



**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: OCTOBER 17, 2023**  
**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 heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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## PRE-HEARING DISPOSITION INSTRUCTIONS

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

MOTION TO MODIFY PLAN  
9-1-2023    [\[117\]](#)

JASON VOGELPOHL/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).

### Conflicting Plan Terms and Evidence

The proposed plan and the evidence offered in support of the plan by the debtor and debtor's counsel conflict. Because the evidence offered does not support the plan as proposed the court cannot determine if the plan is feasible under 11 U.S.C. § 1325(a)(6).

The plan terms and the evidence offered in support of the plan, including the motion and all declarations, must be consistent. Here the two declarations, the motion and the plan all differ as they describe: 1) different percentages to be paid to unsecured creditors; 2) different payment schedules; and 3) different treatment regarding the payment of tax returns into the plan. The court will not presume what conclusion any interested party would reach when reviewing the conflicting terms.

Accordingly, the court will deny the motion.

### Inaccurate Schedules I and J

On July 7, 2023, the debtor filed updated Schedules I and J, ECF No. 110. The schedules show that debtor is employed and earning \$5,313.06 per month. *Id.* However, the declaration of the debtor which is offered in support of this motion states: "I was laid-off from my job on July 28, 2023. I am currently receiving unemployment of \$450.00 per week." Declaration of Pollen Heath, 1:26-27, ECF No. 120. The schedules and the debtor's testimony are inconsistent. As such the court cannot determine whether the proposed plan is feasible.

Accurate budget schedules are essential for the court's determination of plan feasibility under 11 U.S.C. § 1325(a)(6). Current, accurate Schedules I and J are part of a debtor's *prima facie* case for plan confirmation or modification and must be filed at the outset of the debtor's motion, and not in response to opposition by the trustee. Accordingly, the debtor has not met the burden of proof required for plan modification. The court will deny the motion.

### **DOCKET CONTROL NUMBER - VIOLATION OF LBR 9014-1(c)**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used for this motion was used in a previous Motion to Confirm Plan filed by the debtor on July 7, 2023, ECF No. 105.

## 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.

2. [22-21202](#)-A-13     **IN RE: MARIA ZAMORA**  
[HRH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-27-2023     [\[45\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.  
TRANSPORT FUNDING, L.L.C. VS.

### Final Ruling

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject property:** 2015 International Prostar Tractor Truck

Transport Funding, LLC, 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:

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

Transport Funding, LLC's motion for relief from the automatic stay has been presented to the court. Having considered the motion, any oppositions or replies, 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.

3. [23-22702](#)-A-13      **IN RE: DENISE WALLACE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-19-2023    [\[22\]](#)

DEBTOR DISMISSED: 10/03/23

#### **Final Ruling**

This case was dismissed October 3, 2023, the order to show cause is discharged as moot.

4. [23-21020](#)-A-13     **IN RE: EMMA POST**  
[DPC-1](#)

MOTION TO DISMISS CASE  
9-15-2023    [\[19\]](#)

STEVEN ALPERT/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:** October 3, 2023

**Opposition Filed:** Unopposed

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

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,843.95 with a further payment of \$2,595.99 due September 25, 2023.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

## **CIVIL MINUTE ORDER**

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

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

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

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

5. [22-22222](#)-A-13     **IN RE: RODERICK SINGLETON**  
[KLG-3](#)

CONTINUED MOTION TO CONFIRM PLAN  
7-18-2023    [\[81\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

**Notice:** Continued from August 29, 2023

**Disposition:** Granted

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

The debtor moves to confirm the Chapter 13 Plan. The motion was opposed by the Chapter 13 trustee and creditor, U.S. Bank, N.A. The hearing on the debtor's motion was continued to allow the parties to meet and confer and to file a status report. On September 19, 2023, the parties filed a status report, ECF No. 92. The report is signed by counsel for the debtor, the Chapter 13 trustee's attorney, and counsel for U.S. Bank, N.A. The report indicates that post-petition mortgage payments are current and that the parties all agree that the plan may be confirmed. As the opposition to the motion has been resolved the court will grant the motion.

### **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 Second Amended Chapter 13 Plan, ECF No. 83.

### **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.

6. [23-21724](#)-A-13     **IN RE: MARK/CYRIL SENORES**  
[TLW-1](#)

MOTION TO CONFIRM PLAN  
8-5-2023    [\[31\]](#)

TRACY WOOD/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 without prejudice

**Order:** Civil minute order

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

The motion will be denied for the following reasons.

