



**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 22, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

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. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[JNV-6](#)

MOTION TO MODIFY PLAN
7-7-2023 [\[105\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks modification of the Chapter 13 plan. The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Pingora Loan Servicing, LLC; Synchrony Bank/PRA Receivables. See ECF Nos. 8, 10.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 111. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

Additionally, the court notes that the Certificate of Service does not indicate that the trustee was served with the moving papers and plan. *Id.* Neither is the trustee listed on the matrix attached to the certificate.

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state

with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any

order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

Because the moving party has failed to comply with Local Rules regarding service of 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:

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

IT IS ORDERED that the motion is denied without prejudice.

2. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**

MOTION TO DISMISS CASE
7-21-2023 [\[30\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to September 26, 2023, at 9:00 a.m.

Order: Civil minute order

Creditor, Willis A. Miles, III, seeks an order dismissing this case with prejudice.

The hearing on this motion will be continued to September 26, 2023, at 9:00 a.m. to coincide with the hearing on the trustee's motion to dismiss. No appearances by the parties are required on August 22, 2023.

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 26, 2023, at 9:00 a.m. No later than September 5, 2023, the moving party may file and serve any additional evidence in support of his motion.

IT IS FURTHER ORDERED that no later than September 12, 2023, the debtor may file and serve any additional evidence in reply. The evidentiary record will be closed after September 12, 2023.

3. [20-23908](#)-A-13 **IN RE: COLE RUMFORD**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2023 [\[41\]](#)

MARK BRIDEN/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 25, 2023

Disposition: Withdrawn by the moving party

Order: Civil minute order

The hearing on the Chapter 13 trustee's motion to dismiss this case was continued to allow the parties to augment the evidentiary record.

The debtor filed additional opposition and exhibits on July 31, 2023, ECF Nos. 49, 50. On August 14, 2023, the trustee filed a Status Report, ECF No. 53. The status report states that the plan payments are current. The trustee requests that he be allowed to withdraw his motion.

TRUSTEE STATUS REPORT – Fed. R. Civ. P. 41

The trustee filed a timely request to withdraw his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

4. [21-22612](#)-A-13 **IN RE: MARIETTA MORGAN**
[DPC-1](#)

MOTION TO DISMISS CASE
7-14-2023 [\[26\]](#)

MOHAMMAD MOKARRAM/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: August 8, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$740.00 with a further payment of \$370.00 due July 25, 2023.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under

chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

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

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

DAVID RITZINGER/ATTY. FOR DBT.

No Ruling

6. [21-22714](#)-A-13 **IN RE: YOLANDA DORMAN**
[MRL-1](#)

MOTION TO AVOID LIEN OF CAVALRY INVESTMENTS, LLC
7-11-2023 [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding a judicial lien allegedly held by Cavalry Investments, LLC, under 11 U.S.C. § 522(f). The Chapter 13 trustee opposes the motion. The motion will be denied without prejudice for the following reasons.

LIEN AVOIDANCE

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

Here, the debtor has failed to prove the existence of a judicial lien. While the respondent holds a judgment against the debtor there is no proof that an abstract of judgment was recorded against the debtor's real property. Accordingly, a prima facie case has not been made for relief under § 522(f). The court denies the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Judicial Lien of Cavalry Investments, LLC, 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 without prejudice.

7. [21-22714](#)-A-13 **IN RE: YOLANDA DORMAN**
[MRL-2](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
7-11-2023 [\[30\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order avoiding a judicial lien allegedly held by Cavalry SPV I, LLC, under 11 U.S.C. § 522(f). The Chapter 13 trustee opposes the motion. The motion will be denied without prejudice for the following reasons.

LIEN AVOIDANCE

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

Here, the debtor has failed to prove the existence of a judicial lien. While the respondent holds a judgment against the debtor there is no proof that an abstract of judgment was recorded against the debtor's real property. Accordingly, a prima facie case has not been made for relief under § 522(f). The court denies the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Avoid Judicial Lien of Cavalry SPV I, LLC, 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 without prejudice.

8. [20-23415](#)-A-13 **IN RE: MICHAEL/CANDACE TODD**
[BLG-4](#)

MOTION TO EMPLOY BROWN BROTHERS REALTY AS BROKER(S)
7-25-2023 [\[58\]](#)

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

No Ruling

9. [20-23415](#)-A-13 **IN RE: MICHAEL/CANDACE TODD**
[BLG-5](#)

MOTION TO SELL
7-25-2023 [\[63\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [23-21621](#)-A-13 **IN RE: ANGELO CHICO**
[SMJ-1](#)

MOTION TO CONFIRM PLAN
7-18-2023 [\[19\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

ORAL ARGUMENT

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

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take over 999 months to fund as proposed. The plan is overextended as the IRS has filed a priority claim for \$413,307.00, Claim No. 6.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

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

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.

