



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

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

**DAY: TUESDAY**  
**DATE: AUGUST 27, 2024**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [23-23400](#)-A-7      **IN RE: ELL SMITH AND TONYA LOCKETT-SMITH**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[17\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
CASE CONVERTED: 08/08/24

### **Final Ruling**

This case was converted to Chapter 7 on August 8, 2024. Accordingly, the motion to dismiss will be removed from the calendar as moot. No appearances are required.

2. [22-21701](#)-A-13      **IN RE: GRACE REEDY**  
[TLA-1](#)

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

THOMAS AMBERG/ATTY. FOR DBT.

### **No Ruling**

3. [22-21701](#)-A-13      **IN RE: GRACE REEDY**  
[TLA-2](#)

MOTION TO MODIFY PLAN  
7-16-2024    [\[32\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

### **Tentative 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 16, 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(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on July 16, 2024, ECF No. 38. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 41.

The Chapter 13 trustee requests that plan payments be clarified in the order confirming the modified plan, as payments received are higher than those reflected in the proposed plan. As this change is minimal and because it harms no party the court will approve the motion with the following requested language in the order: "the total paid in through June 2024 (month 23) is \$16,300.00, then \$1,840.69 in July 2024 (month 24), then \$1,160.00 in August 2024, then \$733.00 commencing in September 2024." The debtor shall submit an order which is consistent with this ruling and signed by the Chapter 13 trustee.

#### **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.

4. [22-21202](#)-A-13     **IN RE: MARIA ZAMORA**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-23-2024    [\[54\]](#)

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 13, 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 \$1,240.00 with one payment(s) of \$620.00 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.

5. [22-23002](#)-A-13     **IN RE: VELIA CRUZ**  
[MRL-1](#)

MOTION TO MODIFY PLAN  
7-19-2024    [[30](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 08/01/24

### **Final Ruling**

This case was dismissed on August 1, 2024. Accordingly, the motion to dismiss will be removed from the calendar as moot. No appearances are required.

6. [24-22604](#)-A-13     **IN RE: SANDRA DAVIS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-29-2024    [[22](#)]

DEBTOR DISMISSED: 08/13/24

### **Final Ruling**

This case was dismissed on August 13, 2024. Accordingly, the motion to dismiss will be removed from the calendar as moot. No appearances are required.

7. [23-20711](#)-A-13     **IN RE: JOSEPH RIVERA**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[23\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

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

**Order:** Civil minute order

**Opposition Due:** August 13, 2024

**Opposition Filed:** August 13, 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 debtor has filed a timely opposition. However, the opposition is accompanied by a declaration of debtor's counsel which contends the debtor has made payments. Counsel's declaration regarding the debtor's statements and actions is hearsay and is inadmissible. Fed. R. Evid. 802. Counsel further states that she is unable to submit admissible evidence refuting the trustee's contentions because the debtor is out of town and unable, given technical difficulties, to transmit legible evidence of payment to his attorney.

The court construes this as a request to enlarge the time to file opposition to the motion under Fed. R. Bankr. P. 9006(b). In the future counsel should seek appropriate relief, when applicable.

### **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 motion 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:

- (A) The debtor shall file admissible evidence in opposition to the motion. The debtor(s) shall file and serve a written response to the motion not later than September 10, 2024; the opposition shall specifically address each issue raised in the trustee's motion and include **admissible evidence** in support of the debtor's position.



(B) The trustee shall file and serve a status report apprising the court of the status of the plan payments, no later than September 17, 2024. The evidentiary record will close after September 17, 2024

8. [24-21615](#)-A-13     **IN RE: MILTON PEREZ**  
[HDP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY 1 OAK  
VENTURES STEP FUND LLC  
6-7-2024     [[23](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
HENRY PALOCI/ATTY. FOR MV.  
RESPONSIVE PLEADING

**No Ruling**

9. [23-21228](#)-A-13     **IN RE: DONALD CRAIG**  
[ELH-6](#)

MOTION FOR RELIEF FROM FRAUDULENT BANKRUPTCY FILING  
6-6-2024     [[72](#)]

ELIZABETH HURWITZ/ATTY. FOR DBT.  
DEBTOR DISMISSED: 05/05/23

**No Ruling**

10. [23-23828](#)-A-13     **IN RE: GARY DIETRICH**  
[DPC-2](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[32\]](#)

ERIC SCHWAB/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** August 13, 2024

**Opposition Filed:** August 9, 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 \$5,388.39, with two payment(s) of \$5,231.37 due before the hearing on this motion.

