



**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 27, 2023**  
**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 heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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## 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. [21-23601](#)-A-13     **IN RE: POLLEN HEATH**  
[JNV-5](#)

MOTION TO MODIFY PLAN  
5-31-2023    [\[94\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirmation of a Chapter 13 Plan

**Notice:** LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order modifying the chapter 13 plan.

### **Rule 3015-1(d)(2)**

The debtor did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections. Federal Rule of Bankruptcy Procedure 3015(h) requires at least 21 days' notice of the time fixed for filing objections to a proposed modification of a plan. To comply with both Federal Rule of Bankruptcy Procedure 3015-(h) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(2). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

The plan, notice of hearing, and motion were served on May 31, 2023. See Certificate of Service, ECF No. 99. The debtor provided only 27 days' notice to all parties in interest.

### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Modify Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

2. [23-21112](#)-A-13     **IN RE: JANET ROBERTS**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
5-24-2023     [\[21\]](#)

BRIAN COGGINS/ATTY. FOR DBT.

### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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

### **MEETING OF CREDITORS**

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection

### **CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection,

oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

3. [23-21112](#)-A-13     **IN RE: JANET ROBERTS**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
5-9-2023    [\[16\]](#)

BRIAN COGGINS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

### **Tentative Ruling**

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

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

**Disposition:** Overruled

**Order:** Civil minute order

No responding party is required to file written opposition to the motion; opposition may be presented at the hearing. LBR 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

The Bank of New York Mellon objects to confirmation of the debtor's plan contending that the plan contravenes 11 U.S.C. § 1322(b)(5). The creditor complains that the plan calls for payment of the arrears on the creditor's claim in the amount of \$40,450.59. However, the arrearage on the filed claim is \$43,062.06. See Claim No. 4. The difference between the claimed amount and the amount proposed in the plan is \$2,611.47.

Section 3.02 of the plan provides that the proof of claim, not the plan, controls the amount and classification of the creditor's claim unless the claim amount or classification is otherwise altered by the court after ruling on one of the three types of matters listed in the section. This means that the plan's understatement of the pre-petition arrears on a Class 1 claim does not reduce the amount of the arrears reflected in a filed proof of claim.

The objection will be overruled because any understatement of the prepetition arrears in the plan does not alter or affect the creditor's rights.

### **CIVIL MINUTE ORDER**

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

Having considered the present objection to confirmation together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the objection is overruled.

4. [20-20913](#)-A-13     **IN RE: KEITH ARCHIBALD**  
[DPC-3](#)

MOTION TO DISMISS CASE  
5-22-2023    [\[67\]](#)

GARY FRALEY/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 13, 2023

**Opposition Filed:** Unopposed

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

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,170.00 with two further payments of \$586.00 due by June 25, 2023.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

5. [23-21213](#)-A-13     **IN RE: FRITZIE CORTES**  
[DPR-1](#)

MOTION TO VALUE COLLATERAL OF BANK OZK  
5-25-2023    [\[23\]](#)

DAVID RITZINGER/ATTY. FOR DBT.

#### **Final Ruling**

By stipulation of the parties the hearing on this motion has been continued to August 8, 2023, at 9:00 a.m. No appearances are required.

6. [19-27815](#)-A-13     **IN RE: IYANAH FLETCHER**  
[DPC-4](#)

MOTION TO DISMISS CASE  
5-22-2023    [\[79\]](#)

RICHARD JARE/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

**Opposition Due:** June 13, 2023

**Opposition Filed:** June 13, 2023 - timely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$700.00, with two additional payments of \$350.00 due by June 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, and Exhibits, ECF Nos. 84, 86. The debtor's declaration states that the debtor tendered \$1,400.00 and that the trustee received the payment on June 9, 2023. See Declaration, ECF No. 84, Exhibit, ECF No. 86.

The Chapter 13 trustee shall be prepared to confirm the status of the debtor's plan payments at the hearing. Absent a showing of delinquency, the court intends to deny the trustee's motion as it appears the payments are current.

### **CIVIL MINUTE ORDER**

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

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

The 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 denied.



7. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[CRG-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW,  
LLP FOR CARL R GUSTAFSON, DEBTORS ATTORNEY(S)  
5-24-2023    [\[120\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

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

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

In this Chapter 13 case, Lincoln Law, LLP, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7,757.50 in additional fees and reimbursement of expenses in the amount of \$127.07. The motion is supported by a declaration by the debtor Evangelina Hernandez, and the movant's attorney Carl Gustafson.

The Chapter 13 trustee opposes the motion contending that the confirmed Chapter 13 Plan does not provide a monthly payment amount for payment of the requested administrative expense. The trustee does not appear to oppose the amount of compensation requested or the request for reimbursement of expenses.

The court notes that the trustee's opposition does not preclude the allowance of attorney fees under 11 U.S.C. § 329, 330. The payment of compensation under the plan is an issue which should have been raised by the trustee at confirmation or at later modification of the plan. Thus, the proper remedy in this case is not opposition to the motion for allowance of compensation, but rather modification of the plan.

The motion will be denied without prejudice for the following reasons.

### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered

Electronic Filing System Users *shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.*

LBR 7005-1 (emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Attachment - Debtor's Counsel

The first attachment to the Certificate of Service is a document signed by debtor's counsel.

A statement at the bottom of the attachment signed by debtor's counsel indicates as follows: "This is a receipt for mailing, not a legal pleading for filing with the Court System." Certificate of Service, ECF No. 125.

If the attachment containing counsel's signature is not a legal pleading, then it does not have any legal force or effect. Thus, it appears to be a document filed for the purpose of misleading the court that a "legal pleading" has been filed attesting to proper service of the motion.

The attachment further states: "A copy of the declaration of service is attached hereto and incorporated as if fully set forth herein." The court does not understand what counsel means by "as if fully set forth herein". Counsel purports to say that a declaration of testimony is incorporated into his receipt for mailing which in turn expressly states that it is "not a legal pleading for filing with the court." As such there is no declaration under penalty of perjury, which is required for the proper attestation of service.

