



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: JULY 30, 2024  
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

### ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

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1. [24-20500](#)-A-13     **IN RE: MIGUEL/MARTHA GUTIERREZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
6-20-2024    [\[26\]](#)

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:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,537.00, with two payment(s) of \$200.00 due before the hearing on this motion. The confirmed plan requires the debtor to pay the trustee \$2,737.00 in income tax refunds which has not been paid.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 30, 31. The debtors' declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion, and that they have not received the entire tax refund yet. See Declaration, ECF No. 31.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

2. [24-22001](#)-A-13     **IN RE: LEON BROWN**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
6-26-2024    [\[14\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

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

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

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

## **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

3. [22-23002](#)-A-13     **IN RE: VELIA CRUZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
6-20-2024    [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

**Modified Plan Due:** July 16, 2024

**Modified Plan Filed:** July 19, 2024 - untimely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,006.01, with 2 payment(s) of \$569.00 due before the hearing on this motion.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

### **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.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 27, 28. The debtor's declaration states that the debtor will file a modified plan as she is not able to bring the plan payments current. See Declaration, ECF No. 28.

The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition and a modified plan was not timely filed. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

#### Untimely Modified Plan

A modified plan was filed on July 19, 2024. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto

variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed June 20, 2024, giving the debtor 40 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

#### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.



4. [20-25403](#)-A-13     **IN RE: LARRY/LISA MCLAIN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
6-28-2024    [\[45\]](#)

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:** July 16, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency; failure to provide income tax returns to trustee

**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 \$789.00 with one payment(s) of \$823.00 due prior to the hearing on this motion. In addition to plan delinquency the debtors have failed to provide the trustee with copies of their 2023 income tax returns as required by the confirmed 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 and failure to provide tax returns to the trustee under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

5. [24-22210](#)-A-13     **IN RE: CARRIE MURRELL**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-3-2024    [\[18\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

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

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

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

## **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

6. [24-22210](#)-A-13     **IN RE: CARRIE MURRELL**  
[GB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND  
SOCIETY, FSB  
6-28-2024    [\[14\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.  
SHANNON DOYLE/ATTY. FOR MV.

### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Wilmington Savings Fund Society, FSB, objects to  
confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the  
parties to augment the evidentiary record, and to allow the  
objecting creditor to properly serve the objection on all required  
parties.

### **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.

In this case the attachment to the certificate of service fails to include the names and address of the parties served with the motion. Accordingly, the court cannot determine which parties were served with the motion. Certificate of Service, ECF No. 23.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the objecting creditor shall serve the objection and supporting documents on all required parties no later than August 2, 2024. The objecting creditor shall file a certificate of service no later than August 2, 2024.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

7. [24-21613](#)-A-13     **IN RE: EMILIO GARCIA**  
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-20-2024    [\[20\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

**Final Ruling**

**Objection:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

The Chapter 13 trustee objects to the exemptions claimed by the debtor in certain bank accounts. On July 10, 2024, the debtor filed an Amended Schedule C. Amended Schedule C, ECF No. 24.

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1).

Accordingly, the court will overrule the objection as moot.

**CIVIL MINUTE ORDER**

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

The Chapter 13 trustee's Objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled as moot.

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

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

ARETE KOSTOPOULOS/ATTY. FOR DBT.

**No Ruling**

9. [23-24329](#)-A-13     **IN RE: ALEXANDER/VANERY HAYMORE**  
[KPC-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-27-2024    [\[62\]](#)

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

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Cause:** Lease term expired, delinquent payments, plan rejects the lease

**Subject:** Portable storage building

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).

Rocky Top Rentals, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 13 trustee has filed a non-opposition to the motion.

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make payments to the moving party pursuant to a lease agreement by which the debtor leases the storage building described above. The debtor has defaulted under such lease agreement as the lease expired pre-petition and lease payments are past due in the amount of \$2,992.39. Moreover, the debtor states on Schedule A/B that this obligation will be surrendered under the plan. Schedule A/B, ECF No. 12. The plan does not provide for the assumption of the lease. Chapter 13 Plan, § 4.02, ECF No. 41.

The moving party's interest in the portable storage building is not being adequately protected due to the debtor's ongoing post-petition default. See 11 U.S.C. § 1326(a)(1)(B) (requiring personal property lease payments to commence not later than 30 days after the petition).

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.

Rocky Top Rentals, LLC'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 portable storage building, 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.