### **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).

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered*

*Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1 (emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 33. The motion will be denied, dismissed, overruled 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.

7. [23-21724](#)-A-13     **IN RE: MARK/CYRIL SENORES**  
[TLW-2](#)

MOTION TO CONFIRM PLAN  
9-21-2023    [\[50\]](#)

TRACY WOOD/ATTY. FOR DBT.  
WITHDRAWN BY M.P.

### **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 without Prejudice

**Order:** Civil minute order

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

### **Fed. R. Civ. P. 41**

On October 3, 2023, the Chapter 13 trustee filed opposition to the debtor's motion. Opposition, ECF No. 67. The debtor filed a notice of withdrawal of this motion on October 4, 2023, ECF No. 72.

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

Because opposition was filed prior to the debtor's notice of withdrawal a court order is required to allow the withdrawal of the motion. The court declines to allow the matter to be withdrawn and issues this ruling denying the motion.

The motion will be denied for the following reasons.

### **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).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 53. The motion will be denied without prejudice.

**DOCKET CONTROL NUMBER - VIOLATION OF LBR 9014-1(c)**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used for this motion was used in an objection to claim, filed by the debtor concurrently with this motion on September 21, 2023, ECF No. 54. Filing multiple matters under the same docket control number makes it impossible for the court to accurately determine the documents filed in a particular matter. Had this motion not been denied for failure to use Form EDC

7-005 it would have been denied for failure to assign a docket control number in compliance with LBR 9014-1(c). LBR 1001-(g).

**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.

IT IS FURTHER ORDERED that the debtor's withdrawal of the motion is disallowed.

8. [23-21724](#)-A-13     **IN RE: MARK/CYRIL SENORES**  
[TLW-2](#)

AMENDED OBJECTION TO CLAIM OF CEFCU, CLAIM NUMBER 9  
9-21-2023     [\[54\]](#)

TRACY WOOD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Objection:** Objection to Claim  
**Disposition:** Overruled without prejudice  
**Order:** Civil Minute Order

**Fed. R. Civ. P. 41**

On October 2, 2023, the Chapter 13 trustee filed opposition to the debtor's objection to claim. Opposition, ECF No. 63. The debtor filed a notice of withdrawal of this objection on October 4, 2023, ECF No. 73.

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

Because opposition was filed prior to the debtor's notice of withdrawal a court order is required to allow the withdrawal of the objection. The court declines to allow the matter to be withdrawn and issues this ruling overruling the objection.

The debtors object to the claim of CEFCU, Claim No. 9. The objection will be overruled without prejudice as follows.

#### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1 (emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 58. The objection will be overruled without prejudice.

#### **DOCKET CONTROL NUMBER - VIOLATION OF LBR 9014-1(c)**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR

9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used for this motion was used in a motion to confirm Chapter 13 plan, filed by the debtor concurrently with this objection on September 21, 2023, ECF No. 50. Filing multiple matters under the same docket control number makes it impossible for the court to accurately determine the documents filed in a particular matter. Had this objection not been denied for failure to use Form EDC 7-005 it would have been denied for failure to assign a docket control number in compliance with LBR 9014-1(c). LBR 1001-(g).

#### **CIVIL MINUTE ORDER**

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

The debtors' objection to the claim of CEFCU, Claim No. 9 has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

9. [23-21724](#)-A-13     **IN RE: MARK/CYRIL SENORES**  
[TLW-3](#)

AMENDED OBJECTION TO CLAIM OF CEFCU, CLAIM NUMBER 20  
9-21-2023     [\[56\]](#)

TRACY WOOD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Objection:** Objection to Claim

**Disposition:** Overruled without prejudice

**Order:** Civil Minute Order

The debtors object to the claim of CEFCU, Claim No. 20. The objection will be overruled without prejudice as follows.

#### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the

bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1 (emphasis added).

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. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

The debtor has failed to use Form EDC 7-005 in memorializing service in this matter. Certificate of Service, ECF No. 58. The motion will be denied, dismissed, overruled without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtors' objection to the claim of CEFCU, Claim No. 20 has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.



10. [23-20427](#)-A-13     **IN RE: NENITA ANTONIO**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
8-23-2023    [\[38\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case  
**Notice:** Continued from September 26, 2023  
**Disposition:** Denied  
**Order:** Civil minute order

The hearing on this motion was continued from September 26, 2023, to allow for hearing on the debtor's motion to confirm the chapter 13 plan. The motion to confirm the plan, (TJW-3) has been granted.

