

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 29, 2025 at 1:30 p.m.

1. [25-20717-E-13](#) CASEY WOODBURY
[KSH-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-27-25 [\[61\]](#)

WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 27, 2025. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxxxx.

Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf for CSMC 2018-RPL12 Trust, by and through its servicing agent Rushmore Servicing, as its attorney in fact ("Movant") seeks relief from the automatic stay with respect to Casey Woodbury's ("Debtor") real property commonly known as 961 Silverton Cir, Lincoln, CA 95648-8000 ("Property"). Movant has provided the Declaration of Israel Herrera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 63.

Movant argues Debtor has not made three post-petition payments, with a total of \$8,325.84 in post-petition payments past due. Declaration ¶ 12, Docket 63.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on July 15, 2025. Docket 72. Trustee states the proposed Plan does not offer Movant any funds for the post-petition ongoing mortgage payments. This is a liquidation Plan with the Property to be sold in six months to pay Movant in full. The Plan is in month five.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 15, 2025. Docket 74. Debtor asserts that a broker has been employed by order of the court to market and sell the Property. Debtor states he has a potential buyer lined up and requests the court deny or continue the hearing to August 26, 2025 at 2:00 p.m.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$544,136.70 (POC 1-1), while the value of the Property is determined to be \$677,100, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 3, Docket 16.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

In this case, Debtor is proposing to liquidate the real property and provides evidence that he has engaged a potential buyer. Decl. ¶ 9, Docket 76. Moreover, it appears Debtor has an equity cushion of approximately \$132,000. The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). 20% in this case would be \$135,420.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

Information About Sale of the Property

The court authorized the Debtor to employ a real estate broker to sell the property by an Order entered on June 16, 2025. Order; Dckt. 60. Debtor testifies that the Property was listed, under the updated Listing Agreement (with the same Broker as authorized by the court) on July 14, 2025. Dec., ¶ 8. Debtor further testifies that he believes that a potential buyer has been identified and they are negotiating the terms of a purchase contract. *Id.*; ¶ 9.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee on Behalf for CSMC 2018-RPL12 Trust, by and through its servicing agent Rushmore Servicing, as its attorney in fact (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on June 17, 2025. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Confirm Absence of the Stay is granted, and relief from the stay is further granted pursuant to 11 U.S.C. § 362(d)(4).</p>

Creditor, U.S. Bank National Trust Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2007-12N (“Movant”), moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(c)(4). Movant seeks confirmation from the court that no automatic stay in effect on real property commonly known as 3070 Snowbird Drive, Chico, CA 95973 (“Property”) is not in effect because this is Debtor’s third case in the same year with the previous two cases both being dismissed. Mot. 4:7-10, Docket 34.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(4) as well based on a series of cases being filed that affect the Property. *Id.* at 4:14-15. Movant also seeks relief from the co-debtor stay of 11 U.S.C. § 1301(a) in regard to John R. Melms, co-borrower on the note and deed of trust. *Id.* at 4:11-13.

The Chapter 13 Trustee, David Cusick, filed a Non-Opposition on July 15, 2025. Docket 44. Trustee informs the court Debtor is delinquent in plan payments.

DISCUSSION

11 U.S.C. § 362(c)(4) states (emphasis added):

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

...

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if **2 or more single or joint cases of the debtor were pending within the previous year but were dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), **the stay under subsection (a) shall not go into effect upon the filing of the later case**; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. . .

The court, upon request of a party in interest, can issue an order finding there is no automatic stay in effect in a case pursuant to 11 U.S.C. § 362(j).

Debtor has had the following cases dismissed within the past year:

- A. Case No. 24-21153
 - 1. Filed: March 25, 2024
 - 2. Chapter 13
 - 3. Dismissal Date: November 23, 2024
 - 4. Reason for Dismissal: delinquency in plan payments and failure to confirm a plan;
- B. Case No. 25-20845
 - 1. Filed: February 26, 2025
 - 2. Chapter 13
 - 3. Dismissal Date: March 10, 2025
 - 4. Reason for Dismissal: failure to timely file documents.

Therefore, no automatic stay has gone into effect regarding Debtor's third case within the past year, this current case, which was filed on April 23, 2025.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 15, 2025. Docket 46. Debtor acknowledges her filing history in the Opposition. However, Debtor states the court should deny the Motion because it appears Movant is not the actual holder of the deed of trust.