### **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).

The debtor has filed a timely opposition, ECF No. 36. The opposition consists of a brief unsworn statement by debtor's counsel indicating that the debtor will bring the plan payments current by the date of the hearing. *Id.*

The opposition does not 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 why the plan payments are delinquent. Neither is there any admissible evidence indicating how the debtor will amass the \$15,851.13 required to bring the plan payments

current. Neither is there any admissible evidence that the debtor will be able to make additional plan payments going forward.

The debtor's 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.

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. 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.

11. [23-23928](#)-A-13     **IN RE: THOMAS/DIANE FOSTER**  
[DPC-2](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[44\]](#)

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

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** August 13, 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 \$1,197.00 with two payment(s) of 601.00 due prior to the hearing on this motion.

As a courtesy to the court the debtors filed a statement of non-opposition to the motion on August 6, 2024. Non-Opposition, ECF No. 48.

Accordingly, the court will grant the motion.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **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.

12. [24-21229](#)-A-13     **IN RE: ZIALCITA HUFANA**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-17-2024    [\[19\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
TOYOTA MOTOR CREDIT CORPORATION VS.

#### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 2022 Toyota Corolla

**Plan Confirmed:** May 23, 2024

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied as moot.

#### **MOOTNESS OF REQUEST FOR STAY RELIEF**

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist

at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Id.* at 68 n.22 (quoting *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant’s claim in Class 3. See Order Confirming Plan, ECF No. 14. Class 3 secured claims are “secured claims satisfied by the surrender of collateral.” Section 3.11(a) of the plan provides: “Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral . . . .”

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant’s personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

#### **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.

Toyota Motor Credit Corporation’s motion for relief from the automatic stay has been presented to the court. Having considered the motion, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the motion is denied as moot. No relief will be awarded.

13. [24-22629](#)-A-13     **IN RE: RUMMY SANDHU**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-31-2024    [\[21\]](#)

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 October 8, 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 October 8, 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 September 10, 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 September 10, 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 24, 2024. The evidentiary record will close after September 24, 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 October 8, 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 if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming the plan represents to the court that no further objections to confirmation of the proposed plan are pending.

14. [24-21230](#)-A-13      **IN RE: LETICIA BARRON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-31-2024    [\[44\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
8/1/2024 FINAL INSTALLMENT PAYMENT \$65

**Final Ruling**

The installment fee has been paid in full. The Order to Show Cause is discharged. The case will remain pending.

15. [20-25033](#)-A-13      **IN RE: SANDY DENIO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
7-17-2024    [\[33\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

This case was converted to Chapter 7 on August 20, 2024. Accordingly, the motion is removed from the calendar as moot. No appearances are required.



16. [23-23136](#)-A-7     **IN RE: ALEKSANDAR KRULJ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-19-2024    [[35](#)]

CARL GUSTAFSON/ATTY. FOR DBT.  
CASE CONVERTED: 08/13/24

**Final Ruling**

This case was converted to Chapter 7 on August 13, 2024. Accordingly, the motion to dismiss will be removed from the calendar as moot. No appearances are required.

17. [23-24537](#)-A-13     **IN RE: GEORGINA TAMPLEN**  
[BRL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-1-2024    [[102](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
BENJAMIN LEVINSON/ATTY. FOR MV.  
AZIZ ZHARI VS.

**Final Ruling**

The court has granted the trustee's motion to dismiss (DPC-3). Accordingly, the instant motion for stay relief is moot. The court will remove the motion from the calendar as moot. No appearances are necessary.

18. [23-24537](#)-A-13     **IN RE: GEORGINA TAMPLEN**  
[DPC-3](#)

MOTION TO DISMISS CASE  
7-30-2024    [\[94\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** August 13, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - 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 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 \$13,784.00 with one payment(s) of \$4,985.00 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 chapter 13 plan in this case. The court hereby dismisses this case.

