



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

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

DAY: TUESDAY
DATE: OCTOBER 3, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [23-22702](#)-A-13 **IN RE: DENISE WALLACE**
[FEC-1](#)

MOTION TO DISMISS AND EXPUNGE FRAUDULENT CASE
8-22-2023 [\[11\]](#)

DENISE WALLACE/ATTY. FOR MV.

No Ruling

2. [23-21308](#)-A-13 **IN RE: RICHARD/LYNDA BYERS**
[CK-2](#)

MOTION TO CONFIRM PLAN
8-24-2023 [\[31\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek an order confirming their Chapter 13 Plan. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

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

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

On August 28, 2023, the debtor filed an amended notice of hearing, ECF No. 37. The debtor filed a certificate of service indicating that the Amended Notice had been served, ECF No. 38.

The matrix attached to the certificate of service filed on August 28, 2023, is dated July 18, 2023. See Certificate of Service, ECF No. 38. The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

3. [23-21213](#)-A-13 **IN RE: FRITZIE CORTES**
[DPR-2](#)

MOTION TO CONFIRM PLAN
8-22-2023 [\[60\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

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

SERVICE AND NOTICE

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

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

Matrix

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

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

In this case the matrix attached to the certificate of service is not dated. See Certificate of Service, ECF No. 65. Service of the motion occurred on August 22, 2023. *Id.* Because the matrix is not dated the court cannot determine that service of the motion complies with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

4. [23-20616](#)-A-13 **IN RE: LINDA CATRON**
[LC-7](#)

MOTION TO SET ASIDE DISMISSAL OF CASE
7-31-2023 [\[70\]](#)

LINDA CATRON/ATTY. FOR MV.
DEBTOR DISMISSED: 07/28/2023; RESPONSIVE PLEADING

Final Ruling

Motion: Vacate Dismissal

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

Disposition: Denied

Order: Civil minute order

The debtor seeks an order vacating the dismissal of her bankruptcy case under Fed. R. Civ. P. 60(b), as *incorporated by* Fed. R. Bankr. P. 9024. The Chapter 13 trustee opposes the motion.

FACTS

The debtor filed this bankruptcy case on February 28, 2023. A Chapter 13 plan was never confirmed. On June 27, 2023, the Chapter 13 trustee filed a motion to dismiss (DPC-2) the debtor's case citing unreasonable delay under 11 U.S.C. § 1307(c). This was the second motion to dismiss brought by the trustee in this case. The trustee contended that: 1) plan payments were delinquent in the amount of \$40.00 (representing two plan payments) and indicated that further plan payments totaling \$1,500.00 would be due on July 25, 2023. Motion to Dismiss, ECF No. 56. The trustee also contended that the debtor had filed an amended plan, but had failed to set the plan for a confirmation hearing as required by LBR 3015-1(d)(1). *Id.*

The debtor did not file written opposition to the trustee's motion. The hearing on the trustee's motion was held on July 25, 2023, at 9:00 a.m. The debtor failed to attend the hearing and defend the motion. Civil Minutes, ECF No. 66.

DEBTOR HAS PENDING CHAPTER 13 CASE

Once a bankruptcy case is filed, a second case which affects the same debt cannot be maintained. *In re Jackson*, 108 B.R. 251, 252 (Bankr. E.D. Cal. 1989). There is no rule that allows debtors to have two cases pending at the same time. *Id.* (citing *In re Smith*, 85 B.R. 872, 874 (Bankr. W.D. Okla. 1988)). To have two cases pending at the same time, it would allow for abuse of the bankruptcy system if one case does not go to a debtor's liking. *Id.*

On July 31, 2023, the debtor filed another Chapter 13 bankruptcy case: *In re Linda Catron*, Case No. 2023-22522, E.D. Cal. Bankr. (2023). The case is active, and is currently pending in Department E before Judge Ronald H. Sargis. According to the trustee report filed on the court's docket on September 14, 2023, the debtor attended the meeting of creditors on September 14, 2023.