Accordingly, the court will deny this motion to dismiss.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is denied.

11. [23-20427](#)-A-13     **IN RE: NENITA ANTONIO**  
[TJW-3](#)

MOTION TO CONFIRM PLAN  
8-30-2023    [\[43\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed April 24, 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 Chapter 13 Plan, ECF No. 26. The Chapter 13 trustee has filed a non-opposition to the motion, 47.

### **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.

12. [23-20831](#)-A-13     **IN RE: ELIZABETH RODAS BARRIOS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
9-19-2023    [\[22\]](#)

GARY FRALEY/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:** October 3, 2023

**Opposition Filed:** October 3, 2023 - timely

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

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

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 \$805.20, with another payment of \$1,926.04 due September 25, 2023. The trustee also moves for dismissal because the debtor has failed to file an amended plan following the court's denial of confirmation of the most recently filed plan on July 12, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 27, 28. The opposition states that the debtor plans to sell her home and that determining the listing price has delayed the filing of an amended plan. The debtor requests a continuance of 60 days to employ a real estate broker, list the property and propose an amended plan. The court will hear from the parties regarding the issuance of a conditional order to resolve this motion.

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 file an amended plan 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 chapter 13 plan in this case, or to file an amended plan. Each basis for the motion constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

13. [20-20032](#)-A-13     **IN RE: NEIL GARCIA**  
[MAC-3](#)

MOTION TO MODIFY PLAN  
9-9-2023    [\[76\]](#)

MARC CARPENTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Second Modified Chapter 13 Plan, filed September 9, 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(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on September 9, 2023, ECF No. 83. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 84.

#### **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.

14. [23-23232](#)-A-13     **IN RE: MAI TRANG LE AND NHAT TRAN**  
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
10-1-2023    [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Denied

**Order:** Civil minute order

The debtors seek an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Debtor Mai Tran Le filed one previous Chapter 13 case, *In re Mai Tran Tracy Le*, Case No. 2021-23812, E.D. Cal. (2021). The prior case was dismissed on January 26, 2023.

## EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). The motion and notice of hearing must be filed before the expiration of the 30-day period following the date of the petition. The hearing on such motion must also be completed before the expiration of this period. 11 U.S.C. § 362(c)(3)(B). The court must find that the filing of the later case - not the previous case - is in good faith as to the creditors to be stayed. *Id.*

This statute further provides that "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - [(i)] file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ; [(ii)] provide adequate protection as ordered by the court; or [(iii)] perform the terms of a plan confirmed by the court." *Id.* § 362(c)(3)(C)(i)(II).

Additionally, "a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)" in cases in which "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11 or 13 or any other reason to conclude that the later case will be concluded - [(i)] if a case under chapter 7, with a discharge; or [(ii)] if a case under chapter 11 or 13, with a confirmed plan that will be fully performed." *Id.* § 362(c)(3)(C)(i)(III).

### Plan Feasibility

In support of this motion the debtors state:

Since my previous case was dismissed, my circumstances have changed, and I believe that with my husband returning to work, and now being included in this case the money he was using to pay credit cards can get (sic) o (sic) supporting this plan.

Declaration, 1:27-28, 2:1-3, ECF No 17.

### Previous Plan - Case No. 21-23812

The household gross monthly income in the previous case was \$5,971.60, Schedule I, ECF No, 78, *In re Mai Trang Tracy Le*, 2021-23812, E.D. Cal. (2021). The schedule was filed on May 27, 2022. The monthly Chapter 13 Plan payment was \$2,500, Second Amended Chapter 13 Plan, ECF No. 75, *id.*

### Currently Proposed Plan

In this case the debtors' gross monthly income is \$5,403.33, which is a *reduction* of \$568.27 in monthly income from the most recently filed Schedule I in the prior case. See Schedule I, ECF No. 12.

The proposed monthly plan payment in this case is \$3,600.00. Second Amended Plan, Section 7, ECF No. 12. The plan payment is \$1,000 more than the plan payment in the prior case where the debtors' gross household income was higher. Moreover, the current plan payment represents 66% of the debtors' gross monthly income.