11. [19-24624](#)-A-13 **IN RE: THOMAS/SELIMA GARRIS**
[DPC-2](#)

MOTION TO DISMISS CASE
7-14-2023 [[100](#)]

THOMAS AMBERG/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The trustee has filed a notice of withdrawal of his motion under Fed. R. Civ. P. 41, ECF No 104. No opposition has been filed to the motion. Accordingly, the court will remove the motion from the calendar. No appearances are required.

12. [19-23726](#)-A-13 **IN RE: KATHLEEN BUCKLEY**
[DPC-2](#)

MOTION TO DISMISS CASE
7-14-2023 [\[45\]](#)

RICHARD STURDEVANT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 8, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,172.70 with a further payment of \$979.34 due July 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

13. [21-23031](#)-A-13 **IN RE: ANDREA STRATTON**
[DPC-1](#)

MOTION TO DISMISS CASE
7-14-2023 [\[21\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: August 8, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent

in the amount of \$4,780.00 with a further payment of \$2,390.00 due July 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

14. [20-20032](#)-A-13 **IN RE: NEIL GARCIA**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2023 [\[46\]](#)

MARC CARPENTER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 25, 2023

Disposition: Denied

Order: Civil minute order

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 debtor opposed the motion and filed a modified plan. The hearing on the motion to dismiss was continued to coincide with the motion to modify plan (MAC-2).

On July 28, 2023, the Chapter 13 trustee filed a status report which details payments made and requests that the motion to dismiss be denied. Status Report, ECF No. 67. Accordingly, the trustee 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 oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

15. [20-20032](#)-A-13 **IN RE: NEIL GARCIA**
[MAC-2](#)

MOTION TO MODIFY PLAN
7-11-2023 [\[53\]](#)

MARC CARPENTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

ORAL ARGUMENT

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

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).

Conflicting Plan Terms

The proposed modified plan contains conflicting terms regarding the plan payment. Sections 2.01 and 2.03 provide a monthly plan payment of \$326.00 for a period of 60 months. First Modified Chapter 13 Plan, §§ 2.01, 2.03, ECF No. 58. The court notes that payments would total \$19,560.00 over the term of the plan using this calculation.

Conversely, Section 7 provides that the debtor has paid in \$39,720.00 and that monthly payments are \$326.00 beginning August 2023. *Id.*, Section 7.

Moreover, the trustee reports that the \$39,720.00 indicated in the proposed plan is incorrect as he has already received payments totaling \$40,800.00.

It is impossible for the court, creditors, or the trustee to determine the correct plan payment. As such the plan is not feasible under 11 U.S.C. § 1325(a)(6), and may not be confirmed. A further modified plan must be proposed by the debtor.

As the plan is facially deficient the court need not reach the remaining issues raised by the trustee in his opposition to the motion.

DEBTOR REPLY

On August 15, 2023, the debtor filed a timely reply to the trustee's opposition. The reply does not address the inconsistency in the plan payments which the court has previously discussed in this ruling. A modified plan is required to address the facial inconsistencies in the plan. 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 debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

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

16. [21-21833](#)-A-13 **IN RE: VANESSA GRIFFITH**
[PSB-2](#)

MOTION TO INCUR DEBT
8-8-2023 [\[38\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

No Ruling

17. [22-22935](#)-A-13 **IN RE: ANTON NEMTYSHKIN**
[DPC-1](#)

MOTION TO DISMISS CASE
7-14-2023 [\[29\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 29, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: August 8, 2023

Opposition Filed: July 21, 2023 - timely

Motion to Modify Plan Filed: July 21, 2023 - timely

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

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 29, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 29, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 7 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

18. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[CJC-105](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2023 [[122](#)]

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

Tentative Ruling

Motion: Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

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

Disposition: Granted only to the extent specified in this ruling

Order: Civil minute order

Delinquent Lease Payments: prepetition \$9,272.14; post-petition \$33,168.24

Subject: Exercise of state law rights and remedies to obtain possession of real property located at 6000 Hollyhurst Way, Sacramento, California, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession.