#### Attachment - Third Party Servicer

In this case the servicer did not sign the oath as required on page 4 of the certificate. *Id.* The signature section on page 4 states "See attached" which then would refer to the attachment signed by the servicer which follows.

The second attachment to the certificate of service is signed by the third-party servicer.

As with the statement filed by counsel, this attachment contains a statement which expressly states: "This is a receipt for mailing, not a legal pleading for filing with the Court System." *Id.* If the attachment containing the servicer's signature is not a legal pleading, then it does not have any legal force or effect. Thus, it too appears to be a document filed for the purpose of misleading the court that a "legal pleading" has been filed attesting to proper service of the motion.

Additionally, the servicer's attachment containing the oath attesting to service of the motion is signed according to the servicer's "information and belief". If the statement is signed according to the servicer's information and belief, then it is not a proper attestation under penalty of perjury regarding service of the motion.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to properly use and complete Form EDC 7-005 in memorializing service in this matter. 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 incur debt has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

8. [19-22719](#)-A-13     **IN RE: JOSEPH HYLER AND ANDREA GERBER**  
[DPC-4](#)

MOTION TO DISMISS CASE  
5-22-2023    [\[58\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **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 13, 2023

**Opposition Filed:** June 13, 2023 - timely

**Modified Plan:** not filed

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$830.00, with two additional payments of \$415.00 due by June 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 62, 63. The declaration states that debtor Andrea Gerber has been hospitalized several times since April 2023, and has consequently suffered reduced income. Declaration, ECF No. 63. The declaration further indicates that the debtors tendered a partial payment to the trustee and intend to file a modified plan. A modified chapter 13 plan has not yet 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 modified plan on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

Given the extraordinary circumstances in this case the court will consider issuing a conditional order allowing the debtors an opportunity to file a modified plan.

### **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 13, 2023, the debtors filed an opposition to the motion to dismiss, ECF Nos. 62, 63. The opposition indicates the debtors' intention to file a modified plan. 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.

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 the filing of a modified plan is an opposition--albeit of the de facto variety--it has not been filed and therefore it is late.

The court is aware that the motion to dismiss was filed May 22, 2023, giving the debtors only 33 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 a 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, Fed. R. Bankr. P. 9006(b), 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.

#### **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 debtors have 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.

9. [22-21923](#)-A-13     **IN RE: ANDREW/SHAWNI MILLER**  
[TLA-4](#)

CONTINUED MOTION TO MODIFY PLAN  
4-25-2023    [[45](#)]

THOMAS AMBERG/ATTY. FOR DBT.

**No Ruling**

10. [23-20924](#)-A-13     **IN RE: ANITA VERGARA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-30-2023    [[32](#)]

**Final Ruling**

This case was dismissed on June 14, 2023. Order Dismissing, ECF No. 36. Accordingly, the Order to Show Cause is removed from the calendar as moot.

11. [23-20427](#)-A-13     **IN RE: NENITA ANTONIO**  
[TJW-1](#)

MOTION TO CONFIRM PLAN  
4-26-2023    [\[27\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 30. 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 Confirm Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

12. [22-23129](#)-A-13     **IN RE: MARIA ROWENA PENA**  
[AVN-2](#)

MOTION TO CONFIRM PLAN  
5-19-2023    [\[39\]](#)

ANH NGUYEN/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks confirmation of the Chapter 13 Plan. For the following reasons the motion will be denied without prejudice.

#### **SERVICE AND NOTICE**

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

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

#### Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf



label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is dated February 14, 2023. See Certificate of Service, ECF No. 43. Service of the motion occurred on May 19, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Confirm Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

13. [22-20532](#)-A-13     **IN RE: KELLI SIMPSON**  
[BLG-2](#)

MOTION TO EMPLOY BAY TO VALLEY BROKERS AS BROKER(S)  
6-1-2023    [\[52\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

#### **No Ruling**

14. [22-20532](#)-A-13     **IN RE: KELLI SIMPSON**  
[BLG-3](#)

MOTION TO SELL  
6-1-2023    [\[56\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
CREDITOR NON-OPPOSITION

#### **No Ruling**

15. [21-23136](#)-A-13     **IN RE: SONYA ALCARAZ**  
[CJC-112](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-12-2023    [\[102\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
CALVIN CLEMENTS/ATTY. FOR MV.  
LOUDEN LLC VS.

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Louden, 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.

### **SERVICE AND NOTICE**

#### Certificate of Service, ECF No. 107

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

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including,

without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 107.

Certificate of Service, ECF No. 108

A second certificate of service was filed in this matter, ECF No. 108. Although the certificate was filed using Form 7-005 it fails to include any attachment indicating which parties were served and where they were served as indicated in Section 6A1, and as stated under penalty of perjury at Section 7. Certificate of Service, ECF No. 108.

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:

Louden 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.

16. [22-23039](#)-A-13     **IN RE: KAREN GARLINGTON**  
[DB-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-3-2023    [\[74\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
BRIAN ATON/ATTY. FOR MV.  
JOHN W. COSBY VS.

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** Continued from May 31, 2023

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 6081 Sly Park Rd., Placerville, California

John W. Cosby, as co-trustee of the Cosby Family Trust dated May 9, 2013, as amended and restated, and as attorney-in-fact of Grace L. Cosby (Creditor), seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The hearing on this motion was continued to coincide with the debtor's motion to confirm the Chapter 13 plan (PGM-2).

The creditor holds a deed of trust against the subject property, Claim No. 10. The obligation to the creditor is listed in Class 1 of the Second Amended Chapter 13 Plan, ECF No. 88. The Chapter 13 trustee reports that all payments have been made to the creditor through April 2023. Trustee's Reply, 2:4-5, ECF No. 79. Moreover, the trustee filed a non-opposition to the debtor's motion to confirm plan (PGM-2) indicating that plan payments were current. Non-Opposition, ECF No. 106.

The bankruptcy petition was filed November 22, 2022, and a Chapter 13 plan has not yet been confirmed. The most recently filed motion to confirm a plan (PGM-2) has been denied by the court.

The creditor argues that relief from stay is warranted under 11 U.S.C. § 362(d)(1) for cause because: 1) the debtor has failed to confirm a plan; and 2) its interest in the subject property is not adequately protected as the debtor has failed to provide proof of contractually required fire insurance.

