



**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: AUGUST 8, 2023**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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Please join at least 10 minutes prior to the start of the calendar. You are required to give the court 24 hours advance notice on the [Court Calendar](#).

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## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [23-21700](#)-A-13     **IN RE: CAROL UNTERSEHER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-13-2023    [\[12\]](#)

TERRENCE FANTAUZZI/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.

2. [23-21103](#)-A-13     **IN RE: EUGENE NOH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-10-2023    [\[41\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.  
7/21/23 FINAL INSTALLMENT FEE PAID \$156

**Final Ruling**

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

3. [23-20006](#)-A-13     **IN RE: KIMBERLY PROCK**  
[PGM-1](#)

MOTION TO CONFIRM PLAN  
6-21-2023    [\[36\]](#)

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

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed June 21, 2023

### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 39. The plan is supported by Schedules I and J filed, February 24, 2023, ECF No. 23. 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.

4. [22-23014](#)-A-13     **IN RE: DANIEL/VICKI JACOBS**  
[PSB-1](#)

MOTION TO CONFIRM PLAN  
6-21-2023    [\[28\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed June 21, 2023

### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 34. The plan is supported by Schedules I and J filed, June 21, 2023, ECF No. 33. The Chapter 13 trustee has filed a non-opposition to the motion, 38.

### **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.

5. [19-23616](#)-A-13     **IN RE: MARK BRASHLEY**  
[WW-12](#)

MOTION TO MODIFY PLAN  
6-22-2023    [\[208\]](#)

MARK WOLFF/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Fourth Modified Chapter 13 Plan, filed June 22, 2023

### **DEFAULT OF RESPONDENT**

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on May 3, 2023, ECF No. 198. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 214.

### **CHAPTER 13 PLAN 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).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

6. [23-21621](#)-A-13     **IN RE: ANGELO CHICO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-13-2023     [\[15\]](#)

SCOTT JOHNSON/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.

7. [22-23324](#)-A-13     **IN RE: PATRICIA TODD**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-10-2023     [\[16\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

**Final Ruling**

The motion was withdrawn by the Trustee on July 25, 2023, ECF No. 20. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

8. [23-21724](#)-A-13     **IN RE: MARK/CYRIL SENORES**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ LLC  
7-13-2023    [\[24\]](#)

TRACY WOOD/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

**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.

9. [23-21724](#)-A-13     **IN RE: MARK/CYRIL SENORES**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-12-2023    [\[19\]](#)

TRACY WOOD/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.

10. [22-23129](#)-A-13      **IN RE: MARIA ROWENA PENA**  
[AVN-3](#)

MOTION TO CONFIRM PLAN  
6-28-2023    [\[46\]](#)

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

### Final Ruling

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed February 14, 2023]

### DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 29. The plan is supported by Schedules I and J filed, May 19, 2023, ECF No. 37. The Chapter 13 trustee has filed a non-opposition to the motion, 53.

### 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. [22-22232](#)-A-13     **IN RE: DUANE OTT**  
[MEV-4](#)

MOTION TO CONFIRM PLAN  
6-16-2023    [\[63\]](#)

MARC VOISENAT/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order confirming the Chapter 13 Plan. For the following reasons the motion will be denied without prejudice.

### **SERVICE AND NOTICE**

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

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

### Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

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

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 66. Absent a date on the matrix the court is unable to determine if service of the motion complies with LBR 7005-1. The court will deny the motion without prejudice.

Outdated Form EDC 7-005

The debtor has failed to use the most current version of Form EDC 7-005. The most recent version of the required form is dated 10/22. The debtor has used a version of the form dated 9/22.

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

12. [19-22034](#)-A-13     **IN RE: ERNEST/SAIFON BOND**  
[MET-2](#)

MOTION TO MODIFY PLAN  
6-28-2023    [[61](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**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 plan is supported by Amended Schedules I and J, filed June 28, 2023. 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).