This argument misses the mark. The Motion seeks to determine there is no stay in effect pursuant to 11 U.S.C. § 362(c)(4) and (j). Any allegations that Movant is not the "proper party" do not change the fact that 11 U.S.C. § 362(c)(4) is in effect in this case. There is no Motion to Impose the Stay on file.

In stating that the Movant, U.S. Bank National Trust Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2007-12N, is not the proper party, it is alleged that “IndyMac Bank” was the “transferee.” No legal analysis or evidence is provided in support of this contention.

Filed as Exhibit 2 by Movant is a copy of the Deed of Trust which is asserted to encumber the Property. Dckt. 29 at 8. The Lender is identified as IndyMac Bank, F.S.B., with “MERS” interlineated therein. *Id.*; Deed of Trust, ¶ C. Then “MERS,” Mortgage Electronic Registration Systems, Inc. is identified as the beneficiary under the Deed of Trust, as the nominee for the Lender and the Lender’s successors and assigns. *Id.*; ¶ E.

Exhibit 3 is identified as assignments of the Deed of Trust. The first is an assignment in Exhibit 3 is dated July 30, 2013, with a County Recorder date stamp of August 5, 2013, stating that the Deed of Trust is assigned to U.S. Bank National Trust Association, as trustee for LXS Trust 2007-12N. MERS is the entity assigning the Deed of Trust. Dckt. 39 at 27.

The second assignment of the Deed of Trust is dated September 11, 2015, with a County Recorder Stamp date of September 23, 2015, stating that MERS is assigning the Deed of Trust to U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass Through Certificates, Series 2007-12N. *Id.* at 29.

Debtor also argues that “this is a case of panic” and 11 U.S.C. § 362(d)(4) relief is not warranted. Opp’n 2:24-26. This argument is discussed below.

Debtor further argues that co-debtor John Melms has not filed a bankruptcy case in the prior two years. Opp’n 2:7-5. Debtor does not provide any legal argument as to the effect of having a person who has not filed bankruptcy in the prior two years to the current case alters the application of 11 U.S.C. § 362(c)(4) and the express provision that no automatic stay pursuant to 11 U.S.C. § 362(a) goes into effect in the subsequent case, now before the court, that is filed.

No Declaration or other evidence is submitted in support of the Opposition.

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor’s inability to reorganize, and unnecessary delays by serial filings. *Id.* In this case, there have been two bankruptcy cases affecting the Property in the two year. *See* Case nos. 24-21153 and 25-20845.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

Here, Debtor asserts the cases were not filed as part of a scheme to hinder or delay but were filed in a panic.

At the hearing, **XXXXXXX**

~~With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.~~

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. ~~The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the series of unsuccessful cases being filed that result in dismissal.~~

~~The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.~~

~~————— In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.~~

Co-Debtor Stay

Congress provides in 11 U.S.C. § 1301 for a co-nonbankruptcy debtor stay to arise when a Chapter 13 Case is filed. Statutorily, this co-nondebtor stay is not tied to 11 U.S.C. § 362(a).

The co-nonbankruptcy debtor is identified as John Melms. Opp'n, ¶ A. 6.; Dckt. 46. On the Statement of Financial Affairs the Debtor states that she is not married. Stmt Fin Aff, ¶ 1; Dckt. 17 at 25.

On Schedule A/B Debtor states that is owns 100% of the interest in the Property. *Id.*; Sch A/B, ¶ 1.2. On Schedule H Debtor lists John Melms as a do-debtor for the debt secured by the Virage Lane, Chico, California property. Sch. H and Sch D, ¶ 2.5; *Id.* at 19 and 14.

Debtor does not list any co-debtors for the obligation secured by the Property that is the subject of this Motion.

However, in reviewing the Note filed as Exhibit 1 by Creditor, the Note is signed by John R. Melms and Patricia Melms. Dckt. 39 at 7. The signature for John Melms is by Patricia Melms as John Melms attorney in fact. *Id.*

The Note is also endorsed in blank by a vice president of IndyMac Bank, F.S.B., which renders the Note enforceable by any bearer of the of the Note. See, 4 Witkin on California Law, Neg. Instruments § 23.

~~_____ Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant would be unable to exercise any of its available remedies if the co-debtor stay were to stay in effect.~~

**Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, due to Debtor's repeated bankruptcy filings and the long-standing default, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:16-18.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Absence of the Automatic Stay filed by Creditor U.S. Bank National Trust Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2007-12N ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the relief is granted pursuant to the Motion, the court confirming that there is no automatic stay in effect in this case, case no. 25-21925, pursuant to 11 U.S.C. § 362(c)(4).