Neither the debtor in her motion nor the Chapter 13 trustee in his opposition mention the debtor's subsequent Chapter 13 petition.

The court is unable to grant the debtor's motion to vacate the dismissal in this case as she already has another pending Chapter 13 case. The court need not consider the remaining issues raised in the motion as the debtor already has a pending Chapter 13 case. The court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's motion to vacate dismissal of Chapter 13 case has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

5. [19-22719](#)-A-13 **IN RE: JOSEPH HYLER AND ANDREA GERBER**
[PLG-1](#)

CONTINUED MOTION TO MODIFY PLAN
7-20-2023 [\[68\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: Continued from August 29, 2023
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.

The hearing on this motion was continued for the following reasons: 1) to allow the Chapter 13 trustee to cite applicable authority in his opposition to the motion; and 2) to allow the debtor to amend pleadings in response to the trustee's opposition.

The court ordered as follows:

IT IS ORDERED that the hearing on the motion shall be continued to October 3, 2023, at 9:00 a.m. Not later than September 5, 2023, the trustee shall file and serve amended opposition: 1) restating each basis for opposition to the motion; 2) providing argument and evidence in support of his position; and 3) in compliance with this court's ruling. Any amended opposition shall comply with Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A), and shall not cite authority which is inapplicable as indicated in this court's ruling.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, or dismissed, the debtor(s) shall file and serve a written reply, if any, to the opposition not later than September 19, 2023. The reply shall specifically address each issue raised in trustee's amended opposition, state whether the issue is disputed or undisputed, include admissible evidence, and identify any amended schedules, in support of the debtors' position. The reply shall comply with Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A).

IT IS FURTHER ORDERED that if the debtors elect to file a further modified plan in lieu of filing a reply, then a modified plan shall be filed, served, and set for hearing not later than September 19, 2023. The evidentiary record will close after September 19, 2023. If the debtors do not timely file a modified plan or a written reply, this motion will be denied on the grounds stated in the trustee's amended opposition without further notice or hearing.

Order, ECF No. 87.

The Chapter 13 trustee filed amended opposition on September 5, 2023, as ordered, ECF No. 88. The debtors have failed to respond to the trustee's opposition or to file a modified plan. Accordingly, the court rules as follows.

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).

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.

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 Chapter 13 trustee contends that the debtors' motion does not cite authority for the relief sought which is required under LBR 9014-1(d), and Fed. R. Bankr. P 9013. The trustee argues that while the legal authority is not novel, it must be included in the motion to properly notice all parties of the basis for the proceeding.

The trustee is correct, the motion cites no authority in support of plan modification and the debtors are required to support their motion by citing the appropriate legal basis for relief.

The court will deny the motion on this basis. As such, the court need not reach any of the additional bases raised by the trustee in his opposition.

CIVIL MINUTE ORDER

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

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

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.

6. [23-22523](#)-A-13 **IN RE: SHAWNA KARLBERG**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-13-2023 [\[18\]](#)

SETH HANSON/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 November 21, 2023, 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 November 21, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 31, 2023. The response shall specifically address each issue raised in 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 31, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than November 7, 2023. The evidentiary record will close after November 7, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

7. [23-22232](#)-A-13 **IN RE: MARVIN SINGLETON AND NICOLE SMITH**
[TLA-1](#)

MOTION TO CONFIRM PLAN
8-18-2023 [\[27\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 August 18, 2023

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 31. The plan is supported by Schedules I and J filed, August 18, 2023, ECF No. 34. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 44.

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.