The debtor opposes the motion, filed a motion to confirm a plan, and provided a declarations page from AAA Insurance which evidences that an insurance policy has been issued covering the period of April 24, 2023, through April 24, 2024. Exhibit A, ECF No. 83. The declarations page lists the Cosby Family Trust (Creditor) as an "Additional Interest".

## **DEED OF TRUST**

The deed of trust securing the creditor's rights in the subject property provides that the debtor is obligated "[t]o provide, maintain and deliver to Beneficiary fire insurance satisfactory to *and with loss payable to Beneficiary.*" Claim No. 10, Deed of Trust, page 2, Item 2 (emphasis added).

In response to the debtor's assertion that the insurance policy was properly in place, the creditor, through counsel, contacted the insurance company to verify the status of the policy. See Declaration of Brian Aton, ECF No. 101. The purpose of the contact was to determine if the designation of the creditor as an "Additional Interest", as indicated in the declarations page, satisfied the loss payee requirement contained in the deed of trust.

According to the insurance company the designation as an "Additional Interest" does not provide the protections of a designation as a loss payee. *Id.*, 2:5-15. As such the designation is insufficient and the debtor has not satisfied her contractual obligation to the creditor regarding fire insurance.

## **STAY RELIEF**

The debtor is obligated to provide fire insurance and designate the creditor as a loss payee on the insurance policy pursuant to the deed of trust on the real property described above.

Section 362(d)(1) authorizes stay relief for cause shown including the lack of adequate protection of an interest in property. 11 U.S.C. § 362(d)(1).

The creditor's interest in the subject property "could not be adequately protected without concrete evidence that the mortgaged property was properly insured and maintained." *In re Monroe Park*, 17 B.R. 934, 939 (D. Del. 1982).

Because the insurance policy obtained by the debtor does not comply with the contractual requirements contained in the deed of trust the property is not properly insured and maintained. Therefore, cause exists to grant relief under § 362(d)(1).

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

## **CIVIL MINUTE ORDER**

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

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

The Cosby Family Trust's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 6081 Sly Park Rd., Placerville, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

17. [22-23039](#)-A-13     **IN RE: KAREN GARLINGTON**  
[PGM-2](#)

MOTION TO CONFIRM PLAN  
5-17-2023    [\[86\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**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). Creditor Cosby Family Trust opposes the motion, objecting to confirmation. Conversely, the Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 106.

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

### **PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997).

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

The opposing creditor's claim is secured by a deed of trust against the debtor's residence located at 6081 Sly Park Road, Placerville, California. The creditor contends that the plan is not feasible because: 1) the debtor has not provided sufficient proof of fire insurance on the real property; 2) Schedule J does not contain an expense item for the mortgage payment on the property; and 3) the debtor has not proven how she will maintain plan payments when child support ends this year for her son.

#### Fire Insurance

The creditor contends that fire insurance on the property is required pursuant to the deed of trust securing the note on the debtor's property with the creditor indicated as the loss payee on the policy. Motion, 2:12-14, ECF No. 108. The court notes that a copy of the deed of trust containing this provision was filed concurrently with the opposition as Exhibit B, ECF No. 110. The debtor filed a reply to the opposition on June 20, 2023. In her reply to the debtor states that a copy of the insurance policy declarations was filed in this case at docket number 83. A review of that exhibit shows that fire insurance has been issued covering the period of April 24, 2023, through April 24, 2023, and that the creditor has been listed on the policy. Unfortunately, the declarations page does not list the creditor as a loss payee as is contractually required.

#### Mortgage Payment

The opposing creditor contends the plan is not feasible because Schedule J does not list a mortgage payment. A review of the debtor's Schedule J and proposed Amended Plan shows that the payment to the opposing creditor is to be paid through the plan. Second Amended Chapter 13 Plan, Section 3.07, ECF No. 88. The debtor's Schedule J correctly accounts for the mortgage payment as \$0 as the payment is included in the proposed plan payment. To include the mortgage payment in Schedule J would result in a double entry of the expense.

### Support Income

The debtor filed her most recent Schedules I and J on May 17, 2023, ECF No. 90. Schedule I shows monthly income from family support in the amount of \$470.00. *Id.*, Line 8c. The creditor contends that this amount reflects child support paid on behalf of the debtor's son and that the support will end this year when debtor's son turns 18. The debtor has not indicated how she will continue to make plan payments when the child support payments are no longer made to her.

The debtor's reply addresses the anticipated change in support as follows:

Additionally, while the Secured Creditor asserts that the \$400.00 per month DSO payment will end at her child turning 18 years, that is not always the case. Additionally, the son can either assist his mother with \$400.00, or move out and save \$400.00 in monthly expenses being reduced.

Reply, 2:5-9, ECF No. 112.

The reply does not resolve this issue. First, the reply consists of an unsworn statement by debtor's counsel and is not accompanied by a declaration of the debtor, or documentary evidence regarding the termination of child support. Thus, the court gives the reply no weight.

Second, the reply evades the issue of whether and when support will terminate stating that it is not always the case that support will terminate when a child turns 18. The reply is also speculative in that it provides possible alternatives to the loss of income but does not squarely address whether the debtor's income will be reduced in the next year. Moreover, the reply does not dispute that the debtor's son will turn 18 during the next year.

Third, Schedule I does not indicate that the debtor anticipates any changes to her income in the next year. Schedule I, Item 13, ECF No. 90.

The debtor has not sufficiently proven that she has sufficient income to fund the plan given the questions raised regarding continued payment of child support. Nor has the debtor proven that the fire insurance she has purchased complies with the contractual requirements contained in the deed of trust in favor of the opposing creditor. The court will deny the motion.

### **CIVIL MINUTE ORDER**

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

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



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

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

18. [23-20040](#)-A-13     **IN RE: YAROSLAV TKACHUK**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-30-2023    [\[24\]](#)

RESPONSIVE PLEADING

**No Ruling**

19. [23-20543](#)-A-13     **IN RE: KADEN KOFFLER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-30-2023    [\[41\]](#)

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.