19. [24-21038](#)-A-13     **IN RE: PERFECTO GUADIANA**  
[MOH-1](#)

MOTION TO CONFIRM PLAN  
6-20-2024    [\[29\]](#)

MICHAEL HAYS/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).

### 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).

### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible, as it fails to provide sufficient funding to pay the Class 1 mortgage ongoing payment of PHH Mortgage Corporation, Claim No. 2. The trustee calculates that the plan payment will need to increase from \$1,250.00 per month to \$1,975.00 per month to pay the required monthly payments in Class 1 plus administrative expenses.

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.

### **LIQUIDATION**

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . . .

11 U.S.C. § 1325(a)(4).

The trustee contends that the debtor has failed to properly report whether an income tax refund in the amount of \$11,051.00 was received pre-petition or post-petition.

Although his opposition does not state this, it appears the Chapter 13 trustee received a copy of the debtor's 2023 tax returns. The debtor's declaration in support of this motion does not state the amount of the refund to which the debtor is entitled for 2023, or when it was received, yet the trustee appears to know the amount. Accordingly, the court concludes the trustee has seen the 2023 tax returns but is unable to determine the timing of the refund issued to the debtor.

When the refund was received would impact the liquidation value of the estate. If it was received post-petition then the debtor, who has used the C.C.P. § 704 exemption scheme to exempt estate assets, would not be able to exempt the refund. In such circumstances the unsecured debt, which currently totals \$765.53, must be paid in full with interest. The proposed plan proposes 0% to unsecured creditors. Amended Chapter 13 Plan, § 3.14, ECF No. 31.

Schedule A/B filed on March 26, 2024, does not list an anticipated refund, nor is a refund claimed as exempt in Schedule C. Schedules A/B, C, ECF No. 14.

The court finds that the debtor's declaration lacks sufficient detail for the court to conclude that the 2023 tax refunds are not part of the bankruptcy estate. Without this information the court is unable to determine that the plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

The court will deny the motion.

#### **DEBTOR REPLY**

On August 20, 2024, the debtor filed a timely reply, ECF No. 42. The debtor objects to the claim of HSBC Mortgage and seeks a continuance of the motion to confirm.

The reply does not address the issue raised by the trustee regarding the debtor's failure to account for the 2023 tax refund. Accordingly, the court denies the request for continuance and will deny the motion. The debtor has failed to prove that the plan passes the liquidation test of 11 U.S.C. § 1325(a)(4).

#### **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.

20. [24-20540](#)-A-13     **IN RE: JAMES VAN PATTEN**  
[TLA-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY  
FOR THOMAS L. AMBERG, DEBTORS ATTORNEY(S)  
7-20-2024    [\[52\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

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

**Notice:** LBR 9014-1(f)(1); non opposition filed by the trustee

**Disposition:** Approved

**Order:** Civil minute order

**Compensation allowed:**    \$3,152.50

**Reimbursement of expenses:** \$0

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Thomas L. Amberg, Jr., has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$6,402.50 and reimbursement of expenses in the amount of \$0. Billing for pre-petition services totaled \$3,250, leaving \$3,152.50 requested through this application.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

## **CIVIL MINUTE ORDER**

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

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

Thomas L. Amberg, Jr.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,152.50 and reimbursement of expenses in the amount of \$0. The aggregate allowed amount equals \$3,152.50. As of the date of the application, the applicant held a retainer in the amount of \$250.00. The amount of \$2,902.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

21. [24-21440](#)-A-13     **IN RE: ERIKA NORMAN**  
[RDW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , AND/OR MOTION FOR  
ADEQUATE PROTECTION  
8-7-2024    [[66](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
REILLY WILKINSON/ATTY. FOR MV.  
RUDOLPH INCORPORATED VS.

**\*[Since posting its original rulings, the court has changed its  
intended ruling on this matter].**

**Final Ruling**

This case is transferred to the Honorable Ronald H. Sargis and this  
Motion will be heard in Department E, on September 10, 2024, at **1:30**  
**p.m.**, Courtroom 33.