~~**IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:~~

~~_____ "If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order"~~

by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

~~**IT IS FURTHER ORDERED**~~ that the request to terminate the co-debtor stay of John R. Melms of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

3. 24-24263 -E-13 DPC-1	EMANUEL / LENIECE JOHNSON Gary Fraley	CONTINUED MOTION TO DISMISS CASE 3-13-25 [18]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXXXXX.

July 29, 2025 Hearing

The court continued the hearing as counsel for the Trustee reported that Debtor's counsel has reported to Trustee's counsel that both of Debtor's attorneys are out with COVID and could not attend the July 10, 2025 hearing. Counsel for the Trustee requested that the hearing be continued for a couple of weeks. A review of the Docket on July 26, 2025 reveals nothing new has been filed with the court.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Emanuel Wesley Johnson and Leniece Chante Johnson (“Debtor”), is delinquent \$4,165.00 in plan payments. Debtor will need to have paid \$6,249.00 to become current by the hearing date. Mot. 1:18-23, Docket 18.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 20.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on April 2, 2025. Response, Docket 22; Decl., Docket 23. Debtor states they have diligently made all required Chapter 13 plan payments since the commencement of their case. Response 2:2-4, Docket 22. According to Debtor, upon learning of the payment discrepancy from Trustee’s Motion to Dismiss, Debtor verified with the money order issuer that the uncredited payments were not cashed. *Id.* at 19-22. As a result, Debtor requests the court to allow a brief extension for the re-issuance process for the payments to be completed. *Id.* at 24-25.

DISCUSSION

Delinquent

Debtor is \$4,165.00 delinquent in plan payments, which represents multiple months of the \$2,084.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor’s lack of payment appears to be a mistake in processing money orders and should be rectified quickly.

At the hearing, counsel for the Trustee reported that the Debtor is still delinquent \$4,165.00, and agreed to continue the hearing to allow Debtor to cure the default.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on June 4, 2025.

June 4, 2025 Hearing

The court continued the hearing to allow Debtor to cure the default. A review of the Docket on May 29, 2025 reveals nothing new has been filed in the case.

At the hearing, counsel for the Trustee reported that a payment of \$3,980 in payments in May, however there are still two payments in default, which total \$4,357.00.

Counsel for Debtor reported that he believed all payments had been made, verifying online. The Trustee agreed to continue the hearing to allow the Parties to address this apparent discrepancy.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on July 9, 2025.

July 9, 2025 Hearing

The court continued the hearing because Debtor argued all payments were made and the case is current, and Trustee argued there was a delinquency on file in the amount of \$4,357.00. The court continued the hearing to allow the Parties to address this apparent discrepancy. A review of the Docket on July 1, 2025 reveals nothing new has been filed with the court.

At the hearing, counsel for the Trustee reported that Debtor's counsel has reported to Trustee's counsel that both of Debtor's attorneys are out with COVID and could not attend the July 10, 2025 hearing.

Counsel for the Trustee requested that the hearing be continued for a couple of weeks.

The hearing on the Motion to Dismiss is continued to 1:30 p.m. on July 29, 2025.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 23, 2025. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss or Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss or Convert is xxxxxxx.

July 29, 2025 Hearing

The court continued the hearing and ordered Debtor and her counsel to appear in person, there being issues in the case and Schedules not adequately addressed at the prior hearing. Order, Docket 57.

On July 1, 2025, the Debtor filed the 1ST Amended Plan and Motion to Confirm. Dckts. 52, 49. The 1ST Amended Plan provides for monthly Plan payments of \$5,500.00 for four months and then \$6,000 a month for the remaining fifty-six months. 1ST Amd Plan, §7, 2.01; Dckt. 52.

The Section 7 Nonstandard Provisions provides that adequate protection payments will be made on the Wilmington Savings Fund Society ("WSFS") secured claim while the Debtor seeks a loan modification. The adequate protection payment is set at \$2,500.00 a month. *Id.*; § 7.02.2. The 1ST Amended Plan contains the standard Ensminger Provisions for attempting a loan modification through a Chapter 13 Plan.