10. [24-21030](#)-A-13     **IN RE: BINDU JOSEPH**  
[CYB-1](#)

MOTION TO CONFIRM PLAN  
6-4-2024    [\[32\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

#### **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 June 4, 2024

#### **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. 36. The plan is supported by Schedules I and J filed, June 24, 2024, ECF No. 31. The Chapter 13 trustee has filed a non-opposition to the motion, 42.

### **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.

11. [24-22031](#)-A-13     **IN RE: ELIZABETH MALKIN**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
6-26-2024    [[14](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

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

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

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

## CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

12. [24-22037](#)-A-13     **IN RE: HELEN ROQUE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
6-25-2024    [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

13. [17-27538](#)-A-13     **IN RE: RENE JARA**  
[RJ-6](#)

MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTORS  
ATTORNEY(S)  
6-26-2024    [\[107\]](#)

RICHARD JARE/ATTY. FOR DBT.

### **No Ruling**

14. [24-21440](#)-A-13     **IN RE: ERIKA NORMAN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
6-26-2024    [\[32\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The Chapter 13 trustee moves to dismiss the case under 11 U.S.C. § 1307(c)(6). See Motion to Dismiss, 1:22-23, ECF No. 32. For the following reasons the court will deny the motion without prejudice.

### **MOTION FAILS TO SUFFICIENTLY CITE BASIS FOR RELIEF**

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

. . .

Fed. R. Bankr. P. 9013.

*Motion or Other Request for Relief.* The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. *Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request* but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(d)(3)(A) (emphasis added).

Both the Federal Rules of Bankruptcy Procedure and the court's Local Rules of Practice require that the moving party cite the applicable statute which serves as a basis for the relief requested.

(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--

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c).

Section 1307(c) lists eleven different subsections which may be a basis for the relief requested in the trustee's motion.

The trustee's motion is properly brought under 11 U.S.C. § 1307(c)(1), unreasonable delay which is prejudicial to creditors, yet he has instead cited 11 U.S.C. § 1307(c)(6) which identifies material breach of a confirmed plan as the basis for relief. The plan in this case is yet to be confirmed.

The trustee has indicated in his motion that the debtor is in default pursuant to the terms of a *confirmed plan*, yet the plan in this case has not been confirmed. Incorrect citation in motions continues to be a concern for the court. When motions are filed under an incorrect code section or fail to cite the correct code section there is no basis for relief. This creates additional work for the court and delay for all parties impacted by the case.

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 Chapter 13 trustee's Motion to Dismiss 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.

15. [24-21241](#)-A-13     **IN RE: JAMES/LISA GENTRY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-1-2024     [\[43\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
7/1/2024 INSTALLMENT FEE PAID \$78

### **Final Ruling**

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

16. [24-21241](#)-A-13     **IN RE: JAMES/LISA GENTRY**  
[DPC-1](#)

MOTION TO DISMISS CASE  
6-26-2024     [\[39\]](#)

MATTHEW DECAMINADA/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:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

**Modified Plan Due:** July 16, 2024

**Modified Plan Filed:** not filed

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$12,534.00, with 1 payment(s) of \$4,178.00 due before the hearing on this motion.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

#### **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.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 48, 49. The debtor's declaration states that the debtor will file a modified plan. See Declaration, ECF No. 49.

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.

#### **Failure to File Modified Plan**

A modified plan has not yet been filed. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed June 26, 2024, giving the debtor 34 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

However, the court is aware of the recent extraordinary circumstances the debtors have experienced. Accordingly, the court will consider issuing a conditional order resolving this matter. Going forward however, counsel should seek leave of court to file a modified plan after the deadline for opposition to the motion.

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.



17. [21-20842](#)-A-13     **IN RE: DEVIN DARRAH**  
[DPC-1](#)

MOTION TO DISMISS CASE  
6-20-2024    [\[36\]](#)

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:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,450.00, with two payment(s) of \$550.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 40, 41. The debtor disputes the amount of the plan delinquency claiming that only \$321.48 is due to pay the plan off. The plan was recently modified. Order, ECF No. 35.

The amount of the delinquency is unclear to the court. The parties shall be prepared to address the specific amounts required to bring the plan payment current or to complete the plan.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

18. [24-21050](#)-A-13     **IN RE: EDISON/JANNET MEDINA**  
[CRG-1](#)

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 4  
6-13-2024    [\[18\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

#### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 object to the claim of Merrick Bank, Claim No. 4.

## CLAIM OBJECTION

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

With limited exceptions, § 502(b)(1) means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

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

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.'" *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a 'claim.'" The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

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

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

19. [24-21050](#)-A-13     **IN RE: EDISON/JANNET MEDINA**  
[CRG-2](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 24  
6-13-2024    [\[22\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. 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 object to the claim of LVNV Funding, LLC, Claim No. 24.