22. [24-21241](#)-A-13     **IN RE: JAMES/LISA GENTRY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-31-2024    [[52](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.  
DEBTORS DISMISSED: 08/01/24

**Final Ruling**

This case was dismissed on the Chapter 13 trustee's motion on August  
1, 2024. Accordingly, this matter is removed from the calendar as  
moot.



23. [23-23651](#)-A-13     **IN RE: LESLIE BAKER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[73\]](#)

MARC VOISENAT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** August 13, 2024

**Opposition Filed:** August 12, 2024 - timely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,898.80, with two payment(s) of \$2,983.57 due before the hearing on this motion. Accordingly, the trustee contends that the debtor will need to pay \$8,865.94 by the hearing date to bring the plan payments current.

The debtor has filed a timely opposition, ECF No. 77. The opposition consists of unsworn statements by debtor's counsel and exhibits which are attached to the opposition. *Id.* Attaching the exhibits contravenes LBR 9004-2(c), which requires that the exhibits be filed as a separate document. Counsel is reminded that failing to comply with the Eastern District Local Rules of Practice may result in denial of relief, sanctions, or other appropriate relief. LBR 1001-1(g).

The opposition shows that \$5,955 has been paid. However, the trustee observes that the August 2024 payment is due prior to the hearing on this motion. Accordingly, unless the August payment is made prior to the hearing the plan payments will be delinquent on the hearing date.

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.

**VIOLATION OF LBR-9014-1(c)**

(c) Docket Control Number.

1) In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions.

2) In motions filed in adversary proceedings, the Docket Control Number shall be placed immediately below the adversary number.

3) The Docket Control Number shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

Example: The first Docket Control Number assigned to attorney John D. Doe would be DCN JDD-1, the second DCN JDD-2, the third DCN JDD-3, and so on. This sequence would be repeated for each specific bankruptcy case and adversary proceeding in which said attorney or law firm filed motions.

4) Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number. However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above.

LBR 9014-1(c) (emphasis added).

Because this unique docket control number is the method by which the court locates items on its docket, the re-use of a docket control number makes it difficult for the court to locate documents associated with the motion.

Here, "DPC-1" has been used for both the Chapter 13 Trustee's instant motion to dismiss and his Objection to Confirmation, filed December 6, 2023, ECF No. 32.

#### **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.

24. [23-24554](#)-A-13     **IN RE: JAMES CRAGLE**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-19-2024    [[19](#)]

MIKALAH LIVIAKIS/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 13, 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 \$489.00 with two payment(s) of \$341.00 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.

25. [24-22554](#)-A-13     **IN RE: ROBERT/MARIZZA BAUTISTA-ONG  
[SKI-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY CARMAX BUSINESS  
SERVICES, LLC  
7-3-2024    [[11](#)]

MATTHEW GILBERT/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
RESPONSIVE PLEADING

#### **Final Ruling**

The parties submitted a stipulation resolving this objection. Stipulation, ECF No. 27. The stipulation was also signed and approved by the Chapter 13 trustee. The court has approved the stipulation, ECF No. 27. Accordingly, the court will remove this objection from the calendar.

26. [24-22754](#)-A-13     **IN RE: MY TRAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-30-2024    [[24](#)]

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.

27. [24-22457](#)-A-13     **IN RE: HELMUTH/ANGELA BURROWS**  
[PLG-1](#)

CONTINUED AMENDED MOTION TO VALUE COLLATERAL OF PROVIDENT  
CREDIT UNION  
7-31-2024    [\[39\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

**Notice:** Continued from July 30, 2024

**Disposition:** Granted

**Order:** Civil minute order

**Subject Property:** 2020 Ford F150

**Value:** \$31,900

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 respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order valuing the collateral of Provident Credit Union, under 11 U.S.C. § 506(a), Fed. R. Bankr. P. 3012.

### **VALUATION OF COLLATERAL**

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

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2020 Ford F150. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$31,900.

#### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2020 Ford F150 has a value of \$31,900. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$31,900 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

28. [21-22861](#)-A-13     **IN RE: MEGAN EKOMAYE**  
[DPC-3](#)

MOTION TO DISMISS CASE  
7-17-2024    [\[84\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

The hearing on the trustee's motion to dismiss will be continued until September 24, 2024, at 9:00 a.m. No later than September 10, 2024, the Chapter 13 trustee shall file a status report apprising the court of the status of payments under the plan and any other matters pertaining to his motion to dismiss. No later than September 17, 2024, the debtor may file a reply. The evidentiary record will close after September 17, 2024. The court may rule on this matter without further notice or hearing.

29. [24-21464](#)-A-13     **IN RE: EILEEN ARGEL**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[26\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** August 13, 2024

**Opposition Filed:** July 28, 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 \$12,734.00, with two payment(s) of \$11,717.00 due before the hearing on this motion.

### **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).

The debtor has filed a timely opposition, ECF No. 30. The opposition consists of an unsworn statement by debtor's counsel indicating that the debtor will attempt to bring the plan payments current by the date of the hearing. *Id.*

The opposition does not 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 why the plan payments are delinquent. Neither is there any admissible evidence indicating how the debtor will amass the \$36,168 required to bring the plan payments current.



Neither is there any admissible evidence that the debtor will be able to make additional plan payments going forward.

The debtor's 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.

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. The court will dismiss the case.

#### **CIVIL MINUTE ORDER**

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

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

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

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

30. [20-24065](#)-A-13     **IN RE: KAREN KNECHT**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-17-2024    [\[65\]](#)

HELGA WHITE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** August 13, 2024

**Opposition Filed:** July 29, 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 \$1,845.11, with two payment(s) of \$1,845.11 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. 69, 70. The debtor's declaration states that the debtor fell behind in payments following a loss of employment, that the debtor has secured new employment and that she will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 70.

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.

31. [23-24270](#)-A-13     **IN RE: DAVID SIMMONS**  
[PGM-1](#)

MOTION TO CONFIRM PLAN  
7-16-2024    [\[77\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

## **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).

### Incomplete Supplemental Schedules I and J

On July 16, 2024, the debtor filed supplemental Schedules I and J, ECF No. 85. Schedule I shows that the debtor is the owner/operation of Silverback Capital and that he derives his income from the operation of a business and/or rents. The debtor has failed to include the attachments to Schedules I and J which support the net monthly income of \$6,775.00 as indicated in Schedule I. Accordingly, neither the trustee nor the court can assess the debtor's ability to perform the plan.

The court finds the debtor has failed to prove that the proposed plan is feasible, 11 U.S.C. § 1325(a)(6). Complete Schedules I and J are part of the debtor's prima facie case for plan confirmation and are due at the outset of the motion. Accordingly, the motion will be denied, and the court need not reach the remaining bases of opposition raised by the Chapter 13 trustee.

## **DEBTOR REPLY**

On August 20, 2024, the debtor filed a reply to the trustee's opposition. The reply contends that the necessary attachment to Schedules I and J was filed in response to the trustee's opposition and that the opposition is resolved.

First, the attachment of Business Income and Expenses has been filed, ECF No. 98. However, the court will not consider this document because it is unsigned and unverified. Therefore, the document does not comply with Fed. R. Bankr. P. 1008.

Second, as this court has previously indicated in this ruling, complete and accurate Schedules I and J, to include the attachment

of Business Income and Expenses where applicable, is part of the debtor's prima facie case for plan confirmation. This information must be filed at the inception of the motion and not in response to opposition raised by the Chapter 13 trustee. All parties in interest must be able to evaluate the debtor's proposed plan when the motion is served, to determine whether to oppose the motion.

The motion will be denied.

#### **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.

32. [24-22572](#)-A-13     **IN RE: TANYA HALL**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-29-2024    [\[20\]](#)

TIMOTHY WALSH/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 October 8, 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 October 8, 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 September 10, 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 September 10, 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 24, 2024. The evidentiary record will close after September 24, 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 October 8, 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 if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

33. [23-20674](#)-A-13     **IN RE: ELAINE CORPUZ**  
[MRL-1](#)

MOTION TO MODIFY PLAN  
7-11-2024    [\[22\]](#)

MIKALAH LIVIAKIS/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).