### **TRUSTEE OPPOSITION**

The Chapter 13 trustee opposes the debtors' motion to modify indicating inconsistencies in the plan with payments already made by the trustee as to: 1) attorney compensation paid; 2) payments to secured creditor Bank of America; and 3) plan payments. The trustee stated in his opposition that he believed his opposition could be easily remedied in the order modifying the plan.

### **DEBTOR REPLY**

The debtors filed a reply and an exhibit which contains a proposed order, which appear to address all matters raised in the trustee's opposition. See Exhibit A, ECF No. 74. The court has reviewed the proposed order and, absent further opposition from the trustee at the hearing, will allow the corrections to the plan in the order.

### **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 modify 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 granted.

13. [19-23937](#)-A-13     **IN RE: DEBORAH TURNER**  
[WW-3](#)

MOTION TO MODIFY PLAN  
6-26-2023    [\[51\]](#)

MARK WOLFF/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:** Denied

**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).

### **TRUSTEE OPPOSITION**

The trustee opposed the motion contending that: 1) conflicting plan provisions did not allow the trustee to determine the feasibility of the plan and/or plan delinquency; 2) the plan did not provide for the secured portion of an amended claim filed by the Internal Revenue Service; 3) the debtor was not properly withholding taxes; 4) the plan was not proposed in good faith; and 5) the debtor failed to explain the use of bonus payments which were to be paid pursuant to the currently confirmed plan.

### **DEBTOR REPLY**

As a courtesy to the court the debtor has indicated her intention to file a further modified plan which addresses the amended claim of the Internal Revenue Service and the trustee's opposition. The debtor requests that she be allowed to withdraw this motion. See Request to Withdraw Motion, ECF No. 60.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have

appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

In this case the court will deny the debtor's motion to modify and allow the debtor to proceed with a further modified 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 modify 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,

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

14. [23-20837](#)-A-13     **IN RE: KEVIN CANTWELL**  
[SLH-1](#)

MOTION TO CONFIRM PLAN  
6-16-2023    [\[27\]](#)

SETH HANSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

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

#### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 21. The plan is supported by Schedules I and J filed, June 12, 2023, ECF Nos. 24, 25. The Chapter 13 trustee has filed a non-opposition to the motion, 38.

#### **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.

15. [23-20238](#)-A-13     **IN RE: DAVID KIM AND JAE YONG MOON**  
[WW-1](#)

MOTION TO CONFIRM PLAN  
6-22-2023    [\[37\]](#)

MARK WOLFF/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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).

#### **TRUSTEE OPPOSITION**

The trustee opposed the motion contending that: 1) payments under the proposed plan are delinquent; 2) the plan proposes to pay student loan debt in a manner which represents an unfair discrimination; 3) Schedule I is inaccurate when compared to pay

advices provided to the trustee; and 4) the proposed plan does not represent the debtors' best efforts under 11 U.S.C. § 1325(b).

#### **DEBTOR REPLY**

As a courtesy to the court the debtors have indicated their intention to file a further modified plan which addresses the trustee's opposition. The debtors request that they be allowed to withdraw this motion. See Request to Withdraw Motion, ECF No. 48.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

In this case the court will deny the debtors' motion to confirm and allow the debtors to proceed with a further amended 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 debtors' 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,

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



16. [23-20040](#)-A-13     **IN RE: YAROSLAV TKACHUK**  
[DPC-2](#)

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

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from June 27, 2023

**Disposition:** Denied

**Order:** Civil minute order

**Motion to Confirm Plan Filed:** July 28, 2023 - 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 a Chapter 13 plan and a motion to confirm the plan. The debtor opposed the motion and at the prior hearing the court ordered as follows:

IT IS FURTHER ORDERED that not later than August 1, 2023, the debtor shall set, file, and serve a new Plan for confirmation or the trustee's motion will be granted without further notice or hearing.

Order, ECF No. 34.

On July 28, 2023, the debtor filed and served an amended plan and a motion to confirm the amended plan, ECF Nos. 37, 39. The hearing on the motion to confirm is October 17, 2023, at 9:00 a.m.

As the debtor has complied with the order 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 trustee's motion to dismiss 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,

IT IS ORDERED that the motion is denied.