On Debtor's Amended Schedule J, there are no expenses for property insurance, property repairs, or property maintenance. Dckt. 54 at 3-4. Debtor provides for electricity and natural gas expenses of only \$200 a month for the properties located at Lake Tahoe, California. Debtor lists no expenses for vehicle registration, insurance, repairs or maintenance. *Id.*

Debtor also lists no expenses for State and Federal Income Taxes, Social Security and Medicare Taxes, and other self-employment taxes for her business that generates \$8,885.00 a month. See Amended Schedules I and J; *Id.* at 1-2 and 3-4.

Though the court addressed with counsel for the Debtor this obvious, gross inaccuracies at the July 9, 2025 hearing on the Motion to Dismiss, no further amended schedules to accurately state expenses have been filed.

At the hearing, **XXXXXXX**

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Anne Marie Weber (“Debtor”), is engaging in unreasonable delay that is prejudicial to creditors. Trustee, and Toyota Motor Credit, both objected to confirmation of the Debtor’s original Plan, and both objections were sustained at the hearing on May 6, 2025, (DN 38 & 39). The Debtor has failed to file an amended Plan and set it for confirmation. Mot. 1:26-2:2, Docket 40.
2. Trustee has not received business documents he has requested. *Id.* at 2:3-24.
3. Schedule J shows the Debtor budgets \$0.00 for utilities specifically water, sewer, garbage, cell phone, and internet services, which is not realistic. *Id.* at 2:25-3:5.
 - a. On May 8, 2025, Debtor filed an Amended Schedule I and J and has scheduled \$325 for utilities. Am. Schedule J at 4, Docket 35.
4. Trustee recommends conversion as it appears there is \$1,139,015 in non-exempt equity in assets in the case. *Id.* at 3:6-11.

Trustee submitted the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 42.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on June 26, 2025. Dockets 46, 47. Debtor states:

1. An Amended plan has been prepared and it will be set it for hearing on August 26, 2025. Resp. 1:20-21.
2. Debtor has provided the required business documents, which were delayed due to the nature of her business. *Id.* at 1:22-2:4.
3. Almost all of the debt is secured, so conversion would only benefit secured creditors. *Id.* at 2:7-8.

DISCUSSION

Debtor has responded to Trustee's areas of concern. Debtor states the following business documents have been sent to the Trustee:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

Moreover, Debtor states a Plan has been prepared and will be filed shortly, ameliorating another of Trustee's concerns.

On July 1, 2025, an Amended Chapter 13 Plan was filed. Dckt. 52. The court summarizes the basic terms of the Amended Plan as follows:

- A. The Plan shall be funded by the Debtor:
 - 1. \$5,500 a month for months 1-4 of the Plan, and
 - 2. \$6,000 a month for months 5-60 of the Plan.Amd. Plan, Section 7 Nonstandard Provisions, § 2.01; Dckt. 52.
- B. The Secured Claim of Wilmington Savings Fund Society ("WSFS"), shall be provided for with monthly adequate protection payments of \$2,500 until a consensual loan modification or relief from the automatic stay. (An Ensminger Provisions.) *Id.*; ¶ 7.02.1 -7.02.5.
- C. Class 2 secured claim payments are provided for, totaling \$2,795.65 month. *Id.*; Plan, ¶ 3.08.
- D. A 100% dividend for creditors holding general unsecured claims.

From the court's preliminary review, it appears that the Motion to Confirm (Dckt. 49) generally, in a summary way states grounds with particularity upon which relief is based.

Unfortunately, the Debtor's Declaration provides the Debtor's personal conclusions of law that Debtor seeks to state to the court. This includes:

- 5. I believe that the proposed 1st Amended Chapter 13 Plan, filed herewith, complies with all applicable laws and was filed in good faith. Unsecured creditors will receive at least what they would have received in a Chapter 7 liquidation.

Dec., ¶ 5; Dckt. 51. There is nothing in the Schedules to indicate how the Debtor has a knowledge of "all applicable laws" and the basis for stating her legal conclusions that the Plan "was filed in good faith."

Given that this court for 15 years has held that providing the court with mere conclusions of law and a person's finding of fact, as opposed to providing actual personal knowledge testimony is not sufficient evidence. Additionally, it puts into question all other information and statements made by the person under penalty of perjury whether they were based on actual knowledge, or merely signed because "If I Say This We Win!"