### **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 Fails to Provide for Post-Petition Mortgage Arrears

The Chapter 13 trustee opposes the motion to modify contending that the proposed plan fails to provide for post-petition mortgage arrears.

The proposed plan and the previously confirmed plan provide for Class 1 monthly mortgage payments to Newrez, LLC DBA Shellpoint Mortgage Servicing. Because the debtor failed to make timely payments under the previously confirmed plan the trustee was unable to make distributions to Newrez, LLC. Consequently, post-petition arrears in the amount of \$2,006.54 are owed to Newrez, LLC. The proposed plan makes no provision for payment of the arrears. Chapter 13 Plan, § 3.07, ECF No. 26.

Accordingly, a further modified plan is required. Notice to creditors regarding payment of the post-petition arrears is required and this omission may not be corrected in the order confirming the modified plan. The court will deny the motion.

The court need not address the remaining issues raised in the trustee's opposition to the motion.

### **DEBTOR REPLY**

On August 20, 2024, the debtor filed a timely reply to the trustee's opposition, ECF No. 32. The reply which includes a declaration by debtor's counsel, includes a request for a continuance of the hearing to negotiate a stipulation with the mortgage lender and the Chapter 13 trustee regarding payment of the arrears.

Accurately calculating and providing for the pre-petition and post-petition mortgage arrears in a Chapter 13 Plan modification is part of the debtor's prima facie case. The correct number must be presented in the plan at the outset of the motion and not in response to opposition. It requires notice to the mortgage lender as well as the Chapter 13 trustee and all other parties. Accurately providing for the arrears directly impacts the feasibility of the plan under 11 U.S.C. §1325(a)(6). The court notes that the debtor also intends to file Amended Schedules I and J if a stipulation is reached. No other parties would have notice of the amended schedules.

The court denies the request for a continuance 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 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.

34. [22-22376](#)-A-7     **IN RE: CAMERON/DEBORAH ENGLISH**  
[DPC-1](#)

MOTION TO DISMISS CASE  
7-23-2024    [\[35\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
CASE CONVERTED: 08/02/24

#### **Final Ruling**

This case was converted to Chapter 7 on August 2, 2024. Accordingly, the motion to dismiss will be removed from the calendar as moot. No appearances are required.

35. [23-21777](#)-A-13     **IN RE: KEITH/LESLIE MCCOMBS**  
[SLH-2](#)

MOTION TO MODIFY PLAN  
7-16-2024    [\[47\]](#)

SETH HANSON/ATTY. FOR DBT.

#### **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).

## 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 \$1,775.00 under the proposed modified plan. The motion cannot be granted if the plan payments are not current.

## NO LEGAL AUTHORITY CITED FOR RELIEF REQUESTED

"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.

- A) 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).

### Debtors' Motion to Modify

The trustee opposes the motion contenting it fails to reference the legal grounds which authorize *modification* of a chapter 13 plan after confirmation. The court believes that 11 U.S.C. § 1329 is

intended but will not make this presumption. The debtors are required to support their motion by citing the appropriate legal basis for relief.

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 modification of the chapter 13 plan.

36. [24-22577](#)-A-13     **IN RE: MARTHA ESCH SAND**  
[BPE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LOCKE MANAGEMENT  
ASSOCIATION  
7-31-2024    [\[18\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.  
SKYLER GRAY/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 October 8, 2024, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Locke Management Association, 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 October 8, 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 September 10, 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 September 10, 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 24, 2024. The evidentiary record will close after September 24, 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 September 10, 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).

37. [24-22577](#)-A-13     **IN RE: MARTHA ESCH SAND**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
7-31-2024    [\[14\]](#)

GABRIEL LIBERMAN/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 October 8, 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 October 8, 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 September 10, 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 September 10, 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 24, 2024. The evidentiary record will close after September 24, 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 October 8, 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 if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

38. [24-21779](#)-A-13     **IN RE: LAURA ZAMORA**  
[MB-2](#)

MOTION FOR COMPENSATION FOR MICHAEL BENAVIDES, DEBTORS  
ATTORNEY(S)  
7-30-2024    [\[36\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.  
DEBTOR DISMISSED: 05/20/24

### **Final Ruling**

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

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Michael Benavides has applied for an allowance of final compensation and reimbursement of expenses. The motion will be denied without prejudice as follows.