20. [23-20543](#)-A-13     **IN RE: KADEN KOFFLER**  
[DPC-2](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7  
5-30-2023    [\[42\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **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 13, 2023

**Opposition Filed:** June 13, 2023 - timely

**Cause:** 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency; failure to  
file amended plan; failure to provide tax returns

**Best Interests of Creditors/Estate:** Convert to Chapter 7

### **CASE CONVERSION**

The chapter 13 trustee moves to convert this chapter 13 case for delinquency in payments under the most recently filed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to convert the case. Payments under the most recently proposed plan are delinquent in the amount of \$102,000.00, which constitutes 3 plan payments. A further payment of \$34,000 is due June 25, 2023.

The trustee further requests conversion as the debtor has failed to file an amended plan following an order entered May 17, 2023, which denied confirmation of the debtor's previously proposed plan. Finally, the trustee reports that the debtor has failed to provide him with tax returns as required.

### **DEBTOR OPPOSITION**

The debtor has filed opposition to the motion, which is supported by the declaration of the debtor, ECF Nos. 48, 29.

The opposition acknowledges the delinquency alleged by the trustee. Despite proposing a monthly plan payment of \$34,000, the debtor states he has only paid \$3,500.00 since the filing of the case. The debtor also states that he will file an amended plan. However, an amended plan has not yet been filed. Due to scheduling conflicts with other cases the debtor's counsel has requested additional time to file and serve an amended plan and set it for hearing.

Given the complexity of this case the court will consider a conditional order allowing the debtor to file and confirm an amended

plan. The court expects to allow only a short time for the debtor to file, serve, and set the amended plan for hearing.

Absent the issuance of a conditional order at the hearing on this motion the court will issue an order granting the trustee's motion to convert the case to Chapter 7 as follows.

**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) (emphasis added).

The trustee argues that conversion to a Chapter 7 is in the best interest of creditors and the estate. While the trustee concedes that the schedules filed by the debtor do not show non-exempt equity in assets a review of Schedules A/B shows that the debtor owns or has an interest in ten (10) parcels of real property. Schedule A/B, ECF No. 13. Moreover, the properties generate rental income as shown in Schedule I, *id.* Secured creditor Pelorus Fund REIT, LLC, has joined in the trustee's motion, ECF No. 51. The creditor does not state whether its interests are best served by conversion or dismissal only that it supports the trustee's motion in either event.

The court finds that conversion is in the best interests of the creditors and the estate. The court will grant the motion and convert the case to 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 most recently filed chapter 13 plan, and the debtor's failure to file an amended plan in this case. The court hereby converts this case to Chapter 7.

21. [20-21047](#)-A-13     **IN RE: PAUL DENNO AND SANDRA MURRAY**  
[MWB-8](#)

MOTION TO MODIFY PLAN  
4-24-2023    [\[209\]](#)

MARK BRIDEN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Continued to August 8, 2023, at 9:00 a.m.

**Order:** Civil minute order

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

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

### **OPPOSITION**

The Chapter 13 trustee opposes the motion contending that the plan is not feasible under 11 U.S.C. § 1325(a)(6) for the following reasons: 1) the plan relies upon the debtors' ability to market and sell real property; and 2) the income and expense schedules filed by the debtors contain inaccurate and/or conflicting information.

The debtors' currently confirmed plan required the sale of real property located at 28338 Whippoorwill Circle, Shingletown, California, not later than September 30, 2023. Order, ECF No. 94. The debtors have partially complied with the court's order as the real property located at 6732 Airport Rd., Redding, California was sold on January 25, 2022, and the trustee acknowledges that \$111,983.09 in sale proceeds was paid into the plan on February 15, 2022.

The proposed modified plan seeks to extend the date to sell the Whippoorwill property to December 31, 2023, and pay \$51,000 in proceeds to complete the plan. Chapter 13 Plan, Section 7.01, ECF No. 212.

### **DEBTOR REPLY**

On June 20, 2023, in response to the trustee's opposition the debtors filed the following: 1) Declaration, ECF No. 220; and 2) Schedules I and J with attachments for 3 businesses, ECF No. 219.

Additionally, on June 20, 2023, the debtors filed a declaration and exhibits under docket control number MWB-4, ECF Nos. 222, 223. The declaration purports to explain the debtors' efforts to improve, market and sell the Whippoorwill property, and the exhibit lists potential buyers of the property.

Because the instant motion carries the docket control number MWB-8 the documents designated under the MWB-4 number are not part of the record in the motion to modify the plan. The court is uncertain if the debtors intend for the evidence filed under MWB-4 to be considered in connection with the instant motion to modify.

#### **CONTINUED HEARING**

Because the evidentiary record is uncertain, and because the Chapter 13 trustee has not had an opportunity to evaluate the most recently filed evidence the court will continue this hearing for further analysis and briefing by the parties.

The parties may present any evidence desired but should at a minimum address the following: 1) the total amount required to pay the proposed plan in full; 2) a calculation of the projected amount required from the sale of the Whippoorwill property to accomplish the payoff of the plan taking into account the monthly payments made by the debtors; and 3) the likelihood that the sale of the Whippoorwill property will generate sufficient proceeds as called for by the plan.

The debtors shall file, or refile, any evidence they wish to be considered in connection with this hearing under the docket control number MWB-8. If the debtors wish for the declaration and exhibits at ECF Nos. 222 and 223 to be considered in connection with this motion, they must be refiled and served under docket control number MWB-8. LBR 9014-1(c)(1).

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on the motion is continued to August 8, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than July 11, 2023, the debtors shall file and serve any additional evidence and argument in support of the motion. All pleadings, declarations and exhibits shall contain the appropriate docket control number MWB-8 and otherwise comply with LBR 9014-1(c)(1).

IT IS FURTHER ORDERED that no later than July 25, 2023, the Chapter 13 trustee shall file and serve a reply after which the evidentiary record will be closed. No further filings in support of, or in opposition to, the motion will be allowed absent leave of court.