17. [20-21047](#)-A-13     **IN RE: PAUL DENNO AND SANDRA MURRAY**  
[MWB-8](#)

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

MARK BRIDEN/ATTY. FOR DBT.

**Final Ruling**

This motion was continued to August 29, 2023, at 9:00 a.m. by Order, ECF No. 235. Accordingly, this matter will be removed from the calendar. No appearances are required.

18. [23-21868](#)-A-13     **IN RE: JEREMY NAVA-SALINAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-21-2023    [[24](#)]

MATTHEW METZGER/ATTY. FOR DBT.  
7/24/23 FILING FEE PAID \$32

**Final Ruling**

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

19. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[DPC-2](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER  
7  
12-19-2022    [[134](#)]

MARK BRIDEN/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Convert Case to Chapter 7

**Notice:** Continued from May 16, 2023

**Disposition:** Continued to September 12, 2023, at 9:00 a.m.

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's motion to convert this case to Chapter 7 will be continued to allow the Chapter 13 trustee to supplement the record.

The Chapter 13 trustee moves to convert the case under 11 U.S.C. § 1307(c). See Motion to Convert, ECF No. 134.

#### **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. It is not for the court nor any other party to guess which section(s) the trustee contends are applicable.

The court will continue this matter to allow the trustee to supplement the record, and to allow the debtors and creditor Nicholas Loper to file a response.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to September 12, 2023, at 9:00 a.m. No later than August 15, 2023, the Chapter 13 trustee shall amend his motion to state with particularity the legal authority for his motion, and to provide additional evidence and/or argument. The trustee shall also apprise the court regarding the status of plan payments.

IT IS FURTHER ORDERED that no later than August 29, 2023, the debtors, and creditor Nicolas Loper, may file additional evidence and argument in response to the trustee's argument and authority.

IT IS FURTHER ORDERED that the evidentiary record will close after August 29, 2023, and no further filings will be allowed without leave of court.

20. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[MWB-8](#)

CONTINUED MOTION TO DISMISS CASE  
3-28-2023    [[225](#)]

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from May 16, 2023

**Disposition:** Continued to September 12, 2023, at 9:00 a.m.

**Order:** Civil minute order

The hearing on the debtors' motion to dismiss was continued for further briefing by the parties and to coincide with the trustee's motion to convert the case to Chapter 7.

The court has continued the hearing on the trustee's motion to convert the case (DPC-2) to Chapter 7. The court will continue the hearing in this motion to coincide with the motion to convert. No further filings in this matter are authorized without leave of court.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to September 12, 2023, at 9:00 a.m. The evidentiary record is closed, and no further filings are allowed without leave of court.

21. [22-20175](#)-A-13     **IN RE: DARRIN/KRISTINA DEMELLO**  
[DRE-5](#)

MOTION TO DISMISS CASE  
7-25-2023    [\[102\]](#)

D. ENSMINGER/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Chapter 13 Case

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

**Disposition:** Continued to September 12, 2023, at 9:00 a.m.

**Order:** Civil Minute Order

The debtors seek an order dismissing or converting their Chapter 13 case. The case has previously been converted from Chapter 7.

Section 1307(b) of the Bankruptcy Code provides that "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable." 11 U.S.C. § 1307(b).

The court will continue the hearing on the motion to allow the Chapter 13 trustee to file a response. The trustee's response shall indicate whether he contends that dismissal or reconversion of the case, is in the best interests of the creditors and the estate. The trustee shall state the factual basis, cite the legal authority, and provide analysis and argument in support of his position.

At a minimum the chapter 13 trustee should provide the following information, analysis, and argument: 1) identify any orders entered regarding reconversion/dismissal and the impact of the order upon his motion; 2) identify non-exempt assets; 3) indicate the value of any non-exempt asset(s); 4) state the amount required to satisfy the liquidation test of 11 U.S.C. § 1325(a)(4) at confirmation of the plan; 5) state the amount previously distributed by the trustee to *unsecured* creditors under the plan; 6) state whether the distribution to unsecured creditors has satisfied the liquidation test; 7) identify any known position of a previously appointed trustee; and 8) provide any additional relevant information and analysis supporting the trustee's argument for dismissal or reconversion.