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Louden, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The debtor is obligated under a lease to make monthly rent payments to the movant. The movant was prohibited from seeking relief against the debtor until local eviction moratoriums resulting from the COVID-19 pandemic expired.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of the real property described above and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

Louden, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 6000 Hollyhurst Way, Sacramento, California and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money

judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

19. [22-22936](#)-A-13 **IN RE: COURTNEY WILSON**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
6-27-2023 [\[69\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 25, 2023

Disposition: Denied without prejudice

Order: Civil minute order

The Chapter 13 trustee moves to dismiss the case under 11 U.S.C. § 1307(c). See Motion to Dismiss, 1:23, ECF No. 69. For the following reasons the court will deny the motion without prejudice.

MOTION FAILS TO SUFFICIENTLY CITE BASIS FOR RELIEF

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

. . .

Fed. R. Bankr. P. 9013.

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

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

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

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

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

11 U.S.C. § 1307(c).

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

While the trustee has indicated in his motion that the debtor is in default pursuant to the terms of a confirmed plan, he has not cited the applicable subsection of 11 U.S.C. § 1307(c).

The trustee's motion is properly brought under 11 U.S.C. § 1307(c)(6), yet he has failed to provide this citation as required by Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A).

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

20. [22-22936](#)-A-13 **IN RE: COURTNEY WILSON**
[PGM-3](#)

MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
7-18-2023 [\[78\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

21. [21-21238](#)-A-13 **IN RE: RACQUEL VITOR**
[DPC-1](#)

MOTION TO DISMISS CASE
7-14-2023 [\[22\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: August 8, 2023

Opposition Filed: August 7, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,700.00, with two payments of \$968.54 due before the hearing on the motion. It is unclear to the court if this is correct as the trustee's motion was filed on July 14, 2023. As such only the July payment is due prior to the hearing on this motion. The August plan payment is not due until August 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 26, 27. The debtor's declaration states that the debtor had to pay for car repairs which prevented timely plan payments. However, the debtor has made payment via TFS on August 1, 2023, to bring the plan payments current. See Declaration, ECF No. 27.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On August 15, 2023, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041, ECF No. 29.

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

22. [23-22443](#)-A-13 **IN RE: DARBY MCGUIRE**
[CJC-106](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-7-2023 [\[12\]](#)

CALVIN CLEMENTS/ATTY. FOR MV.
6058 RIVERSIDE BLVD FEE OWNER, LLC VS.

Final Ruling

This case was dismissed on August 14, 2023. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

23. [22-21346](#)-A-13 **IN RE: ALLAN WEST**
[DBL-2](#)

MOTION TO CONFIRM PLAN
7-18-2023 [\[48\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
DEBTOR DISMISSED: 7/28/23

Final Ruling

This case was dismissed on July 28, 2023. Accordingly, this motion is removed from the calendar as moot. No appearances are required.

24. [23-21546](#)-A-13 **IN RE: JAMES/KELLY STARLING**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-26-2023 [\[18\]](#)

MARY ANDERSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from July 25, 2023
Disposition: Overruled
Order: Civil minute order

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

The Chapter 13 trustee objected to confirmation of the proposed plan contending that: 1) the meeting of creditors had to be continued to complete the examination of the debtors; and 2) documents had not been provided to the trustee.

The hearing on the trustee's objection to confirmation was continued from July 25, 2023, to allow the debtors to provide information to the trustee and for the trustee to complete his examination of the debtors.

On August 1, 2023, the trustee and the debtors filed a joint status report. Joint Status Report, ECF No. 24. The parties have agreed to make modest changes to the plan payments in the order confirming the plan. The court will approve the changes to the plan payment and the plan will be confirmed with those changes to be reflected in the order confirming the plan. Accordingly, the trustee's objection will be overruled.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled.

IT IS FURTHER ORDERED that the debtors shall prepare an order confirming plan to be signed by the Chapter 13 trustee, which provides for the plan payments as indicated in the Joint Status Report, ECF No. 24.

25. [23-21248](#)-A-13 **IN RE: CHRISTOPHER SEWARD**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
6-12-2023 [[13](#)]

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from July 10, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the trustee's objection to confirmation was continued from July 10, 2023, to allow the parties to augment the record. The court ordered as follows:

IT IS ORDERED that the hearing on the objection is continued to August 22, 2023. at 9:00 a.m. No later than July 25, 2023, the trustee shall file and serve a supplement to his objection as indicated by the court in this ruling. The trustee's supplement shall include the status of the plan payments at that time.

IT IS FURTHER ORDERED that the debtor may file and serve a reply no later than August 8, 2023. The court may rule on this matter without further notice or hearing.