### **CLAIM OBJECTION**

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

With limited exceptions, § 502(b)(1) means that "any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450 (2007).

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

In a different context, the Supreme Court has held that enforceability is not a prerequisite for having a claim in

bankruptcy. "The word 'enforceable' does not appear in the Code's definition of 'claim.' *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (holding that filing a stale claim in bankruptcy does not violate the FDCPA). "[T]he running of a limitations period constitutes an affirmative defense, a defense that the debtor is to assert after a creditor makes a "claim." The law has long treated unenforceability of a claim (due to the expiration of the limitations period) as an affirmative defense." *Id.* (citations omitted).

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

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

20. [24-21356](#)-A-13     **IN RE: RYAN OHLINGER**  
[GC-1](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF  
GLAZER AND CHERRY FOR GERALD GLAZER, DEBTORS ATTORNEY(S)  
6-24-2024    [\[20\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

**No Ruling**

21. [24-21356](#)-A-13     **IN RE: RYAN OHLINGER**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G  
TSANG  
5-23-2024    [\[16\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

**No Ruling**

22. [23-20257](#)-A-13     **IN RE: AUSTIN MERRITT**  
[TLA-3](#)

MOTION TO MODIFY PLAN  
6-24-2024    [\[99\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **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 September 24, 2024, 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).

### **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).

### Declaration Insufficiently Addresses Budgeted Expenses

Feasibility of the proposed Chapter 13 Plan payment is based upon increased expenses in the following categories: (1) mortgage payment; (2) home maintenance; (3) utilities; (4) childcare; (5) medical and dental expenses; (5) transportation; (6) entertainment; (7) health and vehicle insurance. Significantly, the net increase in expenses equals approximately \$2,481.00. Moreover, the amount indicated for the monthly mortgage payment is \$4,190.00, while the notice of mortgage payment change filed by the mortgage lender totals \$3,781.47. Notice of Monthly Mortgage Change, ECF No. 11. This represents a difference of \$408.52.

At the same time there is a decreased expense claimed for the debtor's non filing spouse's separate expenses. The decrease is approximately \$1,150.00 per month. Yet, the plan payments are not increased.

The trustee contends that the debtor has not sufficiently explained the need for the increased expenses and has incorrectly budgeted the monthly mortgage payment.

Given the significant increase in expenses the court finds that the declaration in support of the motion does not adequately explain the proposed budget changes. The declaration does not address the difference in the mortgage payments. The petition in this case was filed on January 27, 2023. While the court believes an increase in some expenses is reasonable additional explanations and/or proof of expenses are warranted when the expense increases exceed \$2,400.00 per month.

### **DEBTOR REPLY**

On July 16, 2024, the debtor filed a reply accompanied by the debtor's declaration, and exhibits.

The reply explains that the increase to the mortgage payment is anticipated because a loan modification is anticipated. Reply, 1:19-20, ECF No. 109. A motion to approve the loan modification is not yet before the court. Additionally, the debtor's declaration now offers explanations regarding the changes to the debtor's budget.

Given the extraordinary circumstances in this case the court will continue the hearing on this motion to allow the Chapter 13 trustee to review the documents the debtor has filed and for the debtor to file the motion to approve the loan modification. The motion for the loan modification shall be set on or before the continued hearing on this motion.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the hearing on this objection will be continued to September 24, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that the debtor shall file a motion for approval of a loan modification. This motion shall be set for hearing on or before September 24, 2024.

IT IS FURTHER ORDERED that no later than September 10, 2024, the Chapter 13 trustee shall file a further reply after reviewing the documents filed by the debtor. The evidentiary record will close after September 10, 2024.

23. [24-22457](#)-A-13     **IN RE: HELMUTH/ANGELA BURROWS**  
[PLG-1](#)

MOTION TO VALUE COLLATERAL OF PROVIDENT CREDIT UNION  
6-20-2024    [\[13\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

The hearing on the debtor's motion to value collateral will be continued to August 27, 2024, at 9:00 a.m. to allow the debtor to file and serve an amended notice of hearing and amended motion to value collateral which comply with Fed. R. Bankr. P. 9013, as the motion currently fails to state the legal basis for relief.

The motion and amended notice shall be filed and served on all interested parties no later than August 6, 2024. Opposition, if any, shall be filed no later than August 20, 2024.



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

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

GABRIEL LIBERMAN/ATTY. FOR DBT.  
BENJAMIN LEVINSON/ATTY. FOR MV.

**Final Ruling**

The hearing on the creditor's objection to confirmation was continued to allow the debtor to respond to the objection.