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to September 12, 2023 at 9:00 a.m. No later than August 29, 2023, the Chapter 13 trustee shall file and serve a response in accordance with this ruling.

IT IS FURTHER ORDERED that no later than September 5, 2023, the debtors may file and serve any additional evidence, amended schedules, and/or argument in support of their motion.

IT IS FURTHER ORDERED that the evidentiary record will be closed after September 5, 2023. The court may rule on this motion without further notice or hearing.

22. [23-22376](#)-A-13     **IN RE: BRANDON VILLICANA**  
[MOH-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-25-2023    [[14](#)]

MICHAEL HAYS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the 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 an order extending the automatic stay under 11 U.S.C § 362(c)(3). The debtor has filed one previous Chapter 13 bankruptcy: *In re Brandon Fernando Villicana*, 2022-22970, E.D. Cal. Bankr. (2022). The debtor confirmed a plan in the previous case; the case was dismissed on June 13, 2023, at the debtor's request. The debtor fell behind in the plan payments because of a serious injury sustained at work. Worker's Compensation payments did not allow the debtor to sustain plan payments or to get caught up when he returned to work. Declaration of Brandon Villicana, 1:24-32, ECF No. 16. The debtor has now returned to work. *Id.*, 2:1-10.

### **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.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

#### **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 granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

23. [23-20178](#)-A-13     **IN RE: TAMMY RAJAH-ALLEN**  
[EJV-2](#)

MOTION TO CONFIRM PLAN  
6-19-2023    [\[35\]](#)

ERIC GRAVEL/ATTY. FOR DBT.

#### **Final Ruling**

This matter is a duplicate of the motion to confirm Chapter 13 Plan, ECF No. 37. Accordingly, this matter will be removed from the calendar. No appearances are required.



24. [23-20178](#)-A-13     **IN RE: TAMMY RAJAH-ALLEN**  
[EJV-2](#)

MOTION TO CONFIRM PLAN  
6-19-2023    [\[37\]](#)

ERIC GRAVEL/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed June 19, 2023

### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 39. The plan is supported by Schedules I and J filed at the inception of the case, ECF No. 1. 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.

25. [23-20978](#)-A-13     **IN RE: SUZZETTEE LAWSON**  
[BLG-1](#)

MOTION TO AVOID LIEN OF ETHAN CONRAD  
7-7-2023    [\[24\]](#)

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

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

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

**Disposition:** Granted

**Order:** Prepared by moving party

**Subject Property:** 12065 Pericles Dr. Rancho Cordova, California

**Judicial Lien Avoided:** \$103,509.89 - Ethan Conrad

**All Other Liens:**

- Deed of Trust - Loancare, \$273,328.00

- Deed of Trust - Anatolia Unites 1 2 and 4 Master, \$2,627.92

**Exemption:** \$500,000

**Value of Property:** \$584,300

The debtor seeks an order avoiding the judicial lien of Ethan Conrad under 11 U.S.C. § 522(f).

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).

### **LIEN AVOIDANCE**

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

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

26. [23-20978](#)-A-13     **IN RE: SUZZETTEE LAWSON**  
[BLG-2](#)

MOTION TO VALUE COLLATERAL OF TRUIST BANK  
7-7-2023    [\[29\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

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

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** HVAC Unit

**Value:** \$2,000

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). Only the Chapter 13 trustee has filed opposition. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order valuing the collateral of Truist Bank at \$2,000.00. The Chapter 13 trustee filed opposition to the motion because the obligation was not listed in the debtor's list of secured obligations (Schedule D) and because the proposed Chapter 13 plan did not provide for treatment of the bank's obligation.

The debtor has filed an amended Schedule D which lists the obligation to the respondent, and an Amended Chapter 13 Plan which provides for the obligation in Class 2(b). See ECF Nos. 38, 46. These amendments resolve the trustee's opposition. No other party has filed opposition to the motion.

### **ORAL ARGUMENT**

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.