The proposed plan term is 60 months. *Id.*, Section 2.03. The plan is not feasible as required under 11 U.S.C. § 1325(a)(6). A review of the debtors' Schedule J shows that the plan is not realistic over the period of sixty months. It provides meager and unrealistic monthly expense amounts for a family of two as follows: 1) \$300 - food and housekeeping supplies; 2) \$10 - medical expenses; and 3) \$0 - recreation. Additionally, neither Schedule I nor J shows an expense for medical insurance. *Id.* The court is not persuaded that the debtors can maintain this restrictive budget for 60 months.

The debtors have offered insufficient evidence that the current case was filed in good faith as to the creditors to be stayed. See 11 U.S.C. § 362(c)(3)(B). A presumption, moreover, that the current case was not filed in good faith arises. Insufficient evidence has been offered to rebut this presumption. The supporting declaration does not point to any substantial change in the personal and financial affairs of the debtors since the dismissal of their previous case. The supporting declaration and schedules filed do not prove that a substantial change in personal or financial affairs has occurred. 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.

A motion to extend the automatic stay has been presented to the court in this case. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

15. [19-22034](#)-A-13     **IN RE: ERNEST/SAIFON BOND**  
[MET-3](#)

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS  
ATTORNEY(S)  
9-7-2023    [\[80\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Allowed

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$2,500

**Additional Cost Reimbursement Requested:** \$0

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Mary Ellen Terranella, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$2,500. This sum represents a substantial reduction in the amount of time and compensation earned by counsel in representing the debtor.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

Because the debtor was forced to resign her employment due to unanticipated medical difficulties additional unanticipated services were undertaken by counsel in this case. The applicant successfully: 1) defended the trustee's motion to dismiss; and 2) successfully modified the debtors' Chapter 13 plan.



The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$2,500.00.

#### Trustee Response

The Chapter 13 trustee filed a response to the motion, ECF No. 86. In his response the trustee indicates that he does not oppose the additional compensation but that the motion does not indicate whether the additional compensation should be paid through the Chapter 13 plan. The court will order the compensation to be paid through the plan, and will grant the motion with this provision in the order.

#### **CIVIL MINUTE ORDER**

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

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

Mary Ellen Terranella's application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$2,500. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

16. [20-20435](#)-A-13     **IN RE: JOHN EPPS AND NICOLE GAGETTA**  
[PGM-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,  
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AND SUBSTITUTE  
PARTY, AS TO JOINT DEBTOR  
9-7-2023     [\[50\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Substitution of Representative, Continued Administration, Waiver of Personal Financial Management and Waiver of Certifications

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

**Disposition:** Granted

**Order:** Civil minute order

Debtor, John L. Epps prays appointment of a personal representative, substitution of the representative, continued administration, waiver

of the post-petition education requirement and the § 1328 certification for his now deceased spouse Nicole R. Gagetta.

The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 55.

## **DEFAULT**

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).

## **DISCUSSION**

### Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a *Notice of Death of the debtor* [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, the movant filed a Notice of Death of Debtor on August 16, 2023, ECF No. 47.

### Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

*An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.*

Fed. R. Civ. P. 17(a), *incorporated by Fed. R. Bankr. P. 7017, 9014(c)* (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by Fed. R. Bankr. P. 7025, 9014(c)* and LBR 1016-1(a).

The movant is the co-debtor in the instant case and the spouse of the deceased debtor. Additionally, the movant declares that he is the successor in interest to the deceased debtor. Declaration, ECF No. 53.

#### Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. *If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.*

Fed. R. Bankr. P. 1016 (emphasis added).

The movant has indicated his desire and provided information regarding his fiscal ability to make plan payments and complete the Chapter 13 Plan. Declaration, ECF No. 53.

#### Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless . . .  
. . . after filing the petition, the debtor failed to  
complete an instructional course concerning personal

financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h) (4).

Section 109(h) provides:

*The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).*

11 U.S.C.A. § 109(h) (4) (emphasis added).

Death is a disability within the meaning of § 109(h) (4).

#### **WAIVER OF § 1328 CERTIFICATIONS**

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q) (1) and pending criminal or civil proceedings described in § 522(q) (1) (A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1

#### **CIVIL MINUTE ORDER**

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

Debtor, John L. Epps' motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) John L. Epps is the representative of Nicole R. Gagetta and is substituted in her place and stead; (2) continued administration is appropriate; (3) as to Nicole R. Gagetta the post-petition education requirement is waived, 11 U.S.C. § 109(h); and (4) as to Nicole R. Gagetta the certifications required by 11 U.S.C. § 1328 are waived.