On May 8, 2025, Debtor filed Amended Schedules I and J. Dckt. 35. On Amended Schedule I Debtor states under penalty that she is employed. *Id.*; Sch. I, ¶ 1. However no employer is listed and the income from the employment is stated to be \$0.00. *Id.*

However, on Amended Schedule I Debtor states that she has Net Income from rental property or operating a business of \$8,885.00 a month. *Id.*; ¶ 8. Unfortunately, Debtor has not included with Amended Schedule I the required statement showing the gross receipts, ordinary and necessary business expenses, and how the total monthly Net Income is computed. *Id.* Debtor did not attach the requirement statement showing gross receipts, expenses, and computation of monthly Net Income to the Original Schedule I filed in this Case. Dckt. 1 at 31 *et seq.*

On Amended Schedule J Debtor lists having monthly expenses of (\$1,475) to be paid outside of the Plan. Dckt. 35 at 3-4. Though the proposed Amended Plan provides for making payments on the debt secured by Debtor's residence (a \$1MM property on Schedule A/B) at Kings Beach, California, a review of Amended Schedule J causes the following questions to arise:

- A. Debtor's Expenses for Repairs and Maintenance.....\$0.00
 - 1. It is unclear how a property located on Lake Tahoe, California, can have no repair or maintenance expenses through the snowy winters and warm summers.
- B. Electricity, Heat, Natural Gas.....(\$200)
- C. Food and Housekeeping Supplies.....(\$500)
 - 1. Assuming (\$75) a month for house keeping supplies, that leaves (\$425) a month for food.
 - a. In a 30 day month, there is \$4.72 per meal. Such amount appears to be unrealistically low for the Debtor to survive on for the next 5 years.
- D. Clothing, Laundry, and Dry Cleaning.....(\$25)
 - 1. It appears grossly unrealistic that over the next five years Debtor will spend only \$300 a year on clothing.
- E. Medical and Dental Expenses.....(\$25)
 - 1. It appears grossly unrealistic to state that Debtor would have only \$300 a year in over the counter medical expenses and co-payments over the next five years.

F. Insurance

1. Car insurance.....\$0.00
2. Health Insurance.....\$0.00

G. Gas, Maintenance, Registration for Vehicles.....\$500

1. On Schedule A/B Debtor lists owning a 2019 Toyota Tundra (80,000 miles), 2001 Chevy Truck (350,000 miles) and a 2004 Harley Fatboy (10,000 miles).
2. It appears highly questionable that fuel, maintenance, and registration expenses for the vehicles averages only \$500 a month.
3. According to Schedule J, all of the vehicles are uninsured.

H. Taxes.....\$0.00

1. No State or Federal Taxes are paid by Debtor. No Social Security, Medicare, or Unemployment Taxes are paid by Debtor.
 - a. No basis has been show that Debtor is exempt from State and Federal Taxes.

On Schedule A/B Debtor lists having 100% ownership interest of the following properties:

- A. Bend Avenue Property.....\$1,100,000 Value
- B. N. Lake Blvd Property.....\$ 587,000 Value
- C. Speckled Ave Property.....\$ 286,000 Value
- D. Jupiter (Lot) Property.....\$ 100,000 Value

Dckt. 1 at 10-11. No provision is made for the payment of any expenses, care, or maintenance of any of these Properties.

Also, no provision is made for payment of current property taxes on the above properties, with the exception of the Bend Avenue Property for which the tax payment may be in the monthly mortgage payment.

In the Amended Plan, provision is made for the Mortgage Claim secured by the Bend Avenue Property. Provision in Class 2 is made for payment of the delinquent property tax claims for the N. Lake Blvd, the Speckled Avenue, and the Jupiter Properties. Plan, ¶ 3.08; Dckt. 52. However, as noted above, no provision is made for paying the future property taxes for these three properties on Schedule J.

On the Petition, Debtor states that she is a sole proprietor and operates her business in Kings Beach, California. Petition, ¶ 12; Dckt. 1. On the Statement of Financial Affairs, Debtor lists her Gross

income from operating her business to have averaged \$4,177 a month, and for 2025 to have averaged \$50 a months. Stmt Fin Affairs, ¶ 4; Dckt. 1. Debtor also states having Gross rental income of \$3,133 a month in 2024, and \$3,133 a month in the first three months of 2025.

The Gross income stated by Debtor appears to be inconsistent with the monthly Net Income shown on Amended Schedule I.

Additionally, on her Statement of Currently Monthly Income, Debtor states that in the six full months before filing bankruptcy on March 11, 2025, Debtor's Gross business income was \$3,000 a month and that she had \$0.00 in ordinary and necessary business expenses during that six month period. Stmt Current Monthly Income, Part 1; Dckt. 1.