The court notes that the debtor failed to comply with the court's order entered June 20, 2024, regarding this objection. The order required the debtor to file either opposition to the motion or an amended plan no later than July 2, 2024. Order, ECF No. 44. The debtor has filed nothing in opposition to the objection; neither has the debtor proposed an amended plan.

The court has dismissed this case for plan delinquency pursuant to the Chapter 13 trustee's motion to dismiss (DPC-2). Accordingly, this objection is overruled as moot.

No appearances are required.

25. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[CCR-1](#)

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

GABRIEL LIBERMAN/ATTY. FOR DBT.  
CHERYL ROUSE/ATTY. FOR MV.

**Final Ruling**

The hearing on the creditor's objection to confirmation was continued to allow the debtor to respond to the objection.

The court notes that the debtor failed to comply with the court's order entered June 20, 2024, regarding this objection. The order required the debtor to file either opposition to the motion or an amended plan no later than July 2, 2024. Order, ECF No. 46. The debtor has filed nothing in opposition to the objection; neither has the debtor proposed an amended plan.

The court has dismissed this case for plan delinquency pursuant to the Chapter 13 trustee's motion to dismiss (DPC-2). Accordingly, this objection is overruled as moot.

No appearances are required.

26. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[DPC-1](#)

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

GABRIEL LIBERMAN/ATTY. FOR DBT.

### **Final Ruling**

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the debtor to respond to the objection.

The court notes that the debtor failed to comply with the court's order entered June 20, 2024, regarding this objection. The order required the debtor to file either opposition to the motion or an amended plan no later than July 2, 2024. Order, ECF No. 45. The debtor has filed nothing in opposition to the objection; neither has the debtor proposed an amended plan.

The court has dismissed this case for plan delinquency pursuant to the Chapter 13 trustee's motion to dismiss (DPC-2). Accordingly, this objection is overruled as moot.

No appearances are required.

27. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
6-21-2024    [\[48\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

**Amended Plan Due:** July 16, 2024

**Amended Plan Filed:** not filed

**Cause:** 11 U.S.C. § 1307(c)(1) - 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) 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 \$13,000.00, with two payment(s) of \$13,000.00 due prior to the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 63, 64. The declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion and that the debtor intends to file an amended plan. See Declaration, ECF No. 64.

The opposition is insufficient. First, the opposition fails to state why the payments due have not been tendered. Second, the opposition fails to state how the debtor will become current by the date of the hearing. Given that \$39,000 is due in order to bring the payments current the debtor should offer evidence regarding how he will obtain such a significant sum in a shortened period of time.

Third, as discussed below, the opposition is untimely.

### **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 July 16, 2024, the debtor filed an opposition to the motion to dismiss, ECF No. 63, 64. The opposition states the debtor's intention to file an amended 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.

#### Failure to File Modified Plan

A motion to modify a plan has not yet been filed. The opposition does not state when the plan will be filed. Neither does it offer any explanation why a plan has not yet been proposed or request additional time to file a plan. Fed. R. Bankr. 9006(b).

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed June 21, 2024, giving the debtor only 32 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

Additionally, multiple objections to confirmation were filed in this case. The court continued the hearings on the objections and ordered the debtor to reply to the objections or to file a modified plan no later than July 2, 2024. The debtor failed to comply with the court's order.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

#### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the 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.

28. [24-22164](#)-A-13     **IN RE: JOHN/KIMBERLY MCCABE**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
6-6-2024    [\[15\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
CASSANDRA RICHEY/ATTY. FOR MV.

#### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Lakeview Loan Servicing, LLC, objects to confirmation of the debtor(s) plan.

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

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

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

29. [23-21966](#)-A-13     **IN RE: KELLI/JUSTIN LOPEZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
6-20-2024    [\[21\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

**Modified Plan Due:** July 16, 2024

**Modified Plan Filed:** July 23, 2024 - untimely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$6,908.22, with 2 payment(s) of \$1,100.00 due before the hearing on this motion.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

### **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.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 25, 26. The debtor's declaration states that the debtors will file a modified plan as they are not able to bring the plan payments current. See Declaration, ECF No. 26.

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.

### Untimely Filed Modified Plan

A modified plan was filed on July 23, 2024. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing.

LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed June 20, 2024, giving the debtor 40 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

#### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this



case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

30. [24-21567](#)-A-13     **IN RE: SANDRA GROOM**  
[DPC-1](#)

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

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan  
**Notice:** Continued from June 18, 2024  
**Disposition:** Overruled  
**Order:** Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor has filed a reply as ordered by the court.

### **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).

### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 101 months to fund as proposed. The trustee states that the reason the plan is overextended is because the IRS filed a claim in a priority amount which was larger than anticipated in the plan.