22. [23-21749](#)-A-13     **IN RE: VANESSA FRANKLIN**  
[FEC-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-30-2023    [\[9\]](#)

VANESSA FRANKLIN/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

On May 30, 2023, the debtor filed a document requesting an extension of the automatic stay. The debtor indicated that she had allowed her previous Chapter 13 case to be dismissed on the advice of counsel at a consultation. Motion to Extend Stay, ECF No. 9. The debtor's request did not set the motion for a hearing. On June 1, 2023, the court issued an order which: 1) set the matter for hearing on June 27, 2023; 2) allowed the debtor to file evidence in support of her motion by June 12, 2023; and 3) required opposing parties to file opposition no later than June 13, 2023. Order, ECF No. 10.

The debtor has not filed any additional evidence in support of her motion. No party has filed any opposition to the motion.

### **EXTENSION OF THE STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the

dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

## **DISCUSSION**

The debtor's previously filed bankruptcy case, 2023-20846, E.D. Cal. (2023) was dismissed because the debtor failed to pay the required filing fee installment. Order, ECF No. 25.

The debtor indicated in her motion that she intends to hire an attorney to represent her in this case which will allow her to complete the plan. Motion, ECF No. 9. However, no substitution of attorneys has been filed, and the debtor has provided no evidence that she has retained counsel to represent her in this proceeding.

A review of the plan filed in the instant case shows that the debtor has failed to designate a percentage to be paid to unsecured creditors. Thus, the plan is defective on its face. Moreover, the plan in the previous case sought to value the collateral of Santander Consumer USA, Inc. The secured creditor objected to this treatment in the plan contending that its collateral could not be valued, and a lesser amount paid on the note as 11 U.S.C. § 506 was inapplicable. The court notes the plan in the instant case also proposes to value the creditor's collateral. Chapter 13 Plan, Section 3.08, ECF No. 7.

The debtor has offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). The motion does not point to any substantial change in the personal and financial affairs of the debtor since the dismissal of the previous case. The debtor has failed to provide any evidence in support of the motion. The motion will be denied.

## **CIVIL MINUTE ORDER**

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

The debtor's motion to extend the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

23. [23-20656](#)-A-13     **IN RE: BARRY/CINDY TAYLOR**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
4-25-2023    [\[15\]](#)

SETH HANSON/ATTY. FOR DBT.

### **Tentative Ruling**

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

**Notice:** Continued from May 31, 2023

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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

The hearing on the trustee's objection to confirmation was continued to allow the debtor to provide proof of social security information. The trustee was ordered to file a status report. The trustee filed a status report indicating that the required social security information had been provided but that an additional issue had arisen. The plan payments are now delinquent. Status Report, ECF No. 22.

### **PLAN FEASIBILITY**

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



N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.").” *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff’d*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$74.20. The plan cannot be confirmed if the plan payments are not current.

#### **CIVIL MINUTE ORDER**

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

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

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

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

24. [23-20956](#)-A-13     **IN RE: JUANETHEL ALEXANDER**  
[MET-4](#)

MOTION TO EMPLOY CENTURY 21 EPIC AS REALTOR(S)  
6-5-2023    [\[63\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

**No Ruling**

25. [19-23960](#)-A-13     **IN RE: TODD BISHOP**  
[DWL-1](#)

MOTION TO INCUR DEBT  
5-22-2023    [\[56\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Approve New Debt

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order allowing him to obtain a second deed of trust against real property. The Chapter 13 trustee opposes the motion. The court need not reach the issues raised in the trustee's opposition and will deny the motion without prejudice for the following reasons.

### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users *shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.*

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### The Certificate of Service is Unsigned

Counsel for the debtor used the court's mandatory certificate of service form. In serving the motion counsel also used the services of a third-party servicer. However, the form is not signed by either counsel for the debtor or the third-party servicer. See Certificate of Service, page 4, ECF NO. 61.

Instead of signing the form as required, debtor's counsel and the third-party servicer have each attached separate declarations which purport to attest to service of the motion.

#### Attachment - Debtor's Counsel

The first attachment to the Certificate of Service is a document signed by debtor's counsel.

A statement at the bottom of the attachment signed by debtor's counsel indicates as follows: "This is a receipt for mailing, not a legal pleading for filing with the Court System." *Id.*

If the attachment containing counsel's signature is not a legal pleading, then it does not have any legal force or effect. Thus, it appears to be a document filed for the purpose of misleading the court that a "legal pleading" has been filed attesting to proper service of the motion.

The attachment further states: "A copy of the declaration of service is attached hereto and incorporated as if fully set forth herein." The court does not understand what counsel means by "as if fully set forth herein". Counsel purports to say that a declaration of testimony is incorporated into his receipt for mailing which in turn expressly states that it is "not a legal pleading for filing with the court." As such there is no declaration under penalty of perjury, which is required for the proper attestation of service.

#### Attachment - Third Party Servicer

The second attachment to the certificate of service is signed by the third-party servicer.

As with the statement filed by counsel, this attachment contains a statement which expressly states: "This is a receipt for mailing, not a legal pleading for filing with the Court System." *Id.* If the attachment containing the servicer's signature is not a legal pleading, then it does not have any legal force or effect. Thus, it too appears to be a document filed for the purpose of misleading the court that a "legal pleading" has been filed attesting to proper service of the motion.

Additionally, the servicer's attachment containing the oath attesting to service of the motion is signed according to the servicer's "information and belief". If the statement is signed according to the servicer's information and belief then it is not a proper attestation under penalty of perjury regarding service of the motion.

#### Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or

within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to properly use and complete Form EDC 7-005 in memorializing service in this matter. 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 incur debt 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.

26. [23-21263](#)-A-13     **IN RE: PHILIP LEONE**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-22-2023    [\[16\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
FIRST TECH FEDERAL CREDIT UNION VS.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2022 Nissan Altima

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).

Movant, First Tech Federal Credit Union seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion contends

that the debtor voluntarily surrendered the subject vehicle to the movant prior to the filing of the petition and the movant is currently in possession of the subject vehicle. Motion, 2:4-6, ECF No. 16. The motion also contends that the debtor is delinquent in payments pre-petition and that it has not received payments since the filing of the petition on April 19, 2023. *Id.*, 2:7-8. Finally, the movant contends that there is no equity in the subject vehicle as its value is \$30,675 and a balance of \$45,952.30 is owed on the note secured by the subject vehicle. *Id.*, 2:13-17.

