debtor's

declaration states that the debtor has tendered payments which will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 108.

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.