IT IS FURTHER ORDERED that should the debtor file an amended plan or concede the argument to the trustee

the debtor shall so inform the court by filing a statement with the court no later than August 8, 2023.

Order, ECF No. 21.

The debtor has not filed any opposition to the trustee's objection. The trustee filed a supplement to his objection on July 25, 2023, ECF No. 22. The supplement indicates that plan payments remain delinquent as discussed below in this ruling.

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

ORAL ARGUMENT

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,042.73. Supplemental Objection, ECF No. 22. The plan cannot be confirmed if the plan payments are not current.

Sale of Real Property

The trustee objects to the plan as it provides for payment from the sale of real property after an 18-month period. The trustee contends that a successful sale of the property is speculative after 18 months. The trustee further objects because the plan does not provide for payments after 18 months.

Courts have historically found balloon payments that are involved in plan payments as insufficient evidence of the debtor's ability to pay under the plan, as they are contingent on a speculative event to take place during the life of the plan, See *In Re Gavia* 24 BR 573, 574 (9th Cir. BAP 1982).

The debtor's plan calls for payment as follows:

7.01 *Plan payments shall be \$3,370.00 per month from month 1 (May 2023) to month 18 (October 2024).*

7.02 (modifying § 3.07) For months 1 through 18, Class 1 Creditor shall be paid \$2,358.64 per month for ongoing mortgage payments plus an additional \$650.00 per month on arrears as adequate protection on its mortgage lien against Debtor's real property located at 4924 T Street Sacramento, CA 95819 ("the property").

7.03 Debtor shall list the property for sale within one hundred eight (180) days. *Class 1 creditor shall be paid in full from the sales proceeds.*

7.04 Upon receipt of Debtor's Schedule A/B tax refunds, Debtor shall deliver \$3,334.00 to the trustee, who shall then distribute the sum of \$3,000.00 to the Fraley & Fraley Trust Account to be held for potential attorney's fees and costs subject to court approval after noticed motion for attorney's fees.

7.05 (modifying § 3.05): Debtor's Attorney was paid \$4,000 into Attorney's Trust Account, of which \$2,004.00 was earned and paid prior to filing the herein Bankruptcy Petition. The remainder of \$1,996.00 is held in Attorney's Trust Account pending confirmation and court approval by noticed motion for additional attorney's fees.

7.06 Attorney's fees to be billed on an hourly basis. This will be paid by distribution from attorney's trust account and additional fees to be placed in attorney's trust account, paid through the plan, and paid to attorney pursuant to noticed motion for attorney's fees.

7.07 *If Debtor does not obtain court approval and complete a sale of the property by the end of month 18 (October 31, 2024), then Debtor shall modify his Plan to provide for repayment of mortgage arrears, or for the debt to be satisfied as a Class 3 claim, or seek and obtain lender and court approval of a modification of the loan.*

Chapter 13 Plan, Section 7, Non-Standard Provisions, ECF No. 3.

As market fluctuations are often unpredictable the court finds that the proposed sale in month 18 is scheduled to take place too far in the future to accurately assess whether sufficient funding will be derived to pay the secured creditor in the plan as proposed.

Moreover, the terms of the proposed plan also suggest that a successful sale is speculative as it provides an alternative to the sale after 18 months. Moreover, the plan does not provide for any payments after 18 months.

The court will deny the motion. As such the court need not reach the remaining issues raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is sustained. The court denies confirmation of the debtor's plan.

26. [23-20449](#)-A-7 **IN RE: ROSALINDA RIVERA**
[DPC-1](#)

MOTION TO DISMISS CASE
7-14-2023 [\[33\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

The case was converted to Chapter 7 on July 25, 2023. Accordingly, this motion is removed from the calendar as moot. No appearances are required.

27. [23-21749](#)-A-13 **IN RE: VANESSA FRANKLIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-19-2023 [\[27\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

28. [19-26951](#)-A-13 **IN RE: FRANK/SYLVIA FERNANDEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-16-2023 [\[60\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling

29. [19-26951](#)-A-13 **IN RE: FRANK/SYLIVIA FERNANDEZ**
[WW-3](#)

MOTION TO MODIFY PLAN
7-6-2023 [\[64\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Civil minute order

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

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

TRUSTEE OPPOSITION

The trustee's opposition centers around what appears to be a typographical error in the additional provisions of the proposed plan. The plan payments are correct, but the payment schedule incorrectly identifies the month for the change in plan payments. The trustee indicates that payments should change in month 43 of the plan and not month 35. The trustee suggests that this provision be corrected in the order granting the motion. Absent any opposition by the debtors, the court will allow the correction to be made in the order, and grant 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 modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is granted. The debtors shall submit an appropriate order approved by the trustee which is in accordance with the court's ruling and the trustee's opposition.

30. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[MET-5](#)

MOTION TO SELL
7-14-2023 [\[94\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

31. [23-20257](#)-A-13 **IN RE: AUSTIN MERRITT**
[DPC-1](#)

MOTION TO DISMISS CASE
7-14-2023 [\[49\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The Chapter 13 trustee seeks an order dismissing the debtor's Chapter 13 case. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

In this case the certificate of service indicates that Attachment 6B1, the Clerk's Electronic Service Matrix is attached to the certificate. See Certificate of Service, Section 6B1, ECF No. 52. However, there is no such matrix attached to the motion, and therefore service does not comply with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

32. [23-20257](#)-A-13 **IN RE: AUSTIN MERRITT**
[TLA-1](#)

MOTION TO APPROVE LOAN MODIFICATION
8-7-2023 [\[56\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Tentative Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Granted in part, denied in part

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks an order approving a loan modification agreement with Freedom Mortgage. The loan modification will impact the debtor's payments regarding real property located at 3243 Highgate Terrace Loop, Folsom, California. The debtor has also indicated his intent to modify his Chapter 13 plan to be consistent with the new terms proposed in the loan modification.

LOAN MODIFICATION

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act

to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

By granting this motion, the court is not approving the terms or conditions of the loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of the terms and conditions of the loan modification agreement or other declaratory relief.

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 court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

33. [23-20758](#)-A-13 **IN RE: WILLIAM/MARANDA KEENE**
[PLG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
5-26-2023 [\[21\]](#)

STEVEN ALPERT/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from July 25, 2023

Disposition: Overruled

Order: Civil minute order

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

The Chapter 13 trustee objected to confirmation of the proposed plan contending that the plan failed the liquidation test of 11 U.S.C. § 1325(a)(4).

The hearing on the trustee's objection to confirmation was continued from July 25, 2023, to allow the parties to confer.

On July 28, 2023, the trustee and the debtors filed a joint status report. Joint Status Report, ECF No. 38. The trustee indicates that after conferring with the debtors he no longer opposes confirmation and that the plan satisfies the liquidation test. Accordingly, the court will overrule the trustee's objection to confirmation.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is overruled.

IT IS FURTHER ORDERED that the debtors shall prepare an order confirming plan to be signed by the Chapter 13 trustee.

34. [23-20059](#)-A-13 **IN RE: WILLIS MARSH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-21-2023 [\[38\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 25, 2023

Disposition: Denied

Order: Civil minute order

The hearing on the trustee's motion to dismiss was continued from July 25, 2023, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (MS-1) has been granted. Accordingly, the court will deny the trustee's motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

35. [23-20059](#)-A-13 **IN RE: WILLIS MARSH**
[MS-1](#)

MOTION TO MODIFY PLAN
7-15-2023 [\[47\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Civil minute order

Subject: First Modified Chapter 13 Plan, filed July 15, 2023

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

The plan is support by Amended Schedules I and J filed July 15, 2023. The schedules show that the debtors have \$1,415.00 in net monthly income to fund the plan.

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).

ORAL ARGUMENT

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

CHAPTER 13 TRUSTEE OPPOSITION

The Chapter 13 trustee opposes the motion contending that the plan is not feasible as the motion proposes a monthly plan payment of \$1,348.00, whereas the plan calls for a payment of \$1,415.00 per month from months 7-60. The trustee also contends that the plan is only feasible if the payment is \$1,415.00 per month from months 7-60.

DEBTOR REPLY

The debtor filed a reply, ECF No. 58. In the reply the debtor offers to resolve the trustee's opposition by providing that monthly plan payments are \$1,415.00 from months 7-60 in the order confirming the modified plan. *Id.*

The court approves the resolution of the trustee's opposition in the order confirming the modified plan, and will grant the motion with the plan payment clarified in the order.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor shall submit an order approved by the Chapter 13 trustee in accordance with the court's ruling and which provides that the plan payment shall be \$1,415.00 per month for months 7-60.