The Chapter 13 trustee has filed a response which states: 1) while the plan payments are current, the trustee has not disbursed payments to the movant as the unconfirmed Chapter 13 Plan does not provide for payment to the creditor; 2) the debtor has listed the entire balance due to the movant in Schedule E/F; and 3) the claim is provided for in the percentage to be paid to the unsecured creditors in Class 7. Response, ECF No. 24.

### **RELIEF FROM STAY**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan.

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

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

### **CIVIL MINUTE ORDER**

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

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

First Tech Federal Credit Union's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as a 2022 Nissan Altima, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing

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

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

27. [22-21365](#)-A-13     **IN RE: RAFAEL/VIANA LARA**  
[KB-6](#)

MOTION TO CONFIRM PLAN  
5-16-2023    [\[232\]](#)

KIM BEATON/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, creditors

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Petition Filed:** May 31, 2022

The debtors seek confirmation of their Chapter 13 Plan. The court notes that this case was filed May 31, 2022, over one year ago and the debtors have not yet confirmed a Chapter 13 plan. It is the court's expectation that the Chapter 13 trustee will monitor cases which have not achieved confirmation, and bring an appropriate motion to dismiss. The court also notes that this remedy is similarly available to creditors which contend they have been prejudiced by a debtor's failure to confirm a plan. 11 U.S.C. § 1307(c)(1).

The motion will be denied without prejudice for the following reasons.

### **SERVICE**

As a contested matter, a motion to confirm a Chapter 13 plan is governed by Federal Rule of Bankruptcy Procedure 9014. Service of the motion was insufficient.

No certificate of service was filed in this matter as required by LBR 9014-1(e). Accordingly, the court will deny the motion.

The court notes that multiple motions filed by the debtors have been denied for this same reason, most recently a motion to value collateral filed May 16, 2023, ECF No. 235.

### **MOTION MUST BE SUPPORTED BY CREDIBLE EVIDENCE**

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c) (4).

LBR 9014-1(d) (3) (D).

The motion to confirm plan is unsupported by any evidence. There is no declaration filed in support of the motion as required by LBR 9014-1. The court has previously denied other motions filed by counsel for this same deficiency. See Civil Minutes, ECF Nos. 103, 178, 258.

### **VIOLATION OF LBR 9014-1(c)**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c) (3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in previous motions filed by the debtors: 1) a previous objection to claim, filed January 15, 2023, ECF No. 186; and 2) a motion to value collateral filed on May 16, 2023, ECF No. 235.

The court has previously denied other motions filed by counsel, in part for failure to properly designate a docket control number to her motion. See ECF Nos. 128, 129, 130, 178, 258.

### **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 motion is denied for the procedural reasons discussed above in this ruling the court need not reach the

issues presented by the Chapter 13 trustee, or creditor Bosco Credit, LLC, in opposition to this motion.

#### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Value Collateral 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.

28. [23-21165](#)-A-13      **IN RE: MIRIAM AGUILA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
5-24-2023    [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

#### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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

#### **11 U.S.C. § 1325(b)**

The trustee contends the plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b). Specifically, the trustee disputes the income indicated by the debtor in Form 122(C) as the trustee has received pay advices from the debtor which conflict with the information in the form. This in turn impacts the calculation of the commitment



period which the debtor has indicated is 36 months. The trustee's information, however, shows that the commitment period should be 60 months.

#### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The debtor has proposed a plan term of 36 months. The trustee calculates that the plan will take 50 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1).

The court will deny confirmation of the debtor's plan.

#### **CIVIL MINUTE ORDER**

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

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

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

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

29. [23-21067](#)-A-13     **IN RE: SHANNON BUELNA**  
[TLA-1](#)

MOTION TO CONFIRM PLAN  
5-12-2023    [\[15\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed May 12, 2023

### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 19. The plan is supported by Schedules I and J filed at the inception of the case. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 21.

### **CHAPTER 13 PLAN 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).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

30. [22-21973](#)-A-13     **IN RE: BEATRICE EATON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
5-22-2023    [\[60\]](#)

MARC VOISENAT/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 10, 2023, at 11:00 a.m.

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to prosecute the Chapter 13 case and confirm a plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is July 10, 2023, at 11:00 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 10, 2023, at 11:00 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.

31. [22-22775](#)-A-13     **IN RE: ORRIN MARKELL**  
[TBG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE BANKRUPTCY  
GROUP, P.C. DEBTORS ATTORNEY(S)  
5-24-2023    [\[89\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute order

**Compensation Allowed:**    \$15,340.00  
**Reimbursement of Expenses:** \$296.24.

In this Chapter 13 case, The Bankruptcy Law Group, P.C., has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$15,340.00 in compensation and reimbursement of expenses in the amount of \$296.24.

The Chapter 13 trustee opposes the motion contending that the confirmed Chapter 13 Plan does not provide adequately for any payment of compensation. The confirmed plan provides \$0 per month for payment of the requested administrative expense. The trustee does not appear to oppose the amount of compensation requested or the request for reimbursement of expenses.

The trustee's opposition does not preclude the allowance of attorney fees under 11 U.S.C. §§ 329, 330. However, the payment of allowed compensation under the plan is an issue which should have been raised by the trustee at confirmation. In this case the plan provides for \$0 to be paid to the attorney. The court orders that payments be made through the plan.

To receive payment for the compensation allowed the debtor must modify the plan. This may not be accomplished by modifying the order confirming the plan as proposed by the debtor, as the creditors are entitled to notice of the change in the plan terms contemplated by the monthly payment of compensation. Thus, the proper remedy in this case is not opposition to the motion for allowance of compensation, but rather modification of the plan.

### **COMPENSATION AND EXPENSES**

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual,

necessary expenses.” 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

#### **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 Bankruptcy Law Group, P.C.’s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$15,340.00 and reimbursement of expenses in the amount of \$296.24. The aggregate allowed amount equals \$15,636.24. As of the date of the application, the applicant held a retainer in the amount of \$3,500.00. The amount of \$12,136.24 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

32. [23-20475](#)-A-13     **IN RE: FRANCIS/JENNIFER WHALEY**  
[DPC-2](#)

MOTION TO DISMISS CASE  
5-30-2023    [\[30\]](#)

BRUCE DWIGGINS/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 13, 2023

**Opposition Filed:** Unopposed

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

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$1,530.00 with a further payment of \$510.00 due June 25, 2023.