8. [23-20565](#)-A-13 **IN RE: VICKI BURTON** [DPC-2](#)

MOTION TO DISMISS CASE
8-23-2023 [\[21\]](#)

JAMES KEENAN/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: September 19, 2023

Opposition Filed: September 19, 2023 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file amended plan

Best Interests of Creditors/Estate: Convert to Chapter 7

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$8,500.00, with two additional payments of \$1,700.00 due prior to the hearing on this motion. The trustee also moves for dismissal because the debtor has failed to file an amended plan after the court denied confirmation of the most recently filed plan on May 18, 2023.

LBR 9014-1(f)(1)(B)

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).

Insufficient Opposition

The debtor has filed a timely opposition, ECF No. 25. The opposition consists solely of an unsworn statement by debtor's counsel indicating that payments will be brought current by the date of the hearing on the trustee's motion.

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 in default, why the debtor has failed to file an amended plan, or how the debtor will obtain the necessary funds to bring the plan payments current.

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) (emphasis added).

Despite the trustee's request to dismiss the case the court finds that conversion is in the best interests of the creditors and the estate. The trustee reports that there are non-exempt assets of approximately \$89,825.00 listed in the debtor's schedules.

The court has reviewed Schedules A/B, C, and D, ECF No. 1. The primary non-exempt asset is real property located at 1550 Cottonwood Circle, Auburn, California. The debtor lists the value of the property at \$75,000.00. According to Schedules C and D the property is unencumbered, and no exemption has been claimed. *Id.* Accordingly, the court finds that conversion to Chapter 7 is in the best interests of the creditors and the bankruptcy estate under 11 U.S.C. § 1307(c). The court will convert the case to Chapter 7.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case, and failed to file an amended plan. This constitutes cause to convert the case. Because of the assets available for distribution to creditors the court will convert this case to Chapter 7. 11 U.S.C. § 1307(c)(1). The court hereby converts this case to Chapter 7.

9. [23-21165](#)-A-13 **IN RE: MIRIAM AGUILA**
[DPC-2](#)

MOTION TO DISMISS CASE
8-23-2023 [\[20\]](#)

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: September 19, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file 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 because the debtor has failed to file an amended plan after the court denied confirmation of the most recently filed plan on June 27, 2023. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case.

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 the debtor has failed to file an amended plan. The court hereby dismisses this case.

10. [23-22566](#)-A-13 **IN RE: TERESA PALOMINO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-14-2023 [\[23\]](#)

JULIUS CHERRY/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 November 21, 2023, 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 November 21, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 31, 2023. The response shall specifically address each issue raised in 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 debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 31, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than November 7, 2023. The evidentiary record will close after November 7, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

11. [23-21367](#)-A-13 **IN RE: MICAH/TINA METZ**
[DPC-2](#)

MOTION TO DISMISS CASE
8-23-2023 [\[26\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: September 19, 2023

Opposition Filed: Unopposed

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

\$1,000.00 with two further payments of \$500.00 due prior to the hearing on this motion.

The trustee also requests dismissal because the debtors have failed to file an amended plan following the court's order on July 10, 2023, which denied confirmation of the previously filed plan.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case and the debtors' failure to file an amended plan. The court hereby dismisses this case.

12. [23-20676](#)-A-13 **IN RE: JOHN/ELSA DINGLASA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2023 [\[19\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
TD BANK, N.A. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Plan Confirmed: May 24, 2023

Subject: 2016 BMW 4 series

T.D. Bank, N.A., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

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 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. 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 . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

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:

T.D. Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot.

13. [23-21485](#)-A-13 **IN RE: JAMES WELLE**
[EJS-1](#)

CONTINUED MOTION TO CONFIRM PLAN
7-14-2023 [\[22\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

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

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from September 12, 2023

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). 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 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.

The hearing on this matter was continued to allow the debtor to bring plan payments current and for the parties to file a joint status report. The court ordered as follows:

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing, the parties shall meet and confer regarding payments to the Chapter 13 trustee and file a joint status report. Mr. Schwab will take the lead in coordinating the meeting and the filing of the report.

Order, ECF No. 37.

A status report was not filed as ordered. The court will deny the motion.