## **VALUATION OF COLLATERAL**

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

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

In this case, the debtor seeks to value collateral consisting of personal property described as an HVAC unit. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$2,000.00.

## **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as an HVAC unit has a value of \$2,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$2,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

27. [20-20580](#)-A-13     **IN RE: ALEKSANDR POKATILOV**  
[DPC-3](#)

MOTION TO DISMISS CASE  
7-10-2023    [\[64\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** July 25, 2023

**Opposition Filed:** July 11, 2023 - timely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,504.98, with another payment of \$2,252.76 due July 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 68, 69. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 69

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.

Moreover, the debtor's declaration is cursory and of no evidentiary value as it merely states the debtor will be current by the date of the hearing. The debtor fails to explain why the plan payments are delinquent, or to provide any information describing how he will be able to bring the plan payments current. Going forward the court will give such a cursory response no weight and grant 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.

28. [19-23082](#)-A-13     **IN RE: DUANE ZAMBOANGA**  
[DPC-3](#)

MOTION TO DISMISS CASE  
7-7-2023    [\[52\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** July 25, 2023

**Opposition Filed:** Unopposed

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

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

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

## **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,802.00 with a further payment of \$1,058.00 due July 25, 2023.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

## **CIVIL MINUTE ORDER**

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

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

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

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

29. [21-22486](#)-A-13     **IN RE: ANNA MURPHY**  
[WSS-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-5-2023    [\[318\]](#)

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

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 6010/6020 McCourtney Road, Lincoln, California

**Petition Filed:** July 6, 2021

Charley Smith Trust (Smith) seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The basis of the request is cause including delinquent adequate protection payments for the months of June and July 2023, and the debtor's failure to confirm a plan.

### **STATUS OF CASE**

Prior to filing the petition Smith and the debtor entered into a Contract for Deed for the purchase of the real property commonly known as 6010/6020 McCourtney Road, Lincoln, California. Also, prior to the filing of the bankruptcy petition Smith and the debtor were engaged in state court litigation which resulted in a final judgment in favor of Smith. A decree of foreclosure was not entered prepetition.

The debtor appealed the state court judgment and proposed monthly adequate protection payments to Smith which, until the filing of the amended plan on August 1, 2023, were payable outside the Chapter 13 plan directly to Smith.

Thereafter the debtor objected to Smith's claim. On March 23, 2023, this court ordered that:

the debtor's objection to the claim of creditor Charley Smith Family Trust, Claim No. 14, is stayed pending resolution of the state court appeal; the automatic stay of 11 U.S.C. § 362(a) is lifted to allow the parties to pursue the pending appeal in state court.

Order, ECF No. 273.

The state court appeal is still pending, and the court is unaware of the status of the appeal. A Chapter 13 plan has never been confirmed. The case has been pending for 24 months.



The Chapter 13 trustee reports that the status of plan payments is as follows: "Debtor is current through June 2023 with the last TFS payment having posted on 7-18-23 in the amount of \$545.00." Trustee Response, 1:27-28, ECF No. 330.

On August 1, 2023, the debtor filed an amended plan. Third Amended Chapter 13 Plan, ECF No. 344. The amended plan calls for payments as follows:

Debtor has paid of (sic) total of \$12,535.00 through July 2023

Plan payments of \$3,125.00 per month will commence August 25, 2023 for 36 months Lump sum payment in the amount sufficient to pay all allowed claims in full on or before the 60th month

Balance on hand as of July 31, 2023 = \$2,182.70

DEBTOR HAS MADE DIRECT PAYMENTS TO CLASS 2 CREDITOR, CHARLEY SMITH FAMILY TRUST, OF \$2,366.60 PER MONTH FOR (22) POST-PETITION PAYMENTS, AUGUST 2021 THRU MAY 2023

\*DEBTOR SHALL REFINANCE REAL PROPERTY WITHIN (60) DAYS OF COMPLETION OF APPEAL AND RESOLUTION OF THE OBJECTION TO CLAIM PGM-6.

*Id.*, Section 7, Non-Standard Provisions.

The Third Amended plan provides for payment to Smith in Class 2, and in the amount of \$2,366.60 per month. *Id.*, Section 2(A).