17. [22-22936](#)-A-13     **IN RE: COURTNEY WILSON**  
[DPC-4](#)

MOTION TO DISMISS CASE  
9-15-2023    [\[96\]](#)

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** October 3, 2023

**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 \$7,100.00 with a further payment of \$3,550.00 due September 25, 2023. The trustee also moves for dismissal as the debtor has failed to file an amended plan following a hearing where the court denied confirmation of the debtor's previously proposed Chapter 13 Plan.

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

18. [23-20838](#)-A-13     **IN RE: PAUL ROCCO**  
[TBG-3](#)

CONTINUED MOTION TO CONFIRM PLAN  
8-3-2023    [\[64\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

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

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

#### **CIVIL MINUTE ORDER**

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

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

19. [23-20838](#)-A-13     **IN RE: PAUL ROCCO**  
[TBG-4](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE  
BANKRUPTCY GROUP, P.C. FOR STEPHAN M. BROWN, DEBTORS  
ATTORNEY(S)  
8-3-2023    [\[71\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

### **Final Ruling**

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

**Notice:** Continued from September 12, 2023

**Disposition:** Continued to November 7, 2023, at 9:00 a.m.

**Order:** Civil minute order

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, The Bankruptcy Group has applied for an allowance of interim compensation and reimbursement of expenses.

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 hearing on the application will be continued to November 7, 2023, at 9:00 a.m. to coincide with the hearing on plan confirmation.

### **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 The Bankruptcy Group's motion for approval of compensation will be continued to November 7, 2023, at 9:00 a.m. The evidentiary record is closed.

20. [23-22239](#)-A-13     **IN RE: JEFFREY/DIANNA BAILEY**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
8-16-2023    [\[23\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from September 12, 2023

**Disposition:** Overruled

**Order:** Civil minute order

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

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the Chapter 13 trustee to review the opposition previously filed by the debtors. The trustee contended that a motion to value the collateral of Ally Financial was required. The debtor's opposition clarified that Ally Financial was provided for in Class 4 of the plan and that such a motion was not required. The opposition also clarified that a motion to value the collateral of creditor RC Willey was not required as the debtors intend to pay the claim as amended pursuant to an agreement with the debtors.

The Chapter 13 trustee has responded indicating the plan is feasible with a payment of \$1,500.00 and 5% interest to RC Willey. The trustee requests that the payment terms to creditor RC Willey be clarified in the order confirming the plan. The court will overrule the objection on that basis, and the debtors shall provide an order confirming the plan approved by the Chapter 13 trustee in accordance with the information provided in the debtors' opposition and the trustee's reply.

### **CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection,



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

IT IS ORDERED that the objection is overruled. The debtors shall submit an order confirming the plan which is consistent with this court's ruling, and which has been approved by the Chapter 13 trustee.

21. [23-22239](#)-A-13     **IN RE: JEFFREY/DIANNA BAILEY**  
[SCF-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ LLC  
8-16-2023    [\[19\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
KRISTIN ZILBERSTEIN/ATTY. FOR MV.  
WITHDRAWN BY M.P.

#### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** Continued from September 12, 2023

**Disposition:** Withdrawn by the moving party

**Order:** Civil minute order

The hearing on NewRez, LLC's objection to confirmation of the debtor's plan was continued to allow the parties to augment the evidentiary record. The debtor filed opposition to the objection on September 5, 2023, ECF No. 30. On September 14, 2023, the objecting creditor filed a notice of withdrawal of its objection, ECF No. 41.

#### **Fed. R. Civ. P. 41**

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

Here, the objecting creditor has signaled its abandonment of the objection to confirmation. Neither the debtor(s), the trustee, nor any other creditor, has expressed opposition to the withdrawal of the creditor's objection. No unfair prejudice will result from withdrawal of the objection and the court will accede to the creditor's request.

## CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection is withdrawn.

22. [23-20040](#)-A-13     **IN RE: YAROSLAV TKACHUK**  
[YK-1](#)

MOTION TO CONFIRM PLAN  
7-28-2023    [\[37\]](#)

YAROSLAV TKACHUK/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative 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).

The Chapter 13 trustee's opposition is limited to one minor issue. The trustee properly disbursed a payment of \$3,933.25 to NewRez LLC, dba Shellpoint Mortgage Servicing on June 30, 2023, pursuant to the debtor's previously proposed Chapter 13 plan. The debtor's amended plan proposes to surrender the collateral of NewRez LLC, and does not authorize the payment previously made by the trustee.