Debtor then states then having \$4,700 a month in Gross rental income in the six months prior to filing bankruptcy, but having \$0.00 in any expenses relating to the rental property. It is unclear how Debtor can make these statements under penalty of perjury.

On Schedule A/B the Debtor makes some statements under penalty of perjury that appear highly questionable:

- A. Electronics.....None
 - 1. Debtor states that she has no cell phone, no TV, no radio, no streaming device, no laptop, no computer, and no other electronic devices.
- B. Equipment for Sports or Hobby.....None
 - 1. Debtor, though living on Lake Tahoe has no sporting equipment, no ski equipment, nothing for the beach, or other outdoor or indoor activities.
- C. Clothing.....None
 - 1. It is unclear how Debtor has no clothing, no shoes, no coats, or other necessary clothing to function in society and business.
- D. Jewelry.....None
 - 1. Again, it is unclear how Debtor has no rings, necklaces, watches, pins, or other jewelry.

Sch. A/B; Dckt. 1 at 13-14.

Debtor lists having a Sole Proprietorship, Pistol Annie's, which includes inventory, equipment and horse trailers, but none of such assets owned by Debtor are listed on Schedule A/B. It appears that Debtor may be treating her sole proprietorship as a separate legal entity, rather than her choosing to operate a business under that fictitious name.

Debtor also states that she has no retirement or pension accounts, no licenses (such as a business licence), and no insurance policies. *Id.*, at 15-16.

On Schedule C, Debtor claims a homestead exemption in the Bend Avenue Property, the Lake Blvd Property, and the Speckled Avenue Property. Sch. C; Dckt. 1 at 19.

While filing a Chapter 13 Plan and a Motion to Confirm, the information in this Bankruptcy Case does not show that Debtor can diligently prosecute this Case in good faith.

Debtor has twice failed to provide the required income and expense information for her sole proprietorship business and her real estate rental properties. The court and parties in interest have no idea what the actual Gross income and the Necessary expenses are for any of these. It may be that Debtor's "living expenses" are so low because the sole proprietorship and rental expenses include providing the Debtor with food, clothing, jewelry, and the like.

While the Debtor now states that business and financial information has been provided to the Trustee, such continues to be kept secret from the court and other parties in interest due to Debtor's failure to provide such gross income and expense information as required for sole proprietorship and rental properties on Schedule I.

At the hearing, counsel for the Debtor attempted to address these informational shortcomings. However, the court did not find these responses to be sufficient or consistent with the duties and obligations of the Debtor and counsel for the Debtor.

However, Debtor's counsel being an experienced attorney, his focus and work with his client may result in this case being salvaged and a Chapter 13 Plan confirmed, rather than converted to a Chapter 7 liquidation.

The hearing on the Motion to Dismiss or Convert is continued to 1:30 p.m. on July 29, 2025. Anne Weber, the Debtor, and John Downing, Esq., counsel for Debtor, and each of them are ordered to appear at the continued hearing in person, with no telephonic appearances authorized for said persons ordered to appear.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss or Convert is **XXXXXXX**.

FINAL RULINGS

5. [25-20122-E-13](#)
[DPC-1](#)

WILLIAM SPAULDING
Michael Hays

CONTINUED MOTION TO DISMISS
CASE
6-9-25 [\[29\]](#)

Final Ruling: No appearance at the July 29, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 9, 2025. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, William Harrison Spaulding (“Debtor”), is delinquent \$2,228.00 in plan payments. Mot. 1:25-2:2, Docket 29.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 31.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on June 25, 2025. Dockets 33, 34. Debtor states the delinquency will be cured by the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,228.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor asserts the delinquency is being cured. At the hearing, counsel for the Trustee reported that Debtor is still delinquent \$3,356.00.

Counsel for the Debtor reported that Debtor has given counsel \$1,800 which is to be transmitted to the Trustee. The delinquency has been caused due to a tree falling on the rental property.

The Trustee agreed to a short continuance to allow the Debtor to address the default, and for Debtor to provide an explanation as to why the default occurred and how the Debtor has obtained the monies to make the cure payment.

The hearing on the Motion to Dismiss is continued to 1:30 p.m. on July 29, 2025 (Specially Set Day and Time).