The debtor filed initial opposition, in the form of a declaration, to the objection on June 3, 2024. Declaration, ECF No. 20. The debtor states she believes the IRS claim is incorrect in the amount claimed.

The debtor filed additional argument on July 1, 2024. Counsel for the debtor stated that an objection to the IRS claim would be filed if the claim was not amended. Reply, ECF No. 24. An objection to the claim has not yet been filed.

On July 11, 2024, the IRS filed an amended claim. Claim No. 3. The claim has been reduced from \$145,306.99 to \$93,028.12. Because the

Chapter 13 trustee has not filed a reply it is unclear to the court if the plan will fund.

#### **TRUSTEE REPLY**

On July 16, 2024, the Chapter 13 trustee filed a reply, ECF No. 26. The reply states that the trustee has reviewed the amended claim filed by the IRS, that the plan is no longer overextended. As such the trustee no longer opposes confirmation of the plan. Accordingly, the court will overrule 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 overruled. The debtor shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

31. [23-21868](#)-A-13     **IN RE: JEREMY NAVA-SALINAS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
6-25-2024    [\[79\]](#)

MATTHEW METZGER/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

**Opposition Due:** July 16, 2024

**Opposition Filed:** July 10, 2024 - timely

**Motion to Modify Plan Filed:** July 9, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to file an amended plan, after the court denied confirmation of the previously filed plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 13, 2024, at 9:00 a.m.

On July 23, 2024, the Chapter 13 trustee filed a reply, ECF No. 99. The trustee states that the plan payments have been brought current and acknowledges the motion to confirm which the debtor has filed. As such the trustee requests that the court deny the motion.

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.

IT IS ORDERED that the Chapter 13 trustee's motion to dismiss is denied, based upon the trustee's request.

32. [24-20169](#)-A-13     **IN RE: JOSE ALBERTO**  
[CDL-1](#)

MOTION TO CONFIRM PLAN  
6-19-2024    [[34](#)]

COLBY LAVELLE/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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).

## **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 69 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 cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

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

### Improperly Classified Automobile Claim

The debtor lists the obligation to Pacific Service Credit secured by a 2007 Chevrolet Corvette in Class 4 of the plan. Schedule D lists the creditor in the total amount of \$21,878.00, Schedule D, ECF No. 1. A claim has not yet been filed by the creditor or the debtor. The debtor's schedules list payments in the amount of \$575.00 per month on this obligation. Schedule J, ECF No. 1. According to the trustee's calculation, this obligation will be paid in full in approximately 38 months, which is prior to the completion of the proposed plan.

Accordingly, the obligation must be provided for in Class 2 of the plan. Class 2 claims are those defined as follows:

Class 2 includes all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed.

Chapter 13 Plan, ECF No. 36.

The debtor offered the following statement in the declaration in support of the motion:

The Trustees' third issue was also a misclassification of Creditor Pacific service Credit. This creditor has not filed a proof of claim and thus this is now a moot objection.

Declaration, 1:24-26, ECF No. 37.

The debtor's assertion is incorrect. The classification issue is not moot. Should the creditor not file a proof of claim, the debtor may do so. Fed. R. Bankr. P. 3004.

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.

33. [23-24270](#)-A-13     **IN RE: DAVID SIMMONS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
6-25-2024    [\[73\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

**Opposition Due:** July 16, 2024

**Opposition Filed:** July 16, 2024 - timely

**Motion to Modify Plan Filed:** July 16, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to file an amended plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 27, 2024, at 9:00 a.m.

On July 23, 2024, the Chapter 13 trustee filed a reply, ECF No. 89. The Chapter 13 trustee requests that the court deny his motion as the plan payments have been brought current and a motion to confirm plan filed. Accordingly, the court will deny the motion on the trustee's request.

**CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the Chapter 13 trustee's motion to dismiss is denied, based upon the trustee's request.

34. [23-24370](#)-A-13     **IN RE: SARA KLINKENBORG**  
[DPC-2](#)

MOTION TO DISMISS CASE  
6-25-2024    [\[37\]](#)

LUCAS GARCIA/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Denied

**Order:** Civil minute order

**Opposition Due:** July 16, 2024

**Motion to Modify Plan Filed:** June 27, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed file an amended plan after the court denied confirmation of the previously filed plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 13, 2024, at 9:00 a.m.

On July 23, 2024, the Chapter 13 trustee filed a reply, ECF No. 53. The trustee requests that the court deny the motion as the plan payments have been brought current and a motion to confirm plan has been filed and set for hearing. Accordingly, 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.