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).

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 \$5,317.00 with another payment of \$2,75.00 due September 25, 2023. The plan cannot be confirmed if the plan payments are not current.

STATUS REPORT

On September 28, 2023, the Chapter 13 trustee and the debtor filed a joint status report. The parties report that a serious injury to the debtor prevented timely filing of the report. The parties agree that the plan payments are current. Status Report, ECF No. 38. No other parties have opposed the debtor's motion. Accordingly, the Chapter 13 plan will be confirmed.

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 granted. The debtor shall submit an order confirmation the plan which has been approved by the Chapter 13 trustee.

14. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-6](#)

CONTINUED OBJECTION TO CLAIM OF CHARLEY SMITH FAMILY TRUST,
CLAIM NUMBER 14-3
7-29-2022 [[214](#)]

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR DISMISSED: 09/19/23

Final Ruling

This case was dismissed on September 19, 2023. This objection is removed from the calendar as moot. No appearances are required.

15. [23-21989](#)-A-13 **IN RE: CATHRYN KINGSBURY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-26-2023 [[15](#)]

BRUCE DWIGGINS/ATTY. FOR DBT.
DEBTOR DISMISSED: 09/13/23

Final Ruling

This case was dismissed on September 13, 2023. This Objection is removed from the calendar as moot. No appearances are required.

16. [21-21297](#)-A-13 **IN RE: RONALD/TERRY BERT**
[MOH-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LARRY BUCKLEY AND/OR MOTION FOR COMPENSATION
FOR MICHAEL O. HAYS, DEBTORS ATTORNEY(S)
9-14-2023 [\[30\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Motion: Approve Compromise of Controversy, Approve Compensation

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

Disposition: Continued to November 21, 2023, at 9:00 a.m.

Order: Civil minute order

The debtors seek an order approving the settlement of a personal injury cause of action and approval of compensation for the personal injury attorney who represented the debtors in the proceedings. The motion was filed and served on September 14, 2023. Certificate of Service, ECF No. 33.

NOTICE

The movant did not provide a sufficient period of notice of the hearing on the approval of the compromise or settlement agreement. Federal Rules of Bankruptcy Procedure 2002(a)(3) and 9019(a) require no less than 21 days' notice of the hearing on approval of the compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d) (agreements relating to stay relief, adequate protection, cash collateral use, obtaining credit, prohibiting or conditioning the use, sale or lease of property). Fed. R. Bankr. P. 2002(a)(3).

The hearing will be continued to allow the debtors to: 1) file and serve a notice of continued hearing on all interested parties; 2) file and serve evidence from the debtors' personal injury counsel regarding his qualifications to represent the debtors under 11 U.S.C. § 330; 3) file and serve exhibits evidencing the agreement for compensation and reimbursement of expenses between the debtors and personal injury counsel; 4) file and serve evidence of the debtors' support of the motion; 5) file and serve any amended bankruptcy schedules required in support of the motion; 6) file and serve an accounting by personal injury counsel detailing the receipt and disbursement of any and all proceeds received on behalf of the debtors in the personal injury cause of action, this accounting shall be in the form of admissible evidence; and 7) file and serve any additional evidence in support of this motion.

The notice of continued hearing shall advise potential respondents that written opposition is due by November 7, 2023; and that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. The notice of amended hearing shall advise potential respondents that they can determine whether the matter has

been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

The Chapter 13 trustee shall file and serve a response to the motion apprising the court of his position. All other interested parties may also file and serve opposition to the motion. The court may rule on this motion without further notice or hearing.

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 November 21, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall file and serve a notice of continued hearing and additional evidence in support of the motion, in compliance with this court's ruling, on all interested parties not later than October 24, 2023.

IT IS FURTHER ORDERED that the trustee and all other interested parties shall file and serve a response, if any, no later than November 7, 2023. The evidentiary record will close after November 7, 2023.