36. [18-26260](#)-A-13 **IN RE: JESSICA TODD**
[DPC-3](#)

MOTION TO DISMISS CASE
7-14-2023 [\[52\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: August 8, 2023

Opposition Filed: July 31, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,560.02, with another payment of \$860.00 due July 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 56, 57. The debtor's declaration states that the debtor fell behind in payments because of difficulty with TFS and will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 57.

TRUSTEE REPLY – Fed. R. Civ. P. 41

The trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041, ECF No. 59.

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

37. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KB-11](#)

AMENDED MOTION TO DISMISS CASE
7-28-2023 [[282](#)]

KIM BEATON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

Case Filed: May 31, 2022
Chapter: 13

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order dismissing their Chapter 13 case. Motion to Dismiss Case, ECF No. 280. The motion is supported by the declaration of the debtors indicating their desire to dismiss the case. Declaration, ECF NO. 285.

This case was filed on May 31, 2022. The case was filed under Chapter 13 and has not been previously converted.

ORAL ARGUMENT

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

CASE DISMISSAL

On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of

this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. § 1307(b).

CIVIL MINUTE ORDER

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

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

The debtors' motion to dismiss has been presented to the court.

Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted under 11 U.S.C. § 1307(b). The court hereby dismisses this case.

38. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**
[DPC-3](#)

MOTION TO DISMISS CASE
7-14-2023 [\[126\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: August 8, 2023

Opposition Filed: August 8, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,271.00, with another payment of \$999.00 due July 25, 2023.

The debtors have filed a timely opposition which is accompanied by Exhibits and the Declaration of the Debtor, ECF Nos. 130, 131, 132. The debtors' declaration states that the debtors: 1) changed bank accounts which created difficulties with TFS resulting in missed

plan payments; 2) have tendered three plan payments to the trustee via TFS and 3) contend plan payments are current. See Declaration, ECF No. 132. The declaration is supported by the exhibits.

TRUSTEE REPLY – Fed. R. Civ. P. 41

The trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041, ECF No. 134.

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

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee’s motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee’s request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

39. [22-21488](#)-A-13 **IN RE: CECILIA SMITH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-21-2023 [\[53\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from July 25, 2023

Disposition: Continued to September 26, 2023, at 9:00 a.m.

Order: Civil minute order

The chapter 13 trustee’s motion to dismiss was continued to coincide with the debtor’s motion to modify plan (MJD-2). The court has continued the hearing on the motion to modify to allow for further

briefing by the parties. The court will continue the trustee's motion to coincide with the hearing date on the modified plan.

If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case without further notice or hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to September 26, 2023, at 9:00 a.m.

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

40. [22-21488](#)-A-13 **IN RE: CECILIA SMITH**
[MJD-2](#)

MOTION TO MODIFY PLAN
7-7-2023 [\[58\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to September 26, 2023, at 9:00 a.m.

Order: Civil minute order

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself,

coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

The trustee opposes the motion contending that: 1) the plan is not feasible as payments under the proposed modified plan are delinquent; 2) attorney compensation is not provided for in the plan in a manner which is consistent with previous orders regarding compensation; and 3) the modified plan proposes an unfair discrimination regarding student loan debt.

The court will continue the hearing on the motion to allow the debtor to file a reply to the trustee's opposition.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is continued to September 26, 2023, at 9:00 a.m. No later than September 5, 2023, the debtor shall file and serve either a reply with any additional evidence and argument in support of her motion, or a statement indicating that she concedes the trustee's opposition.

IT IS FURTHER ORDERED that the trustee may file and serve further opposition no later than September 12, 2023. The evidentiary record will be closed after September 12, 2023, and the court may rule on this matter without further notice or hearing.

41. [22-22289](#)-A-13 **IN RE: CASS CRINER**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
6-21-2023 [\[33\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from July 25, 2023

Disposition: Granted

Order: Civil minute order

At the prior hearing on the motion the debtor appeared without the benefit of counsel. The court directed the debtor to contact his attorney and consult with him regarding the motion.

At the previous hearing the court also ordered as follows:

IT IS ORDERED that the Trustee's Motion to Dismiss Case is continued to August 22, 2023, at 9:00 a.m. in Courtroom 28, Seventh Floor, 501 I Street, Sacramento, California.

IT IS FURTHER ORDERED that Gabriel E. Lieberman, debtor's attorney, shall appear at the continued hearing on August 22, 2023.

Order, ECF No. 40.

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,400.00 with two further payments of \$1,100.00 due by July 25, 2023.

The court notes that plan payments were 4 months in arrears when the trustee's motion was filed. The trustee filed this motion to dismiss on June 21, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the earlier of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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

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