IT IS ORDERED that the Chapter 13 trustee's motion to dismiss is denied, based upon the trustee's request.

35. [24-22071](#)-A-13     **IN RE: RAYMOND/MELISSA UNBANKES**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
6-26-2024    [\[13\]](#)

SETH HANSON/ATTY. FOR DBT.

### **Final Ruling**

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

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

**Disposition:** Withdrawn

**Order:** Civil minute order

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

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

On July 23, 2024, the Chapter 13 trustee filed a Status Report, ECF No. 17. The trustee states that the debtor provided copies of Social Security documents. This was the sole basis for the trustee's objection to confirmation. As such the objection has been resolved and the trustee requests that the trustee be allowed to withdraw the objection. Fed. R. Civ. P. 41.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the trustee's objection to confirmation is withdrawn under Fed. R. Civ. P. 41.



36. [24-20873](#)-A-13     **IN RE: RICHARD/CYNTHIA SOUTSOS**  
[CK-1](#)

MOTION TO CONFIRM PLAN  
6-13-2024    [\[22\]](#)

CATHERINE KING/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

### **CONFIRMATION**

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

#### Plan Fails to Pay Priority Claims in Full

Under 11 U.S.C. §1322(a)(2), the plan shall provide for the full payment of all priority claims unless the holder of the claim agrees to a different treatment of such claim.

The trustee contends that the proposed Chapter 13 Plan does not comply with 11 U.S.C. §1322(a)(2) because the plan provides:

The debtors are paying the IRS all of their disposable income after payment (sic) priority tax claim of the Franchise Tax Board, attorney fees, and trustee fees, which is the amount that the IRS would receive with an offer and compromise. General unsecured (sic) shall receive 0% of any claim, and will be discharged once this plan is completed.

Amended Chapter 13 Plan, § 7, ECF No. 24.

The trustee correctly argues that the IRS must agree to the proposed treatment if the plan will not pay the priority claim in full. The debtor provides no evidence that the IRS has accepted the plan terms. 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.

37. [24-21673](#)-A-13      **IN RE: AARON MCCONVILLE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-9-2024    [\[53\]](#)

7/10/2024 INSTALLMENT FEE PAID \$10

### **Final Ruling**

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

38. [24-22775](#)-A-13     **IN RE: EVELYN DOMONDON**  
[RAM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2024    [\[11\]](#)

ROBERT MILLER/ATTY. FOR MV.  
JEFFREY VIEYRA VS.; TRUSTEE NON-OPPOSITION

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

**Subject:** 2768 Georgia Street, Vallejo, California

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).

Jeffrey Vieyra seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 13 trustee filed a non-opposition to the motion, ECF No. 24. The trustee's non opposition was filed on July 2, 2024, and states the basis for the trustee's position is the lack of a proposed Chapter 13 Plan and Schedules. Subsequently, the debtor filed a Chapter 13 Plan and filed Statements and Schedules.

### Chapter 13 Plan

A Chapter 13 Plan was filed on July 9, 2024, ECF No. 27. The plan classifies the movant's claim in Class 1 and provides for payment of mortgage arrears in the amount of \$24,877.70, with a monthly payment on those arrears in the amount of \$414.63. There is no provision in the proposed Chapter 13 Plan for ongoing mortgage payments. *Id.*, § 3.07.

### Cause

The evidence in support of the motion is that the debtor has tendered no payments since December 2023. Declaration of Jeffrey Vieyra, ECF No. 13. The petition in this case was filed on June 26, 2024. Accordingly, a post-petition mortgage payment was due on July 25, 2024. The debtor has failed to oppose the motion. Schedule J filed, on July 10, 2024, lists the ongoing mortgage payment in the monthly amount of \$2,601.99, ECF No. 28. However, there is no evidence that the debtor has tendered the payment to the movant.

The movant has filed a claim in this case. Attached to Claim No. 2, is a copy of the note and deed of trust evidencing the debtor's obligation. The note appears to be fully matured. See Attachment, Claim No. 2.

Accordingly, the proposed plan does not correctly classify the movant's claim, nor make appropriate provision for payment of the fully matured note in the plan. Movant's claim should be classified in Class 2 which provides for all secured claims that are modified by this plan, or that have matured or will mature before the plan is completed. Chapter 13 Plan, § 3.08, ECF No. 27.

#### **STAY RELIEF**

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as – both prepetition and postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

Alternatively, because the plan which has not been confirmed fails to appropriately provide for the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

#### **SECTION 362(d)(4)**

The motion also seeks relief under 11 U.S.C. § 362(d)(4).

