

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: September 27, 2022**

**CALENDAR: 1:00 P.M. CHAPTER 13**

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

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**September 27, 2022 at 1:00 p.m.**

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| 1. | <a href="#">22-21609</a> -B-13    FRANCISCO/MARIA PADILLA<br>Peter G. Macaluso | ORDER TO SHOW CAUSE - FAILURE<br>TO PAY FEES<br>9-2-22 [ <a href="#">22</a> ] |
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**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtors' failure to pay \$78.00 due August 29, 2022. The court's docket reflects that payments were made on September 13 and 14. The latter payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the minutes and the case SHALL REMAIN PENDING.

The court will issue an order.

**September 27, 2022 at 1:00 p.m.**

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to October 4, 2022, at 1:00 p.m.**

Debtor's plan is overextended. The confirmed plan is for a term of 60 months paying 16% to general unsecured creditors. However, according to the Chapter 13 Trustee's calculations the plan will take approximately 94 months to complete. The Trustee had filed the Notice of Filed Claims, which includes allowed claims that will prevent Debtor's plan from timely completing. The Debtor did not object to the claim or confirm a modified plan as required by Local Bankr. R. 3008-1(d)(3) and (5).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 30, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 4, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on October 4, 2022, at 1:00 p.m.

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to October 4, 2022, at 1:00 p.m.**

First, Debtor is delinquent in the amount of \$455.00 as of September 9, 2022. The last payment was received on September 1, 2022. Failure to timely make plan payments is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1) and (4).

Second, Debtor has failed to file, set, and serve an amended plan after the court denied confirmation of the plan filed June 3, 2022. 11 U.S.C. § 1307(c).

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 30, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 4, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on October 4, 2022, at 1:00 p.m.

### **Final Ruling**

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to October 4, 2022, at 1:00 p.m.**

First, Debtor is delinquent in the amount of \$250.00 as of September 9, 2022. The last payment was received on July 26, 2022. Failure to timely make plan payments is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1) and (4).

Second, Debtor failed to appear at the first meeting of creditors held August 3, 2022, and two continued meetings of creditors held August 17 and August 31, 2022. Although the meeting of creditors is again continued to September 28, 2022, the court doubts that Debtor will appear given the history of nonappearances.

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

### **Conditional Nature of this Ruling**

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, September 30, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on October 4, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on October 4, 2022, at 1:00 p.m.

### **Final Ruling**

This matter was continued from September 6, 2022, after the court required the Debtor to supplement the record. The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to retroactively approve the loan modification agreement.

Debtor seeks to retroactively approve a loan modification. USAA Federal Savings Bank ("Creditor"), whose claim the plan provides for in Class 4, has offered a permanent loan modification that will reduce Debtor's mortgage payment from the current \$2,070.00 a month to \$1,836.89 a month as stated in a letter dated August 15, 2022, from Creditor to Debtor. Dkt. 38. This is a slight reduction from the amount stated in the Loan Modification Agreement. Dkt. 31. The terms under the Loan Modification Agreement commenced November 2021, whereas the terms under the recent letter are to commence October 2022.

The Chapter 13 Trustee filed an opposition questioning the good faith of the Debtor since the loan modification reduced Debtor's mortgage by over \$202 per month and the Debtor did not state what she has done with the residual money since November 2021. Debtor's confirmed plan provides for payments of \$350.00 for 60 months. The total amount due through August 2022 is \$11,550.00. As of August 16, 2022, Debtor has tendered payments in the total amount of \$11,549.00.

Debtor filed a response, declaration, supplemental declaration, and memorandum of points and authorities to support her motion. Debtor had applied for a loan modification without consulting her attorney, was offered a loan modification from her lender, and signed an agreement with the lender without the knowledge of her attorney. Debtor was not required to make a series of trial loan modification payments prior to receiving and signing the permanent loan modification. It was thereafter that Debtor notified her attorney, and the attorney filed amended schedules consistent with the modified home loan installment amount.

Debtor also addressed the Trustee's concern that any residual money went toward large expenses including air conditioning repair, multiple high utility bills, a shared cost with her neighbor for the trimming of two trees, and a Les Schwab tire payment.

Additionally, there are exacerbating circumstances warranting the court's retroactive approval of the loan modification agreement. Debtor is a veteran suffering from PTSD that has caused her to distrust people, including her attorney, and miss plan payments. Debtor is only two payments away from completing her plan and believes that the terms of the loan modification will facilitate reaching that goal.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. The motion complies with the provisions of 11 U.S.C. § 364(d).

Furthermore, the court's decision is consistent with *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, --- U.S. ---, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020), and *In re Miller*, 620 B.R. 637, 640 (Bankr. E.D. Cal. 2020). In *Acevedo*, jurisdiction had to exist before the court could act and the court created jurisdiction so that it could act. Here, the court is not aware of a requirement that a loan modification must be approved before it is effective. Indeed, as explained in *Miller*, postpetition debt may be incurred before the transaction is approved and the court retains equitable discretion to retroactively approve the transaction. The additional evidence the Debtor submitted in this case warrants a favorable exercise of this court's equitable discretion. The Debtor's loan modification agreement will be retroactively approved effective on November 1, 2021.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

6. [22-21949](#)-B-13 WILFREDA LEGASPI  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-8-22 [[16](#)]

**Final Ruling**

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due September 6, 2022. The court's docket reflects that payments were made on September 9 and 22. The latter payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the minutes and the case SHALL REMAIN PENDING.

The court will issue an order.



7. [22-21087](#)-B-13 MIGUEL ANGEL AGUIRRE AND MOTION TO DISMISS CASE  
[RDG](#)-3 NORA ANGEL 9-6-22 [[37](#)]  
Ryan C. Wood

**Final Ruling**

The Chapter 13 Trustee has filed a motion to dismiss its pending motion. The motion is therefore dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041. The case will proceed in this court.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.