The trustee requests that the order confirming the plan allow for the payment previously made by the trustee to NewRez LLC. The court

will hear from the debtor regarding this proposal. Absent the inclusion of such a provision the court will deny the motion.

#### **CIVIL MINUTE ORDER**

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

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

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

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

23. [23-22942](#)-A-13     **IN RE: ARIAN BARD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-26-2023    [[22](#)]

#### **Tentative Ruling**

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

24. [23-21749](#)-A-13     **IN RE: VANESSA FRANKLIN**  
[DPC-2](#)

MOTION TO DISMISS CASE  
9-19-2023    [[42](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
DEBTOR DISMISSED: 09/27/23

#### **Final Ruling**

This case was dismissed on September 27, 2023. This motion is removed from the calendar as moot. No appearances are required.

25. [23-21351](#)-A-13     **IN RE: TANYA HALL**  
[DPC-2](#)

MOTION TO DISMISS CASE  
9-19-2023    [\[36\]](#)

TIMOTHY WALSH/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:** October 3, 2023

**Opposition Filed:** October 3, 2023 - timely

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

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

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor failed to file an amended plan after the court denied confirmation of the most recently filed proposed plan.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 42, 43, 44. The debtor has also filed an amended plan, ECF No. 41. However, despite an assertion in the opposition that the plan is set for hearing on November 21, 2023, there is no motion to confirm or accompanying documents on the court's docket. LBR 3015-1(d)(1).

The opposition does not fully resolve the grounds for dismissal. While an amended plan has been filed, a motion to confirm the plan has not been filed and served as required under LBR 3015-1(d)(1). The court is unable to deny the motion given the debtor's failure to file a motion to confirm the amended 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. 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 file a motion to confirm the amended plan. This constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

26. [23-22657](#)-A-13     **IN RE: ARIANA MORENO**  
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST CREDIT  
COMPANY, LLC  
8-31-2023    [[15](#)]

SCOTT JOHNSON/ATTY. FOR DBT.  
CHERYL SKIGIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

## **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:** Resolved by stipulation of the parties

**Order:** Civil minute order

Bridgecrest Credit Company, LLC, objects to confirmation of the debtor's plan. On October 2, 2023, the debtor filed a response to the opposition. The response states that the objecting creditor and the debtor have resolved the objection. A proposed order confirming the plan, signed by counsel for the objecting creditor has been submitted as Exhibit A. Exhibit A, ECF No. 21.

Accordingly, the court will remove the objection from the calendar and indicate that the objection has been resolved by stipulation of the parties.

## **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.

Bridgecrest Credit Company, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is resolved by stipulation of the parties, and the objection is removed from the calendar. A confirmation order shall be submitted by debtor's counsel after approval by the Chapter 13 trustee and the objecting creditor.

27. [23-22264](#)-A-13     **IN RE: CHARLISA/ARTHUR HUDSON**  
[RCW-3](#)

MOTION TO CONFIRM PLAN  
8-30-2023    [\[36\]](#)

RYAN WOOD/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 motion will be denied for the following reasons.

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 IS NOT SUPPORTED BY RELEVANT EVIDENCE**

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

The motion is not accompanied by a declaration of the debtors. The declaration filed in support of the motion which purports to attest to the requirements for confirmation under 11 U.S.C. §§ 1322, 1325, is not made by the debtors. Rather it is a declaration by debtors' counsel. Declaration of Ryan C. Wood, ECF No. 38. Debtors' counsel is not the proper party to testify regarding the necessary facts in support of confirmation. The debtors are the proper party to provide firsthand knowledge of their circumstances.

As the plan is not properly supported by relevant evidence the court will deny the motion.

#### **PLAN WAS NOT SERVED WITH THE MOTION TO CONFIRM**

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, *the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it*. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

LBR 3015-1(d)(1) (emphasis added).

The debtors move to confirm the Chapter 13 Plan filed on August 7, 2023.

In support of this motion to confirm the debtors have filed a Certificate of Service, ECF No. 39. The certificate does not list the Chapter 13 Plan as a document which was served on interested parties. See Section 4, *id*.

LBR 3015-1(d)(1) requires that the debtor serve the plan under consideration with a motion to confirm. The purpose of the rule requiring service of the plan with a motion to confirm is to assure adequate notice of the plan terms upon all interested parties. If the plan is not served notice is not properly accomplished.