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either–(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870–71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

### Application

Movant contends that relief is appropriate under § 362(d)(4) as the debtor has filed a previous bankruptcy case. The prior case, *In re Evelyn Fidel Domondon*, Case No. 24-20136-A-7, E.D. Cal. Bankr., (2024) was filed on January 13, 2024. The debtor received a discharge on May 6, 2024.

The movant filed a motion for relief from the automatic stay in the prior case. The motion was heard after the entry of the debtor's discharge. Accordingly, the request for stay relief was denied as moot to the debtor. Order, *Id.*, ECF No. 65.

The court does not find a sufficient basis for in rem relief, with only one prior filing, where the debtor has proposed a Chapter 13 Plan.

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.

Jeffrey Vieyra'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 2768 Georgia Street, Vallejo, 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, the request for relief under 11 U.S.C. § 362(d)(4) is denied. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

39. [23-24379](#)-A-13     **IN RE: GRACE LEE**  
[JLK-1](#)

MOTION TO CONFIRM PLAN  
6-19-2024    [\[42\]](#)

JAMES KEENAN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks confirmation of the Chapter 13 Plan. The motion will be denied without prejudice as follows.

### **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 failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 46. 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.

40. [24-22181](#)-A-13      **IN RE: AHMED ALI**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-3-2024    [\[28\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

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

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

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

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than August 13, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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



41. [24-22181](#)-A-13     **IN RE: AHMED ALI**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIRSTKEY MASTER FUNDING  
2021-A COLLATERAL TRUST  
6-26-2024    [\[22\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

### **Final Ruling**

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

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

**Disposition:** Continued to September 10, 2024, at 9:00 a.m.

**Order:** Civil minute order

Creditor, First Key Master Funding 2021-a Collateral Trust, objects to confirmation of the debtor(s) plan.

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

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

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to September 10, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

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

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than August

13, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than August 27, 2024. The evidentiary record will close after August 27, 2024; or

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

42. [24-20883](#)-A-13     **IN RE: DARON/CHANTEL YOUNG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-9-2024    [\[63\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

#### **Final Ruling**

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

43. [24-20883](#)-A-13     **IN RE: DARON/CHANTEL YOUNG**  
[MJB-2](#)

MOTION TO VALUE COLLATERAL OF KIA FINANCE AMERICA  
6-24-2024    [\[53\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **No Ruling**

44. [24-20883](#)-A-13     **IN RE: DARON/CHANTEL YOUNG**  
[MJB-3](#)

MOTION TO CONFIRM PLAN  
6-24-2024    [\[49\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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).

### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 96 months to fund as proposed. The trustee contends the overextension is caused by a claim filed by the IRS to which there is currently no objection pending.

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 cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

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

### **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 Kia Finance America'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.

#### **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.

45. [23-22085](#)-A-13     **IN RE: JULIAN PEREZ**  
[PSB-1](#)

MOTION TO MODIFY PLAN  
6-17-2024    [[37](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 06/20/24

#### **Final Ruling**

This case was dismissed on June 20, 2024. This motion is removed from the calendar as moot. No appearances are required.

46. [24-22485](#)-A-13     **IN RE: RICARDO VEGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-11-2024    [[19](#)]

PETER MACALUSO/ATTY. FOR DBT.

#### **Final Ruling**

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

47. [19-23987](#)-A-13     **IN RE: JULIE QUESTA**  
[DPC-1](#)

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

CANDACE BROOKS/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from June 18, 2024

**Disposition:** Continued to August 13, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Motion to Modify Plan Filed:**    July 3, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 13, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 13, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

48. [24-21588](#)-A-13     **IN RE: ANGELA/KEITH THORNTON**  
[DPC-1](#)

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

MICHAEL HAYS/ATTY. FOR DBT.

### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from June 18, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the record or for the debtor to file an amended plan.

The debtors have filed a motion to confirm an amended plan, with a hearing date of September 24, 2024. Motion, ECF No. 32. The Motion purports to confirm an amended plan. *Id.*, 1:18-20. However, an amended plan does not appear on the court's docket.

The trustee objected to confirmation contending that the plan was not feasible under 11 U.S.C. § 1325(a)(6) as the debtor failed to provide for the secured obligation owed to Tesla, which holds a security interest in solar panels. How or if a secured debt is paid, whether through or outside a Chapter 13 Plan, directly impacts the feasibility of a plan. The debtors failed to indicate how the obligation to Tesla will be paid. As such the court finds the plan is not feasible.

Accordingly, the court will sustain the trustee's objection and deny confirmation of the plan.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is sustained, and confirmation is denied.