Additionally, the trustee moves for dismissal as the debtors have failed to file an amended plan following a hearing on April 18, 2023, where the court sustained objections to the previously filed plan.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

33. [23-20978](#)-A-13     **IN RE: SUZZETTEE LAWSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
5-24-2023    [\[17\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

#### **Tentative Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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

## **REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Ethan Conrad's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

## **PLAN FEASIBILITY**

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

The trustee contends the plan is not feasible as it does not provide for the claim of Truist Bank. The creditor filed a secured claim in the amount of \$14,503.51. Claim No. 6. Whether the debtor intends to pay the obligation, and how the debtor intends to pay this obligation directly impacts the feasibility of the proposed plan.

Additionally, the debtor testified at the meeting of creditors that she is not current on her HOA dues. The proposed plan calls for mortgage payments in Class 4. The debtor's ability to make contractual payments due each month regarding the real property directly impacts the feasibility of the proposed plan.

The court will sustain the objection.

## **CIVIL MINUTE ORDER**

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



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

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

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

34. [19-21082](#)-A-13     **IN RE: RONDELL DANIEL**  
[DPC-4](#)

MOTION TO DISMISS CASE  
5-22-2023    [[166](#)]

PETER MACALUSO/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**No Ruling**

35. [19-21082](#)-A-13     **IN RE: RONDELL DANIEL**  
[DPC-4](#)

MOTION TO DISMISS CASE  
5-22-2023    [[170](#)]

PETER MACALUSO/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**Final Ruling**

This motion is a duplicate filing of the trustee's motion to dismiss (DPC-4). Accordingly, it will be removed from the calendar.

36. [21-22486](#)-A-13     **IN RE: ANNA MURPHY**  
[WSS-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-22-2023    [[277](#)]

PETER MACALUSO/ATTY. FOR DBT.  
W. SHUMWAY/ATTY. FOR MV.  
CHARLEY SMITH VS.

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** Continued from May 31, 2023

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 6020 McCourtney Road, Lincoln, California

Movant, Charley Smith Family Trust, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The movant contends that relief is warranted under 11 U.S.C. § 362(d)(1) because: 1) the debtor has made no adequate protection payments to the movant since November 2022; and 2) the debtor has not achieved confirmation of a Chapter 13 plan.

The debtor opposes the motion.

### **EVIDENCE**

#### Smith's Motion

In support of the motion Charley Smith (Smith) filed a declaration which stated that the debtor had made no adequate protection payments to the movant since November 2022. Declaration, ECF No. 281. The declaration did not state the amount of the past due payments.

A Relief From Stay Information Sheet was also filed in support of the motion which indicates that the debtor had missed 4 post-petition payments totaling \$9,334.40. However, the information sheet is not admissible evidence. When the motion was filed the court had no admissible evidence regarding the actual amounts due to the movant.

#### Debtor Opposition

The debtor opposed the motion and filed a declaration in support of her opposition. The debtor stated:

The mortgage payments of \$2,366.00, which are current at this time with the delivery of \$7,100.00, which is being personally delivered to Creditor, Charley Smith.

Declaration, 2:3-5, ECF No. 288.

The declaration, which is dated April 3, 2023, and was filed April 17, 2023, does not state that the payment had already been delivered to the movant. It stated that it "is being personally delivered", which implies that it had not yet been delivered.

#### Smith Reply

On April 25, 2023, Smith filed a reply which consisted solely of an unsworn statement by his attorney. The reply stated that the movant had not received adequate protection payments since November 2022.

#### Initial Hearing

On May 2, 2023, at the initial hearing on this matter, the court ordered as follows:

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing, *the parties shall file a joint status report.*

IT IS FURTHER ORDERED that also, not later than 14 days prior to the continued hearing, *the debtor shall file and serve evidence of the adequate protection payment.*

Order, ECF No. 297 (emphasis added).

The hearing was continued to May 31, 2023, because the actual amount owed, and the amounts paid, had not been effectively presented by the parties. Consequently, the court was unable to determine whether the adequate protection payments had been fully paid.

#### Debtor's Status Report

On May 17, 2023, the debtor filed a status report. The report consisted of an unsworn statement by debtor's counsel and was not accompanied by any admissible evidence. The report stated in part as follows:

Debtor disputes being in arrears as the Creditor's son, Damian has collected \$7,100.00, in the form of a cashier's check on April 4, 2023.

Debtor has also has (sic) mailed the May 2023 payment, on May 16, 2023, in the form of a cashier's check, in the amount of \$2,366.60, for the Monthly Option Payment due.

Status Report, 2:4-9, ECF No. 298.

The moving party failed to file a report as ordered.

### Continued Hearing - May 31, 2023

At the hearing on May 31, 2023, the court was unable to determine the amount of adequate protection payments which had been paid and how much, if any, was still owed to Smith. Consequently, the court continued the hearing on this motion to June 27, 2023, and issued the following order:

IT IS FURTHER ORDERED that not later than 14 days from the date of this hearing, *Mr. Macaluso and Mr. Shumway shall meet, confer, and file a joint status report addressing any remaining issues.* Mr. Macaluso and Mr. Shumway shall exchange documents concerning debtor's payments and any accounting.

Order, ECF No. 302 (emphasis added).

### Debtor's Status Report

On June 14, 2023, the debtor filed a further status report. The report consists of an unsworn statement by debtor's counsel. The report indicates that counsel was unable to reach opposing counsel to file a joint status report as ordered. The report further stated that the debtor disputed the alleged delinquency in adequate protection payments as she has tendered the amount of \$7,100.00. Status Report, ECF No. 303.

The debtor's status report was not accompanied by any admissible evidence regarding payments tendered to the movant.