July 29, 2025 Hearing

The court continued the hearing on this Motion to allow the Debtor to address the default, and for Debtor to provide an explanation as to why the default occurred and how the Debtor has obtained the monies to make the cure payment. Trustee filed a Reply on July 23, 2025. Docket 39. Trustee requests the Motion be denied, Debtor now being current.

The Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the July 29, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2025. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is denied without prejudice.</p>
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REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Gerald William Miller and Barbara Miller (“Debtor”), is delinquent \$1,833.63 in plan payments, which is the final amount to complete the Plan. Mot. 1:19-22, Docket 109.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 111.

DEBTOR’S RESPONSE

Debtor filed a Response on February 11, 2025. Docket 115. Debtor states there was a misunderstanding as the final amount due to complete the Plan, and Debtor requests time to cure the delinquency and complete the Plan.

The Chapter 13 Trustee requested a continuance to the April 16 dismissal calendar on February 11, 2025. Docket 113.

DISCUSSION

Delinquent

Debtor is delinquent \$1,833.63 in plan payments, which is the final amount to complete the Plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor is in the process of curing the delinquency and the Parties have agreed to a continuance. The hearing on the Motion to Dismiss is continued to April 16, 2025.

April 16, 2025 Hearing

The court continued the hearing on the Motion as the Parties reported Debtor was in the process of curing the default. As of the court's review of the Docket on April 9, 2025, nothing new has been filed with the court.

At the hearing, counsel for the Trustee reported that there is still a \$1,000 delinquency. As addressed at the hearing, based on the facts and circumstances, the Trustee did not oppose a continuance of the hearing.

The hearing is continued to 9:00 a.m. on June 4, 2025.

June 4, 2025 Hearing

The court continued the hearing to allow Debtor to make the final payments to complete the Plan. The Chapter 13 Trustee filed a Status Report on May 21, 2025. Docket 124. Trustee informs the court that Debtor paid \$511.01 on April 8, 2025, and now only \$1,000 remains to complete the Plan. However, no further payments have been made.

Trustee requests dismissal.

At the hearing, counsel for the Trustee says that they have not heard anything from the Debtors. The Trustee notes that the Debtors are only \$1,000 in payments to complete the Plan.

The court continues the hearing to 9:00 a.m. on July 9, 2025.

The court orders both Debtors to appear at the continued hearing in person, No Telephonic Appearance for the forgoing persons ordered to appear.

The court has continued the hearing and orders the Debtors to appear to insure that they understand that after five years under a Chapter 13 Plan they have one final payment to make to reap all of the benefits of the Plan and obtain their discharges. Debtors are now in pro se, their counsel having ceased practicing law, and may well not appreciate what they are about to lose after five years of making plan payments.

July 9, 2025 Hearing

The court continued the hearing and ordered Debtors to appear in person to impress upon them the fact that they only have one plan payment remaining to complete the Plan payments and reap the benefits of a confirmed and completed Chapter 13 Plan. Due to a clerical error, the court ordered the wrong Debtors to appear. Order, Docket 128. This error resulted from the court mistakenly including text from a different case in the body of the Civil Minutes filed at Docket 127.

A review of the Docket on July 1, 2025 reveals nothing new has been filed in the case.

If the Debtors do not appear at the hearing, due to the court's clerical error, it will be necessary to again continue the hearing.

At the hearing, Peter Macaluso, Esq., appeared, reported to the court that he is assisting the Debtor in light of prior counsel having withdrawn, and that the payments are in process to cure the default and have the Debtor complete the Plan.

The hearing Motion to Dismiss is continued to 1:30 p.m. on July 29, 2025.

July 29, 2025 Hearing

The court continued the hearing because at the prior hearing Peter Macaluso, Esq., appeared, and reported to the court that he is assisting the Debtor in light of prior counsel having withdrawn, and that the payments are in process to cure the default and have the Debtor complete the Plan.

Trustee filed a Status Report on July 18, 2025. Docket 134. Trustee states Debtor has made the final payment of \$1,000 and believes the Plan is now complete.

The Trustee requests that the Motion be denied without prejudice. *Id.*

The Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

7. [25-20866](#)-E-13
[CLB-1](#)

ELPIDIO PLASENCIA
Mohammad Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-17-25 [[17](#)]

U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the July 29, 2025 Hearing is required.

The Motion for Relief from the Automatic Stay has been granted by prior Order of the court. Order, Docket 28. No appearance by the parties is required for the hearing on July 29, 2025 at 1:30 p.m., and this Matter is removed from the Calendar