49. [23-23390](#)-A-13     **IN RE: AARON/REBECCA ULDALL**  
[KLG-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KOSTOPOULOS LAW  
GROUP, PC FOR A. RITA KOSTOPOULOS, DEBTORS ATTORNEY(S)  
6-13-2024    [\[67\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation allowed:**    \$6,337.50

**Reimbursement of expenses:**    \$229.32

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 application was required not less than 14 days before the hearing on the application. 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).

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, A. Rita Kostopoulos has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6,337.50 and reimbursement of expenses in the amount of \$229.32. The application is supported by the declaration of the debtors, ECF No. 70.

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.

A. Rita Kostopoulos' 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 \$6,337.50 and reimbursement of expenses in the amount of \$229.32. The aggregate allowed amount equals \$6,566.82. As of the date of the application, the applicant held a retainer in the amount of \$1,661.00. The amount of \$4,905.82 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.

50. [24-22193](#)-A-13      **IN RE: KENNETH WILKINSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-3-2024    [\[18\]](#)

### **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).

The Chapter 13 trustee objects to confirmation of the debtor's proposed Chapter 13 Plan on multiple bases.

#### **INCORRECT FORM PLAN**

The Debtor has used the mandatory form Chapter 13 Plan required in the Eastern District of California. Local Rule 3015-1(a) states that the mandatory form Plan EDC 003-080 shall be utilized as the standard form. According to the Court's website ([www.caeb.uscourts.gov](http://www.caeb.uscourts.gov)) form EDC 003-080 is effective November 9, 2018. The debtor filed a Chapter 13 Plan using Official Form 113, which is not used in the Eastern District of California Court. Chapter 13 Plan, ECF No. 13.

The Chapter 13 Plan is defective on its face and an amended plan is required. Accordingly, the court need not address the remaining objections raised by the trustee. The court sustains the trustee's objection and denies confirmation of the 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.

51. [24-22953](#)-A-13     **IN RE: JESSICA KENYON**  
[SMJ-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-15-2024     [\[14\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

**No Ruling**

52. [24-21361](#)-A-13     **IN RE: JOSHUA WILLIAMS**  
[SKI-1](#)

CONTINUED MOTION TO RECONSIDER  
6-28-2024    [\[52\]](#)

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

### **Final Ruling**

The hearing on the creditor's motion to reconsider the ruling on its objection to confirmation was continued for the motion to coincide with the trustee's motion to dismiss the case.

The court has dismissed this case pursuant to the Chapter 13 trustee's motion to dismiss (DPC-2). Accordingly, this motion is denied as moot.

No appearances are required.

53. [24-22923](#)-A-13     **IN RE: ERROL QUOCK AND IRENE WONG**  
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-16-2024    [\[11\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

**Instant Petition Filed:** July 2, 2024

### **Prior Chapter 13 Cases:**

1. *In re Errol J. Quock and Irene Chi Wai Wong*, Case No. 22-21656-E-13C, E.D. Cal. Bankr. (2024). Filed July 1, 2022, and dismissed February 23, 2024.
2. *In re Errol J. Quock and Irene Chi Wai Wong*, Case No. 24-21067-A-13, E.D. Cal. Bankr. (2024). Filed March 18, 2024, and dismissed April 1, 2024.

### **ORAL ARGUMENT**

The issues in this matter having been sufficiently briefed by the debtors, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

The debtors move for an extension of the automatic stay under 11 U.S.C. § 362(c)(3) disclosing only one prior Chapter 13 bankruptcy in their petition: *In re Errol J. Quock and Irene Chi Wai Wong*, Case No. 22-21656-E-13C, E.D. Cal. Bankr. (2024). Petition, ECF No. 1.

The debtors also filed a second Chapter 13 case in 2024. *In re Errol J. Quock and Irene Chi Wai Wong*, Case No. 24-21067-A-13, E.D. Cal. Bankr. (2024). This additional case was filed March 18, 2024, and dismissed April 1, 2024.

Accordingly, the instant case is the debtors' third Chapter 13 case pending within one year. Both previous cases pending in the past year were dismissed. The debtors failed to disclose one of the previously filed cases in the petition in the instant case.

#### **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). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

The court finds that the instant case is the debtors' third Chapter 13 case pending in the last one year. Accordingly, the debtors do not qualify for relief under 11 U.S.C. § 362(c)(3). 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.

A motion to extend the automatic stay has been presented to the court in this case. 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, the debtors do not qualify for relief under 11 U.S.C. § 362(c)(3).

54. [24-22983](#)-A-13     **IN RE: AMELIA ALLEN**  
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-16-2024    [[16](#)]

PETER MACALUSO/ATTY. FOR DBT.

**No Ruling**