### Smith's Status Report

On June 16, 2023, Smith filed a status report. The report was not a joint status report as ordered, neither was it timely filed. The report was due 14 days prior to the hearing on June 27, 2023. Counsel failed to request additional time to file the status report. As with the debtor's status reports, Smith's report makes allegations regarding payments due, and payments received, without any admissible evidence. Status Report, 1:21-27, ECF No. 305. The report itself consists of an unsworn statement by Smith's counsel.

Accompanying the status reports are exhibits consisting of several broker price opinion's regarding the value of the subject property and a copy of the joint status report which the parties drafted in response to the court's initial order on May 2, 2023.

### Smith's Supplemental Status Report

On June 21, 2023, Smith filed a further status report. Status Report, ECF No. 308. The report states as follows: "Movant's attorney just received a cashier's check in the amount of \$2,366.60 in the mail from the Debtor. The cashier's check

bears the notation: "May 2023 Mortgage."" *Id.*, 1:16-19. The report is accompanied by a copy of the check.

The court is still unable to determine whether the adequate protection payments are current.

#### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

As previously discussed, neither the moving party nor the debtor has provided sufficient evidence in this matter for the court to determine: 1) the amount due to Smith in adequate protection payments; and 2) excepting one payment in the amount of \$2,366.60 the amounts paid to Smith for adequate protection payments since November 2023. The motion has been continued twice and the court will not continue the matter again.

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:

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

Charley Smith Trust's motion for relief from the automatic stay has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice.

37. [23-20287](#)-A-13     **IN RE: GREGORY JACKSON**  
[DPC-3](#)

MOTION TO DISMISS CASE  
5-22-2023    [\[57\]](#)

ERIC SCHWAB/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 13, 2023

**Opposition Filed:** Unopposed

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

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$5,286.00 with two further payments of \$1,762.00, due by June 25, 2023.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

## **CIVIL MINUTE ORDER**

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

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

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

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

38. [22-21690](#)-A-13      **IN RE: TRACI HAMILTON**  
[DPC-3](#)

MOTION TO DISMISS CASE  
5-30-2023    [\[110\]](#)

RICHARD JARE/ATTY. FOR DBT.

### **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 13, 2023

**Opposition Filed:** June 13, 2023 - timely

**Amended Plan:** not filed

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$1,000.00, with an additional payment of \$500.00 due by June 25, 2023. The trustee further argues for dismissal as the debtor has failed to file an amended plan after the denied the debtor's most recent motion to confirm a plan on March 23, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 119, 120. The declaration states that the debtor's child is a heart transplant candidate, and that related hospitalizations have created the need for the debtor to take time off from work with resulting fluctuations in the debtor's

income. Declaration, ECF No. 120. The declaration further indicates that the debtor intends to make up the payments to the trustee. An amended chapter 13 plan has not yet 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 an amended plan on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency or a modified plan.

Alternatively, given the extraordinary circumstances in this case the court will consider a conditional order.

#### **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 debtors have failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.



39. [22-21690](#)-A-13     **IN RE: TRACI HAMILTON**  
[EAT-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-19-2023    [\[104\]](#)

RICHARD JARE/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.  
U.S. BANK TRUST NATIONAL ASSOCIATION VS.; RESPONSIVE PLEADING

**No Ruling**

40. [20-24698](#)-A-13     **IN RE: JOHN/VERLYNDA KAZE**  
[BB-2](#)

MOTION FOR HARDSHIP DISCHARGE  
5-25-2023    [\[45\]](#)

BONNIE BAKER/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Hardship Discharge

**Notice:** LBR 9014-1(f) (1)

**Disposition:** Continued to August 8, 2023, at 9:00 a.m.

**Order:** Civil minute order

This is the debtor's motion for hardship discharge. The trustee has filed opposition to the motion, requesting additional evidence from the debtor, ECF No. 49.

The hearing on this motion will be continued to allow the debtor to file additional evidence and argument in response to the trustee's opposition.

The evidentiary record in this matter will be closed after the date ordered for filing of the trustee's reply. The court may rule on this motion without further notice or hearing.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to August 8, 2023, at 9:00 a.m. No later than July 10, 2023, the debtor shall file and serve evidence and argument, if any, in response to the trustee's opposition.

IT IS FURTHER ORDERED that no later than July 17, 2023, the trustee shall file and serve further reply, if any, to the debtor's motion. The evidentiary record will be closed after July 17, 2023.

41. [22-22698](#)-A-13     **IN RE: NICKOLAS GARCIA AND JACK TYLER**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
4-26-2023    [\[52\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from May 31, 2023

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued from May 31, 2023, to allow for hearing on the debtor's motion to confirm the chapter 13 plan. The motion to confirm plan, (GEL-4) has been granted.

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

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is denied.

42. [22-22698](#)-A-13     **IN RE: NICKOLAS GARCIA AND JACK TYLER**  
[GEL-4](#)

MOTION TO CONFIRM PLAN  
5-16-2023    [\[59\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed May 16, 2023

### **DEFAULT OF RESPONDENT**

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

The debtors seek an order confirmation the First Amended Chapter 13 Plan, ECF No. 61. Feasibility of the plan is supported by Amended Schedules I and J filed May 16, 2023, ECF No. 64.

The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 68.

### **CHAPTER 13 PLAN 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).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

43. [23-21497](#)-A-13     **IN RE: CHRISTOPHER HIGGINBOTHAM**  
[DWL-2](#)

MOTION TO EXTEND AUTOMATIC STAY  
6-12-2023    [\[21\]](#)

PATRICIA WILSON/ATTY. FOR DBT

### **Final Ruling**

**Motion:** Extend Stay  
**Disposition:** Denied without prejudice  
**Order:** Civil minute order

The debtor seeks an order extending the automatic stay under 11 U.S.C. § 362(c) (3).

### **NO CERTIFICATE OF SERVICE**

There is no evidence that any creditor in this case has received notice of the motion or the hearing. Because creditors do not have notice of the hearing, due process has not been satisfied given that creditors have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Creditors will be unable to present their objections at a hearing of which they have no notice.

Here, service of the motion was insufficient because a certificate of service evidencing service of the notice and the motion was never filed.

The court will deny the motion without prejudice on grounds of insufficient service of process.

### **CIVIL MINUTE ORDER**

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

The debtor's motion to extend the automatic stay 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.