### **ILLEGIBLE AND INTERLINEATED PLEADINGS**

All petitions, pleadings, motions, briefs and other papers submitted for filing shall be typewritten, printed, computer generated, or prepared by some other clearly legible process, with printing on only one side of each page. Unless prior approval of the Court is granted, interlineations shall not be allowed.

LBR 9004-2(a)(3).

This is the second motion filed by counsel for final approval of compensation in this case. The previous motion (MB-1) was denied without prejudice on several procedural grounds.

Counsel filed the following documents in support of this motion: (1) Motion for Compensation; (2) Notice of Hearing; (3) Exhibits; (4) Declaration of Michael Benavides; and (5) Certificate of Service.

All the documents filed by counsel for the debtor in this matter are illegible.

The following documents also contain interlineations from what appear to be the previous motion for compensation filed in this case: (1) Motion for Compensation; (2) Notice of Hearing; (3) Declaration of Michael Benavides; and (4) Certificate of Service.

As the motion fails to comply with LBR 9004-2(a)(3) 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:

Michael Benavides's Motion for Allowance of Final Compensation 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.

39. [23-24382](#)-A-13     **IN RE: VICTOR/ELMY HOPPER**  
[CK-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
5-20-2024    [\[35\]](#)

CATHERINE KING/ATTY. FOR DBT.

#### **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 Chapter 13 trustee opposes confirmation of the plan under 11 U.S.C. § 1325(a)(7) contending that the debtor has failed to prove that the petition was filed in good faith. At the center of the trustee's objection are inconsistent statements made in the petition, schedules, and testimony of the debtor regarding the debtors' ownership interests, if any, in Pit Stop Inc., and/or Pitt Stop El Segundo.

The debtor's declaration in support of this motion lacks sufficient detail for the court to find that the petition was filed in good faith. The declaration refers the court to a previous declaration filed by the debtors regarding a previous plan. Declaration, ECF No. 37. The debtors have failed to file anything but cursory information regarding confirmation of the instant plan.

The court continued the hearing on this motion to allow the parties to file additional evidence and argument. Neither the debtors nor the trustee have filed any additional evidence. Accordingly, the court will deny the debtors' motion as they have failed to sustain their burden of proving that the plan satisfies the requirements of 11 U.S.C. § 1325(a)(7) for 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 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.



40. [24-23183](#)-A-13     **IN RE: SHANNON FAIRLEY**  
[CJC-165](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-30-2024    [\[11\]](#)

CALVIN CLEMENTS/ATTY. FOR MV.  
OAKMONT PROPERTIES II, L.P. VS.  
DEBTOR DISMISSED: 08/09/24

#### **Final Ruling**

This case was dismissed on August 9, 2024. Accordingly, the motion for stay relief will be removed from the calendar as moot. No appearances are required.

41. [22-21885](#)-A-13     **IN RE: RODERICK FRAZIER**  
[DPC-2](#)

MOTION TO DISMISS CASE  
7-19-2024    [\[50\]](#)

MIKALAH LIVIAKIS/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 13, 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 \$1,973.93 with two payment(s) of \$989.00 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.

42. [23-24087](#)-A-13     **IN RE: KERRY LUCY**  
[SLH-1](#)

MOTION TO CONFIRM PLAN  
7-3-2024    [\[49\]](#)

SETH HANSON/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed June 14, 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. 42. The plan is supported by Schedules I and J filed, June 14, 2024, ECF No. 40. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 56.

### **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.

43. [24-20987](#)-A-13     **IN RE: KYLE/GRACIELA FARRIS**  
[DPC-2](#)

MOTION TO DISMISS CASE  
7-24-2024    [\[26\]](#)

SETH HANSON/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 13, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended 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 \$15,079.23 with two payment(s) of \$5,026.41 due prior to the hearing on this motion.

The trustee also moves for dismissal as the debtors have failed to file an amended 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, and the debtors' failure to file an amended plan in this case. The court hereby dismisses this case.