Smith contends that adequate protection payments are delinquent as follows:

Debtor is delinquent in her adequate protection payments to me for the months of June and July 2023. Another payment will come due prior to the hearing on this motion (sic)

Declaration of Charley Smith, 2:16-18, ECF No. 322.

#### **STAY RELIEF**

The debtor is obligated to make loan payments to the moving party pursuant to a contract for deed, and judgment thereon, on the real property described above. The debtor has defaulted in making post-petition adequate protection payments to the movant as payments are past due for the months of June and July 2023. 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).

The debtor has filed opposition to the motion. The opposition states that:

[t]he Debtor is current to both the Trustee and the Creditor, is preparing a Motion to Confirm which will be filed, set, and served by August 4, 2023, and then confirmed by September 15, 2023.

Opposition, 1:21-25, ECF No. 334.

The opposition is an unsworn statement by the debtor's attorney and is accompanied by no evidence. As such the court gives it no weight. Moreover, the proposed plan, filed on August 1, 2023, states that the debtor has made payments to Smith through May 2023, but does not propose any further payment to Smith until disbursements are made by the Chapter 13 trustee at the end of August 2023. Finally, the debtor filed the petition on July 6, 2021, and has yet to confirm a plan, to the creditor's detriment.

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.

Charley Smith Trust's motion for relief from the automatic stay has been presented to the court.

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 6010/6020 McCourtney Road, Lincoln, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

30. [22-21690](#)-A-13     **IN RE: TRACI HAMILTON**  
[EAT-2](#)

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

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

**No Ruling**

31. [22-21690](#)-A-13     **IN RE: TRACI HAMILTON**  
[RJ-3](#)

AMENDED MOTION TO CONFIRM PLAN  
6-27-2023    [[127](#)]

RICHARD JARE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

**SERVICE AND NOTICE**

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

Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1 (emphasis added).

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 128. 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:

Debtor's Motion to Confirm Chapter 13 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.

32. [22-20491](#)-A-13     **IN RE: MICHELLE PAILLET**  
[TBG-3](#)

MOTION TO MODIFY PLAN  
6-30-2023    [\[61\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order confirming the Chapter 13 plan. For the following reasons the motion will be denied without prejudice.

### **SERVICE AND NOTICE**

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

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

### Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

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

In this case the matrix attached to the certificate of service is dated April 3, 2023. See Certificate of Service, ECF No. 65. Service of the motion occurred on June 30, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

## **CIVIL MINUTE ORDER**

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

Debtor's Motion to Confirm Chapter 13 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.

33. [20-24698](#)-A-13     **IN RE: JOHN/VERLYNDA KAZE**  
[BB-2](#)

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

BONNIE BAKER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Hardship Discharge  
**Notice:** Continued from June 27, 2023  
**Disposition:** Granted  
**Order:** Civil minute order

This is the debtor's motion for hardship discharge. The debtor's spouse passed away unexpectedly during the pendency of the confirmed plan.

The trustee filed initial opposition to the motion, requesting additional evidence from the debtor, ECF No. 49.

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

The debtor filed multiple declarations and exhibits which specifically addressed and documented: 1) the debtor's medical conditions which prohibit her employment; 2) insurance proceeds received by the debtor; 3) denial of insurance coverage by additional insurance companies; and 4) lack of ability to make plan payments by the debtor's family members. On July 17, 2023, the debtor amended Schedules A/B and C listing insurance proceeds received, and exempting the same. See Amended Schedules A/B, C, ECF No. 66.

The Chapter 13 trustee has filed a Supplemental Response to the motion indicating that he no longer opposes the debtor's request for a hardship discharge. Supplemental Response, ECF No. 65.

No other parties have filed opposition to the motion.

#### **HARDSHIP DISCHARGE**

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C. § 1328(b).

For the reasons stated in the motion and supporting papers, the court finds that the debtor is entitled to a discharge under 11 U.S.C. § 1328(b). The motion will be granted.

#### **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 for Hardship Discharge under 11 U.S.C. § 1328(b) has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted.