



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: AUGUST 13, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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.

1. [22-21701](#)-A-13 **IN RE: GRACE REEDY**
[TLA-1](#)

MOTION TO INCUR DEBT
7-16-2024 [\[27\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

The hearing on this motion is continued to August 27, 2024, at 9:00 a.m. to coincide with the debtor's motion to modify the Chapter 13 Plan. No later than August 14, 2024, the Chapter 13 trustee shall file and serve a response to this motion.

2. [24-22604](#)-A-13 **IN RE: SANDRA DAVIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-19-2024 [\[20\]](#)

Tentative Ruling

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

3. [24-22306](#)-A-13 **IN RE: JOSE/ALICIA SANTANA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
7-17-2024 [\[22\]](#)

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 24, 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

4. [24-22416](#)-A-13 **IN RE: REYNALDO TABOT**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
7-18-2024 [\[13\]](#)

ERIC GRAVEL/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 24, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Toyota Motor Credit Corporation, 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 24, 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 27, 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

27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

5. [24-22629](#)-A-13 **IN RE: RUMMY SANDHU**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-22-2024 [[19](#)]

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

6. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-15-2024 [[25](#)]

7/17/2024 FILING FEE PAID \$34

Final Ruling

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

7. [24-20935](#)-A-13 **IN RE: SIANG PETERS**
[DPC-2](#)

MOTION TO DISMISS CASE
7-12-2024 [\[76\]](#)

MARK SHMORGON/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 30, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file Chapter 13 Plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$36,000.00 with one payment(s) of \$12,030.24 due prior to the hearing on this motion.

The trustee also seeks dismissal as the debtor has failed to file an amended Chapter 13 Plan after the court denied confirmation of the previously filed plan.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

8. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLEN**
[MET-2](#)

CONTINUED MOTION TO CONFIRM PLAN
3-26-2024 [\[44\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from July 2, 2024

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. Creditor Erika Ceja also opposes the motion.

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

PLAN FEASIBILITY

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

Plan Delinquency

The Chapter 13 trustee has filed a status report, ECF No. 98. The trustee reports that the plan payments are delinquent in the amount of \$13,784.00, with an additional payment of \$4,985.00 due on August 25, 2024. The plan cannot be confirmed if the plan payments are not current.

DEBTOR FAILED TO FILE EVIDENCE AS ORDERED

On June 18, 2024, the debtor requested a continued hearing date in response to the creditor's opposition to this motion. As such the court issue the following order:

IT IS FURTHER ORDERED that no later than July 30, 2024, the debtor shall file and serve all evidence and argument in response to the opposition and evidence filed by creditor Ceja and the Chapter 13 trustee in this matter. The evidentiary record will close on July 30, 2024, and no further evidence may be filed regarding this motion without further order of the court.

IT IS FURTHER ORDERED that no later than July 30, 2024, the Chapter 13 trustee shall file a status report apprising the court regarding the status of payments under the proposed Chapter 13 Plan.

Order, ECF No. 93.

The debtor failed to file any evidence, or otherwise advise the court of her intentions regarding the prosecution of this motion.

The court finds that the debtor has not sustained the burden of proving that the proposed plan complies with 11 U.S.C. §§ 1322, 1325. 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.

9. [24-22437](#)-A-13 **IN RE: ROBERT STANLEY**
[DPC-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-19-2024 [[22](#)]

MARY TERRANELLA/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 24, 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

10. [24-22437](#)-A-13 **IN RE: ROBERT STANLEY**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
7-16-2024 [[14](#)]

MARY TERRANELLA/ATTY. FOR DBT.
JENNIFER WONG/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 24, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Nationstar Mortgage 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

11. [24-21440](#)-A-13 **IN RE: ERIKA NORMAN**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-15-2024 [\[42\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

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

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The Chapter 13 trustee objects to the debtor's claim of exemptions as follows.

EXEMPTIONS

Burden of Proof

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

Exemption Law in Bankruptcy

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201, 204 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 of Title 11 allows a debtor (1) to exempt property under § 522(d), unless a state does not so authorize, or (2) to exempt property under state or local law and federal law other than § 522(d). *Id.* § 522(b)(2)-(3)(A), (d). California has opted out of the federal exemption scheme. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11

U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 (“[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition.”); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). “In California, exemptions are to be construed liberally in favor of the debtor.” *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure (“special bankruptcy exemptions”) or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) (“regular non-bankruptcy exemptions”). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)–(3).

C.C.P. § 704.060

Section 704.060 allows the debtor to exempt:

- (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:
 - (1) Eight thousand seven hundred twenty-five dollars (\$8,725), *if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.*
 - (2) Eight thousand seven hundred twenty-five dollars (\$8,725), *if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.*
 - (3) Twice the amount of the exemption provided in paragraph (1), *if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.*

Cal. Civ. Proc. Code § 704.060(emphasis added).

The debtor has claimed exempt an interest in: (1) a 2003 Ford F250 under C.C.P. §704.060 in the amount of \$2,000.00; and (2) power tools under C.C.P. §704.060 in the amount of \$3,275.00.

Schedule I, indicates that the debtor is unemployed. Schedule I, ECF No. 1.

The debtor testified at the meeting of creditors, that she receives her income from her non-filing spouse who is self-employed. Debtor also testified that she is not involved with her spouse's business. Because the debtor is not currently engaged in a trade and does not produce income from the use of the vehicle or the power tools, the court finds that the claim of exemption under C.C.P. §704.060 is improper. The court will sustain the objection.

C.C.P. § 704.070(b) (2)

A debtor may exempt earnings as follows:

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.

(2) *Disposable earnings* that would otherwise not be subject to levy under Section 706.050 that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

Cal. Civ. Proc. Code § 704.070(b) (1), (2) (emphasis added).

The debtor has claimed exempt an interest in multiple accounts at the Bank of America in the aggregate amount of \$2,500.00 under C.C.P. §704.070(b) (2).

As the court has previously discussed in this ruling Schedule I indicates that the debtor is unemployed. There is no evidence before the court that the amounts on deposit result from the debtor's employment. Unless the funds on deposit are the result of funds from the debtor's employment the exemption pursuant to C.C.P. § 704.070(b) is improper.

As the debtor bears the burden of proof and has failed to produce evidence which shows the amounts on deposit are derived from her employment the court will sustain the objection and disallow the \$2,500.00 exemption in the bank accounts.

The objection trustee's objection will be sustained.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is sustained. The exemptions of claimed in the: (1) 2003 Ford F250 under C.C.P. §704.060 in the amount of \$2,000.00; (2) power tools under C.C.P. §704.060 in the amount of \$3,275.00; and (3) multiple bank accounts at Bank of America in the amount of \$2,500.00 under C.C.P. § 704.070(b)(2) are disallowed in their entirety.

12. [24-21440](#)-A-13 **IN RE: ERIKA NORMAN**
[RDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-29-2024 [\[54\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
ARTHUR H. SUTTER, TRUSTEE OF THE ARTHUR H. SUTTER REVOCABLE
TRUST ET AL. VS.

No Ruling

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

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

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

Tentative Ruling

Objection: Objection to Homestead Exemption

Notice: Continued from June 18, 2024

Disposition: Continued to September 24, 2024, at 9:00 a.m.

Order: Civil minute order

Attorneys Alan Nahmias, counsel for the Chapter 13 trustee, and Maryellen Terranella are ordered to appear at the hearing on August 13, 2024, at 9:00 a.m. Appearances may be made in person, by Zoom, or CourtCall.

The hearing on creditor Richard Teague's objection to the debtor's claim of exemptions has been continued multiple times. To resolve this matter the parties entered into a settlement agreement which resolved this objection as well as additional matters in this case which are pending before this court. The hearing on this objection was continued to allow the sale of real property to close.

STIPULATION AND PLAN

Settlement Agreement

The Settlement Agreement resolving the controversies states:

Upon the Court's approval of the Compromise Motion, the closing of the sale of the Property, and the payment of the entire Guaranteed Settlement Sum, the parties shall cooperate to:

- i. Dismiss the Adversary Proceeding, with prejudice;
- ii. Withdraw, with prejudice, Teague's proof of claim;
- iii. Withdraw Debtor's motion to avoid judicial lien; and
- iv. Withdraw with prejudice Teague's objection to Debtor's claim of exemption.

Exhibit, ECF No. 197.

However, it appears that the completion of the Chapter 13 Plan is required to fully resolve all matters, after which the agreement requires the parties to dismiss and/or withdraw the contested matters pending before the court.

Confirmed Plan

The confirmed Chapter 13 Plan is a 60-month plan. Chapter 13 Plan, § 2.03, ECF No. 203. However, Section 7 of the Plan also states:

The plan term is dependant (sic) upon the date of the close of sale of the debtor's residence, the proceeds of which will be sufficient to pay off the Chapter 13 plan.

Id., § 7.

The debtor filed a status report on July 23, 2024, as ordered. The report states:

The Settlement Agreement provided for a sale of the debtor's residence, which the Court approved through a Motion to Sell Property, by Order of the Court on May 29, 2024, docket number 240.

The sale of the property has closed (sic) and the Chapter 13 Trustee was provided the Final Seller's Statement on or about July 11, 2024. The sale of the debtor's residence, as well as the provisions of the Settlement Agreement all of which have now been met,

have resolved all three of the above referenced contested matters, which are the Motion to Avoid Judicial Lien, the Objection to Homestead Exemption and the Objection/Rebuttal to Objection to Homestead Exemption.

Status Report, ECF No. 255.

The Chapter 13 trustee has not apprised the court regarding the status of the Chapter 13 Plan. Neither has any party moved to dismiss or withdraw any of the matters pending before this court as provided in the Settlement Agreement.

Accordingly, it is unclear to the court if the plan is completed, and consequently if this objection is resolved according to the terms of the Settlement Agreement.

The court will continue this matter once more to allow the parties to determine if the Chapter 13 Plan has completed, and to take appropriate measures to dismiss or withdraw the matters pending before the court, as provided in the Settlement Agreement.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to September 24, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the continued hearing the debtor, the objecting creditor, and the Chapter 13 trustee shall file a **joint status report**. Ms. Terranella shall take the lead in filing the status report. At a minimum the status report shall apprise the court: (1) whether the Chapter 13 Plan is complete; (2) whether the terms of the Settlement Agreement regarding payment to the objecting creditor have been satisfied; (3) whether the instant objection has been withdrawn or dismissed; and (4) if the objection has not been withdrawn or dismissed, an estimated time for the parties to take appropriate action to withdraw or dismiss the objection.

14. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-2](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Objection: Objection to Homestead Exemption

Notice: Continued from June 18, 2024

Disposition: Continued to September 24, 2024, at 9:00 a.m.

Order: Civil minute order

Attorneys Alan Nahmias, counsel for the Chapter 13 trustee, and Maryellen Terranella are ordered to appear at the hearing on August 13, 2024, at 9:00 a.m. Appearances may be made in person, by Zoom, or CourtCall.

The hearing on the debtor's objection to the testimony of Joseph Lynch has been continued multiple times. To resolve this matter the parties entered into a settlement agreement which resolved this objection as well as additional matters in this case which are pending before this court. The hearing on this objection was continued to allow the sale of real property to close.

STIPULATION AND PLAN

Settlement Agreement

The Settlement Agreement resolving the controversies states:

Upon the Court's approval of the Compromise Motion, the closing of the sale of the Property, and the payment of the entire Guaranteed Settlement Sum, the parties shall cooperate to:

- i. Dismiss the Adversary Proceeding, with prejudice;
- ii. Withdraw, with prejudice, Teague's proof of claim;
- iii. Withdraw Debtor's motion to avoid judicial lien;

and

- iv. Withdraw with prejudice Teague's objection to Debtor's claim of exemption.

Exhibit, ECF No. 197.

However, it appears that the completion of the Chapter 13 Plan is required to fully resolve all matters, after which the agreement requires the parties to dismiss and/or withdraw the contested matters pending before the court.

Confirmed Plan

The confirmed Chapter 13 Plan is a 60-month plan. Chapter 13 Plan, § 2.03, ECF No. 203. However, Section 7 of the Plan also states:

The plan term is dependant (sic) upon the date of the close of sale of the debtor's residence, the proceeds of which will be sufficient to pay off the Chapter 13 plan.

Id., § 7.

The debtor filed a status report on July 23, 2024, as ordered. The report states:

The Settlement Agreement provided for a sale of the debtor's residence, which the Court approved through a Motion to Sell Property, by Order of the Court on May 29, 2024, docket number 240.

The sale of the property has closed (sic) and the Chapter 13 Trustee was provided the Final Seller's Statement on or about July 11, 2024. The sale of the debtor's residence, as well as the provisions of the Settlement Agreement all of which have now been met, have resolved all three of the above referenced contested matters, which are the Motion to Avoid Judicial Lien, the Objection to Homestead Exemption and the Objection/Rebuttal to Objection to Homestead Exemption.

Status Report, ECF No. 255.

The Chapter 13 trustee has not apprised the court regarding the status of the Chapter 13 Plan. Neither has any party moved to dismiss or withdraw any of the matters pending before this court as provided in the Settlement Agreement.

Accordingly, it is unclear to the court if the plan is completed, and consequently if this objection is resolved according to the terms of the Settlement Agreement.

The court will continue this matter once more to allow the parties to determine if the Chapter 13 Plan has completed, and to take appropriate measures to dismiss or withdraw the matters pending before the court, as provided in the Settlement Agreement.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to September 24, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the continued hearing the debtor, the opposing creditor, and the Chapter 13 trustee shall file a **joint status report**. Ms. Terranella shall take the lead in filing the status report. At a minimum the status report shall apprise the court: (1) whether the Chapter 13 Plan is complete; (2) whether the terms of the Settlement Agreement regarding payment to the objecting creditor have been satisfied; (3) whether the instant objection has been withdrawn or dismissed; and (4) if the objection has not been withdrawn or dismissed, an estimated time for the parties to take appropriate action to withdraw or dismiss the objection.

15. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-1](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien

Notice: Continued from June 18, 2024

Disposition: Continued to September 24, 2024, at 9:00 a.m.

Order: Civil minute order

Attorneys Alan Nahmias, counsel for the Chapter 13 trustee, and Maryellen Terranella are ordered to appear at the hearing on August 13, 2024, at 9:00 a.m. Appearances may be made in person, by Zoom, or CourtCall.

The hearing on the debtor's motion to avoid lien of creditor Richard Teague has been continued multiple times. To resolve this motion the parties entered into a settlement agreement which resolved this motion as well as additional matters in this case which are pending before this court. The hearing on this motion was continued to allow the sale of real property to close.

STIPULATION AND PLAN

Settlement Agreement

The Settlement Agreement resolving the controversies states:

Upon the Court's approval of the Compromise Motion, the closing of the sale of the Property, and the payment of the entire Guaranteed Settlement Sum, the parties shall cooperate to:

- i. Dismiss the Adversary Proceeding, with prejudice;
- ii. Withdraw, with prejudice, Teague's proof of claim;
- iii. Withdraw Debtor's motion to avoid judicial lien;

and

iv. Withdraw with prejudice Teague's objection to Debtor's claim of exemption.

Exhibit, ECF No. 197.

However, it appears that the completion of the Chapter 13 Plan is required to fully resolve all matters, after which the agreement requires the parties to dismiss and/or withdraw the contested matters pending before the court.

Confirmed Plan

The confirmed Chapter 13 Plan is a 60-month plan. Chapter 13 Plan, § 2.03, ECF No. 203. However, Section 7 of the Plan also states:

The plan term is dependant (sic) upon the date of the close of sale of the debtor's residence, the proceeds of which will be sufficient to pay off the Chapter 13 plan.

Id., § 7.

The debtor filed a status report on July 23, 2024, as ordered. The report states:

The Settlement Agreement provided for a sale of the debtor's residence, which the Court approved through a Motion to Sell Property, by Order of the Court on May 29, 2024, docket number 240.

The sale of the property has closed (sic) and the Chapter 13 Trustee was provided the Final Seller's Statement on or about July 11, 2024. The sale of the debtor's residence, as well as the provisions of the Settlement Agreement all of which have now been met, have resolved all three of the above referenced contested matters, which are the Motion to Avoid Judicial Lien, the Objection to Homestead Exemption and the Objection/Rebuttal to Objection to Homestead Exemption.

Status Report, ECF No. 255.

The Chapter 13 trustee has not apprised the court regarding the status of the Chapter 13 Plan. Neither has any party moved to dismiss or withdraw any of the matters pending before this court as provided in the Settlement Agreement.

Accordingly, it is unclear to the court if the plan is completed, and consequently if this motion is resolved according to the terms of the Settlement Agreement.

The court will continue this matter once more to allow the parties to determine if the Chapter 13 Plan has completed, and to take appropriate measures to dismiss or withdraw the matters

pending before the court, as provided in the Settlement Agreement.

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 24, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the continued hearing the debtor, the opposing creditor, and the Chapter 13 trustee shall file a **joint status report**. Ms. Terranella shall take the lead in filing the status report. At a minimum the status report shall apprise the court: (1) whether the Chapter 13 Plan is complete; (2) whether the terms of the Settlement Agreement regarding payment to the opposing creditor have been satisfied; (3) whether the instant motion has been withdrawn or dismissed; and (4) if the motion has not been withdrawn or dismissed, an estimated time for the parties to take appropriate action to withdraw or dismiss the motion.

16. [24-20056](#)-A-13 **IN RE: TYLOR/TAMMY VEST**
[CK-1](#)

CONTINUED MOTION TO CONFIRM PLAN
5-21-2024 [\[26\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from July 16, 2024

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).

The hearing on this motion was continued to allow the parties to supplement the record. Each party has filed additional argument as follows.

The trustee objects to the proposed plan contending that it does not provide for payment in full of priority obligations owed to the IRS and the Franchise Tax Board as required under 11 U.S.C. §§ 1325(a)(1), 1322(a)(2). Supplemental Opposition, ECF No. 37.

As a courtesy to the court the debtor's attorney filed a supplemental declaration in response to the trustee's supplemental opposition. Declaration, ECF No. 40. In the declaration counsel concedes the trustee's opposition and states her intention to file an amended plan in this case. *Id.* Accordingly, the court finds that the plan does not comply with the requirements of 11 U.S.C. §§ 1325(a)(1), 1322(a)(2) and 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.

17. [24-22457](#)-A-13 **IN RE: HELMUTH/ANGELA BURROWS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-24-2024 [\[33\]](#)

RABIN POURNAZARIAN/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 24, 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

18. [23-24064](#)-A-13 **IN RE: RICARDO CORTEZ**
[TJW-1](#)

MOTION TO SET ASIDE DISMISSAL OF CASE
7-24-2024 [\[37\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
DEBTOR DISMISSED: 06/05/24; RESPONSIVE PLEADING

Tentative Ruling

Motion: Vacate Dismissal

Notice: LBR 9014-1(f)(2); written opposition filed by trustee

Disposition: Denied

Order: Civil minute order

The debtor seeks an order vacating the dismissal of the debtor's Chapter 13 case. The case was dismissed on the motion of the Chapter 13 trustee on June 5, 2024, after a hearing on June 4, 2024.

The instant motion to vacate the dismissal was filed on July 24, 2024. The motion to vacate dismissal is not accompanied by a declaration from the debtor or debtor's counsel. The Chapter 13 trustee opposes the motion. Opposition, ECF No. 41.

AUTHORITY

The motion states:

The basis of the trustee's motion, is twofold: 1- no Amended Plan filed, and, 2- the alleged missing payment, for April, 2024.

The basis of this Debtor's motion is also twofold: 1. The debtor did, in fact, file the Amended plan, 5 days prior to the hearing of the trustee's motion. 2. The debtor did in fact make the missing payment on May 8, 2024, 27 days prior to the hearing. The Court did not have the accurate set of facts, necessary for the Court to grant the trustee's Motion to Dismiss.

Motion to Vacate, 1:19-28, ECF No. 37.

The Chapter 13 trustee opposes the motion to vacate on multiple bases. One such basis is that the debtor fails to cite any applicable authority for the motion to vacate as required by LBR 9014-1(d)(3).

The trustee is correct, the debtor cites no legal authority in his motion. However, the court will presume that the motion is intended under Fed. R. Civ. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9024. Accordingly, the court will hear the motion.

Rule 60(b)

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) *mistake, inadvertence, surprise, or excusable neglect*;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b) (emphasis added).

EVIDENCE IN SUPPORT OF MOTION TO VACATE

No Declaration in Support of Motion to Vacate Dismissal

The debtor has submitted scant admissible evidence in support of the motion to vacate. As the court has previously observed there are no declarations filed by either the debtor or debtor's counsel explaining the circumstances which led to the order dismissing the case.

Judicial Notice

As the trustee observes, the debtor has failed to request that the court take judicial notice of the pleadings which appear on the court's docket, and the Department A Prehearing Disposition Instructions.

However, the court may take judicial notice on its own motion. Fed. R. Evid. 201(c). A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Accordingly, the court takes judicial notice of the documents filed in this case and of the court's own prehearing disposition instructions.

Hearsay

The trustee contends that the debtor has submitted documents in support of the motion which have not been authenticated. The debtor filed an estimate regarding the value of his real property residence located at 785 Persimmon Place Fairfield, California, Exhibit 10, ECF No. 39. The printout regarding the property value is an

internet estimate from Bank of America which states that the value is \$628,487. This exhibit also contains the following language:

[t]his is an estimate of your home's value as of 7/22/2024. It is intended to be used for illustrative purposes only and does not represent an appraisal or confirmation of actual home value.

Id.

The exhibit is hearsay. Fed. R. Evid. 802. As such, the Bank of America estimate is inadmissible and will not be considered.

There is no declaration filed by the debtor regarding the value of the real property. However, the debtor indicated in Schedule A/B, filed at the inception of this case, that the property has a value of \$600,000. Schedule A/B, ECF No. 1. A Notice of Trustee's Sale was also submitted as Exhibit 9, ECF No. 39. This document shows that \$282,605.74 is owed to the claimant U.S. Bank Trust National Association as Trustee, Claim No. 3. Thus, it appears that the debtor has approximately \$317,395 equity in the real property.

EVIDENCE IN OPPOSITION TO MOTION TO VACATE

Plan Payments

The Chapter 13 trustee's Motion to Dismiss alleged:

The Debtor is delinquent \$1,467.00 in Plan payments to the Trustee. The next scheduled payment of \$1,720.00 will be due on May 25, 2024, which is prior to this hearing. This case was filed on November 14, 2023. The Debtor has paid \$7,133.00 into the Plan to date. The Debtor must be current under all payments called for by any pending Plan, Amended Plan or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

Trustee Motion to Dismiss, 1:24-28, 2:1-2, ECF No. 27.

The motion to dismiss was to be heard on June 4, 2024. At the time the motion was filed plan payments were delinquent in the amount of \$1,467.00. However, an additional plan payment in the amount of \$1,720.00 was due on May 25, 2024. Accordingly, the total amount due prior to the hearing was \$3,187.00.

The trustee acknowledges receipt of \$1,800.00 in plan payments on May 8, 2024. Declaration of Neil Enmark, ECF No. 42. The trustee also contends that no further payments were made in May 2024. *Id.* Accordingly, on June 4, 2024, (the hearing date) plan payments were delinquent in the amount of \$1,387.00 when case was dismissed.

Further Payments Tendered

The trustee acknowledges receipt of \$1,800.00 in plan payments on June 7, 2024. *Id.* These funds were received after the case was dismissed.

Funds Returned to Debtor

The Chapter 13 trustee reports that payments totaling \$3,302.18, were refunded to the debtor on or about July 2, 2024. *Id.* The trustee also reports that the refunds occurred contemporaneously with a communication from debtor's counsel questioning amounts paid to the mortgage company and when the trustee's final report and account might be generated. *Id.*

MOTION TO DISMISS

Dismissal Motion Was Unopposed

The trustee's motion to dismiss was brought pursuant to LBR 9014-1(f)(1) which requires written opposition to the motion no later than 14 days prior to the scheduled hearing. Notice of Trustee's Motion to Dismiss Case, ECF No. 28. The notice specifically stated:

YOU HAVE UNTIL MAY 21, 2024, TO FILE A WRITTEN RESPONSE OR OPPOSITION TO THIS MOTION.

Even if you believe the issues brought up in the Motion to Dismiss have been resolved, do not assume the Court or Trustee knows this. You should still file a response or opposition stating why you believe the issues have been resolved. If you do not file a timely written response or opposition with the Court to this motion, the Court may resolve this matter without oral argument, **AND YOU MAY NOT BE ALLOWED A HEARING.** Any opposition must be accompanied with evidence to support any factual allegations.

Id., 1:24-28, 2:1-3.

Despite the use of bold type, underlined text, and clear wording in the notice of motion, the debtor and counsel failed to file any opposition to the motion. Because opposition was not filed the court issued a final ruling granting the motion and dismissing the case.

"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.

Prehearing Disposition Instructions, Department A.

Matters in which a final ruling is issued are not heard on the date of the hearing. The court posted its prehearing dispositions on May 30, 2024, at 1:24 p.m.

Amended Plan Untimely Filed - Debtor Failed to Request Extension of Time to Oppose Motion and File Plan

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B).

While the debtor did not file opposition to the motion to dismiss, an amended plan was filed on May 30, 2024, at 11:38 a.m. Amended Plan, ECF No. 31. This was 6 days prior to the hearing date on June 4, 2024. However, a motion to confirm the amended plan was not filed and served at the time the plan was filed. LBR 3015-1(d)(1).

Moreover, as documents are not posted immediately on PACER when filed, the amended plan was not available when the court posted its prehearing dispositions.

The modified plan was offered and intended as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). The opposition--albeit of the de facto variety--was untimely.

The court is aware that the motion to dismiss was filed May 6, 2024, giving the debtor only 15 days to resolve the grounds for dismissal or to timely file opposition and 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 availed himself of that rule when he filed the motion to dismiss.

Second, and moreover, if the debtor believed that additional time to oppose the motion to dismiss was required, even if by presentation of a modified plan, **it was incumbent on the debtor prior to the date opposition to the motion was due to seek leave to file a late opposition**, LBR 9014-1(f), Fed. R. Bankr. P. 9006(b), 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 in this case.

Plan Payments Were Delinquent on Hearing Date

The Chapter 13 trustee brought a motion to dismiss the debtor's Chapter 13 case arguing the debtor's conduct constituted unreasonable delay which was prejudicial to creditors under 11 U.S.C. § 1307(c)(1). The trustee asserted that delinquent plan payments and the debtor's failure to file an amended plan (following the court's denial of confirmation of the previously confirmed plan on February 27, 2024) constituted such unreasonable delay. Motion to Dismiss, ECF No. 27.

The motion contended that:

The Debtor is delinquent \$1,467.00 in Plan payments to the Trustee. The next scheduled payment of \$1,720.00 will be due on May 25, 2024, which is prior to this hearing.

Id., 1:24-28.

Both the debtor and the Chapter 13 trustee agree that \$1,800.00 was paid prior to the hearing on the dismissal motion. However, the Chapter 13 trustee states in his opposition to the instant motion:

Debtor's Motion does not explain that the Debtor made no other payments in May 2024 and the Debtor was delinquent \$1,387.00 once the May payment came due on 5/25/24 prior to the hearing.

Trustee Oppos., 2:9-11, ECF No. 41.

Thus, the Chapter 13 Plan payments were still delinquent on the day of the hearing on the trustee's dismissal motion. The trustee's records support that no further payment was received from the debtor until June 28, 2024.

The court concludes that plan payments were delinquent on the hearing date and the dismissal of the bankruptcy case was proper.

MOTION TO VACATE DISMISSAL - DISCUSSION

Fed. R. Civ. P. 60(b), *incorporated* by Fed. R. Bankr. P. 9024, authorizes this court to grant relief after considering "all relevant circumstances surrounding the party's omission" including "[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith," *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 US 380, 395 (1993).

Danger of Prejudice to Debtor

The court acknowledges that there is danger of prejudice to the debtor as a foreclosure sale date of August 22, 2024, has been set regarding the debtor's real property. Exhibit 9, ECF No. 39. As previously indicated the debtor has equity of approximately \$317,395 in the real property which is the subject of the sale.

However, the debtor is not precluded from filing another Chapter 13 petition.

Length of Delay and Impact on Judicial Proceedings

The petition in this case was filed November 14, 2024. A Chapter 13 Plan was never confirmed. Eight claims were filed, including a

claim by the mortgage lender which noticed the foreclosure sale. However, 88 parties were notified of the dismissal of this case on June 7, 2024. Certificate of Notice, ECF No. 36. Over two months has passed since the case was dismissed.

The debtor served the instant motion to vacate only on the Chapter 13 Trustee, the U.S. Trustee, and U.S. Bank Trust, N.A. - the foreclosing creditor. None of the remaining 88 parties are aware of the debtor's motion to vacate the stay. If the motion is granted each of these parties would be impacted by the subsequent reimposition of the automatic stay. The debtor's motion fails to address the impact of the motion on creditors which have been notified that the case was dismissed. At least one creditor, U.S. Bank Trust, N.A., has acted in reliance on the dismissal of the case.

Administration of the Chapter 13 Plan would similarly be negatively impacted by the granting of the motion.

The Chapter 13 trustee sent refunds of \$3,302.18 to the debtor. The debtor has filed no declaration in support of the instant motion. Accordingly, there is no evidence before the court about whether the debtor can comply with the payments scheduled in the proposed amended plan. The court notes that the plan calls for payments of \$1,720 per month for 60 months. Amended Chapter 13 Plan, §§ 2.01, 2.03, ECF No. 31. The plan also calls for ongoing monthly mortgage payments to U.S. Bank Trust, N.A., in the amount of \$1,262.19. *Id.*, § 3.07. Two payments have come due since the dismissal of the case and the debtor has failed to provide any evidence of his ability to make the plan payments which would be due immediately, or the payment due on August 25, 2024.

Reason for Delay

The court must determine whether the neglect in this case was "excusable".

In *Pioneer*, the Supreme Court held that the determination of whether a party's neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." 507 U.S. at 395, 113 S.Ct. at 1498. Briones' conduct appears to have been at least negligent, so the issue is whether his neglect was excusable.

Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997).

The neglect in this case was the debtor's and counsel's failure to: (1) file any opposition to the motion to dismiss; (2) timely file the amended plan and set it for a hearing; or (3) seek leave of court for additional time to file opposition and file an amended plan.

As the court has noted several times in this ruling, the debtor and counsel failed to file any declaration in support of this motion. As such there is no admissible evidence explaining: (1) why plan payments were still delinquent in the amount of \$1,387.00 on the date of the dismissal hearing or otherwise disputing this contention; (2) why the debtor and counsel failed to file opposition to the motion to dismiss; (3) why the Amended Chapter 13 Plan was not timely filed; (5) why a motion to confirm the amended plan was not filed; and (5) how the debtor would bring plan payments current under the proposed Amended Chapter 13 Plan.

The court finds that the debtor has failed to provide sufficient evidence in support of the motion to vacate dismissal under Fed. R. Civ. P. 60(b). 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:

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

IT IS ORDERED that the motion is denied.

19. [24-20964](#)-A-13 **IN RE: FRANK BELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-15-2024 [\[66\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

The installment fee has been paid. The order to show cause is discharged and the case will remain pending. No appearances are required.

20. [23-21868](#)-A-13 **IN RE: JEREMY NAVA-SALINAS**
[MDM-6](#)

MOTION TO CONFIRM PLAN
7-9-2024 [\[90\]](#)

MATTHEW METZGER/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: Fourth Amended Chapter 13 Plan, filed July 9, 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 Fourth Amended Chapter 13 Plan, ECF No. 93. The plan is supported by Schedules I and J filed, July 8, 2024, ECF No. 87. The Chapter 13 trustee has filed a non-opposition to the motion, 103. The non-opposition is supported by the declaration of Neil Enmark, which details the documents reviewed by the trustee and his conclusions regarding the debtor's income and valuation of assets. Declaration, ECF No. 104.

In addition to the non-opposition the trustee previously filed a report, which details the documents reviewed by the trustee in this case. Business Summary Report, ECF No. 77. Since the filing of the case the debtor's financial circumstances have changed as the restaurant business previously operated by the debtor was closed in January 2024.

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.

21. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
4-17-2024 [\[58\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 2, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from July 2, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (TLA-2) has been granted.

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.

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

IT IS ORDERED that the motion is denied.

22. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[TLA-2](#)

CONTINUED MOTION TO MODIFY PLAN
5-7-2024 [\[65\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

The hearing on the debtor's motion to modify the Chapter 13 Plan was continued to allow the debtor to present a stipulation with creditors Rushmore Loan Servicing, PNC Bank, and the Chapter 13 trustee. A proposed order confirming the modified plan was signed by all parties and submitted. The court has granted the motion to modify and signed the order modifying the plan. Order, ECF No. 86. Accordingly, this motion will be removed from the calendar.

23. [24-20169](#)-A-13 **IN RE: JOSE ALBERTO**
[DPC-2](#)

MOTION TO DISMISS CASE
7-1-2024 [\[41\]](#)

COLBY LAVELLE/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 30, 2024

Opposition Filed: July 31, 2024 - untimely

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

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$363.10 with one payment(s) of \$266.62 due prior to the hearing on this motion.

UNSUPPORTED OPPOSITION, LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

On August 1, 2024, the debtor filed an untimely opposition to the motion. The opposition consists of an unsworn statement by debtor's counsel and states that the debtor has brought the payments in the plan current.

In addition to being filed late, the opposition fails to comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating when or in

what amount the debtor delivered the payment to the chapter 13 trustee. The opposition does not indicate how the payment was tendered to the trustee. Neither is there any evidence that the debtor can make additional plan payments.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

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 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.

24. [23-24370](#)-A-13 **IN RE: SARA KLINKENBORG**
[LBG-1](#)

MOTION TO CONFIRM PLAN
6-27-2024 [\[41\]](#)

LUCAS GARCIA/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 27, 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. 46. The plan is supported by Schedules I and J filed, June 27, 2024, ECF No. 48. The Chapter 13 trustee has filed a non-opposition to the motion, 55.

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. [24-22275](#)-A-13 **IN RE: AARON LAURANT**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-17-2024 [\[18\]](#)

MUOI CHEA/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 24, 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

26. [23-23778](#)-A-13 **IN RE: SYBILLE WASSNER**
[TAA-2](#)

AMENDED MOTION TO CONFIRM PLAN
6-26-2024 [\[66\]](#)

KEVIN TANG/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: Denied without prejudice

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 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).

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 there is no matrix attached to the certificate of service. Instead, exhibits in support of the motion are attached to the certificate. See Certificate of Service, ECF No. 69. Accordingly, service of the motion does not comply with LBR 7005-1, and the court cannot determine if all creditors and parties in interest were served with the motion. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

The debtor's motion to modify plan has been presented to the court. Because of the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

27. [24-22381](#)-A-13 **IN RE: TERI HUMPHREY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-17-2024 [\[14\]](#)

JOCELYN GODINHO/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 24, 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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.

28. [24-22485](#)-A-13 **IN RE: RICARDO VEGA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-24-2024 [\[21\]](#)

PETER MACALUSO/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 24, 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 24, 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 27, 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 27, 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 September 10, 2024. The evidentiary record will close after September 10, 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 27, 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. [19-23987](#)-A-13 **IN RE: JULIE QUESTA**
[CYB-1](#)

MOTION TO MODIFY PLAN
7-3-2024 [\[34\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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: First Modified Chapter 13 Plan, filed July 3, 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 approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on July 3, 2024, ECF No. 40.

The Chapter 13 trustee initially opposed the motion contending that the plan had not been properly served with the motion as required by LBR 3015-1(d)(2). The debtor filed an amended certificate of service, ECF No. 46. The debtor also filed the declaration of Candace Brooks which states that the initial certificate incorrectly omitted listing service of the plan and that the plan was served with the motion at the outset. Declaration, ECF No. 55.

The Chapter 13 trustee also requests that the debtor clarify the correct amount paid in through month 61 of the plan as \$24,917.99. This represents a difference of \$.99, a minor correction. The court

will approve the modification of the plan with this change in the order.

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. The debtor shall submit an order confirming the modified plan which is consistent with this ruling, and which has been approved by the Chapter 13 trustee.

30. [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 July 30, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from July 30, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (CYB-1) has been granted.

Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

31. [24-22193](#)-A-13 **IN RE: KENNETH WILKINSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-25-2024 [\[26\]](#)

Final Ruling

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

32. [24-22193](#)-A-13 **IN RE: KENNETH WILKINSON**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-9-2024 [\[22\]](#)

Final Ruling

Objection: Objection to Claim of Exemptions

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

Disposition: Sustained

Order: Civil minute order

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The Chapter 13 trustee objects to the debtor's claim of exemptions in Schedule C filed June 4, 2024, ECF No. 11. The debtor has claimed as exempt "100% of the value" of two parcels of real property. Additionally, the trustee objects as the debtor has

failed to cite any applicable authority for his claim of exemptions. The court will sustain the trustee's objection and disallow the exemptions as follows.

EXEMPTIONS

Burden of Proof

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

Exemption Law in Bankruptcy

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201, 204 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 of Title 11 allows a debtor (1) to exempt property under § 522(d), unless a state does not so authorize, or (2) to exempt property under state or local law and federal law other than § 522(d). *Id.* § 522(b)(2)-(3)(A), (d). California has opted out of the federal exemption scheme. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); accord 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D. Cal. 1996); see also *Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

Under California exemption law, debtors may elect either the set of special exemptions available only to debtors in bankruptcy under section 703.140(b) of the California Code of Civil Procedure ("special bankruptcy exemptions") or they may elect the regular set of exemptions under Chapter 4 of Part 2, Title 9, Division 2 of the California Code of Civil Procedure excluding the exemptions under section 703.140(b) ("regular non-bankruptcy exemptions"). See Cal. Civ. Proc. Code § 703.140(a). But they may not elect both. See Cal. Civ. Proc. Code § 703.140(a)(1)-(3).

The debtor has not claimed an amount exempt under either set of California exemptions. Schedule C cites no legal authority for any exemption claimed. The court will sustain the objection and disallow the exemptions entirely.

Moreover, the debtor has claimed an exemption in real property described as: (1) Primary Residence; and (2) Family Property in amounts which are "100% of fair market value, up to any applicable statutory limit". Schedule C, ECF No. 11.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is sustained. The exemptions claimed in the family property and primary residence in Schedule C are disallowed in their entirety.

33. [24-23192](#)-A-13 **IN RE: KENDRON FRYER**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-30-2024 [\[14\]](#)

RAFFI KHATCHADOURIAN/ATTY. FOR MV.
CROSSROADS EQUIPMENT LEASE AND FINANCE, LLC VS.

Final Ruling

This case was dismissed on August 6, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

34. [23-20883](#)-A-13 **IN RE: MELISSA CHAVEZ**
[PLC-5](#)

MOTION TO INCUR DEBT
7-30-2024 [\[83\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

No Ruling

35. [23-21966](#)-A-13 **IN RE: KELLI/JUSTIN LOPEZ**
[MRL-2](#)

MOTION TO VACATE DISMISSAL OF CASE
7-30-2024 [\[35\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

No Ruling

36. [23-22603](#)-A-13 **IN RE: MASARU JACKSON**
[DPC-2](#)

MOTION TO DISMISS CASE
6-14-2024 [\[49\]](#)

MARY TERRANELLA/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 30, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,280.00 with two payment(s) of \$2,695.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

37. [23-24325](#)-A-13 **IN RE: SEKOU COLEMAN**
[DPC-1](#)

MOTION TO DISMISS CASE
6-14-2024 [\[31\]](#)

GEORGE BURKE/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 30, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,550.00 with two payment(s) of \$875.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

38. [24-20027](#)-A-13 **IN RE: RASUL SHEVCHENKO**
[DPC-2](#)

MOTION TO DISMISS CASE
6-14-2024 [\[42\]](#)

MARK SHMORGON/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 30, 2024

Opposition Filed: June 17, 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 \$1,936.00, with two payment(s) of \$968.00 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. 46, 47. 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. 47.

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.