The court will deny the motion for improper service under LBR 3015-1(d)(1).

#### **CIVIL MINUTE ORDER**

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

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

The debtors' motion to 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.

28. [23-22766](#)-A-13     **IN RE: DANIEL/DANIELLE CALVILLO**  
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
9-8-2023    [\[15\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
CHERYL SKIGIN/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 December 5, 2023, at 9:00 a.m.

**Order:** Civil minute order

Creditor Ally Bank, 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 December 5, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response



to the objection not later than November 7, 2023. The response shall specifically address each issue raised in 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 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 November 7, 2023.

IT IS FURTHER ORDERED that the creditor shall file and serve a reply, if any, no later than November 21, 2023. The evidentiary record will close after November 21, 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.

29. [23-22766](#)-A-13     **IN RE: DANIEL/DANIELLE CALVILLO**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT CORPORATION  
9-22-2023    [\[19\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Overruled

**Order:** Civil minute order

Harley-Davidson Credit Corporation objects to the debtors' proposed plan. The objection will be overruled as it was not timely filed and served.

Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. *An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a).* The objection shall be set for hearing on the confirmation hearing date and time designated in the *Notice of Chapter 13 Bankruptcy Case*. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(1), including the requirement for a Docket Control Number on all documents relating to the objection. The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. Absent a

timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing.

LBR 3015-1(c)(4) (emphasis added).

When the chapter 13 plan is filed within 14 days of the petition and no motion to confirm is required, see LBR 3015-1(c)(1), the court's local rules require an objection to plan confirmation to be filed and served within 7 days after the first date set for the meeting of creditors, see LBR 3015-1(c)(4). The notice of the meeting of creditors includes notice of this deadline. The objecting creditor did not seek an enlargement of the time to object under Fed. R. Bankr. P. 9006(b).

The deadline for filing an objection to confirmation was September 21, 2023. But the objection was filed and served on September 22, 2023. The court will overrule this objection as untimely.

The court also notes that the proposed plan provides for the secured creditor in Class 4 of the plan.

#### **CIVIL MINUTE ORDER**

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

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

Harley-Davidson Credit Corporation's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled.

30. [20-22267](#)-A-13     **IN RE: KEVIN NORMAN**  
[RDW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-21-2023    [[180](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
REILLY WILKINSON/ATTY. FOR MV.  
SUTTER COMMERCIAL CAPITAL INC. VS.

#### **No Ruling**

31. [23-22167](#)-A-13     **IN RE: ROBERT/SHERYL WILLIAMS**  
[CAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
7-25-2023    [\[14\]](#)

CATHERINE KING/ATTY. FOR DBT.  
CHERYL SKIGIN/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:** Sustained and confirmation denied

**Order:** Civil minute order

Ally Bank objects to confirmation of the debtor's plan. The court continued the hearing on this motion to allow the debtors to respond to the objection and file evidence and argument as necessary. The deadline for the debtors to oppose the objection was September 26, 2023. Order, ECF No. 20. The debtors failed to file either an amended plan, a stipulation resolving the objection, or any opposition to the objection by the required date.

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).

### **SECURED CLAIM - INTEREST RATE**

The plan's interest rate on a secured claim should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till*, 541 U.S. at 480.

The *Till* Court found that "[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors' objections and receiving the advice of the trustee, the judge is persuaded that 'the debtor will be able to make all payments under the plan and to comply with the plan.' Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an 'eye-popping' interest rate, the plan probably should not be confirmed." *Id.* (citations omitted).

"The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id.* at 479. Without deciding the issue of the proper scale of

the risk adjustment, the plurality opinion noted that other courts have generally approved upward adjustments of 1% to 3% to the interest rate. See *id.* at 480.

Here, the plan provides for an interest rate of 5.5% on the objecting creditor's class 2 secured claim. The current interest rate is 8.25%.

The appropriate interest rate should be about 1% to 2% above the current prime rate given the nature of the security, the risk of default, and the lack of evidence submitted by the creditor that would warrant upward adjustment. So, the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement. The proper interest rate on this class 2 claim should be at least 9.25%.

#### **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.

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

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

32. [23-22072](#)-A-13     **IN RE: RODNEY ANDREWS**  
[CLH-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PETER  
SCHLATTER  
8-17-2023    [\[29\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
CHARLES HASTINGS/ATTY. FOR MV.

#### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from September 12, 2023

**Disposition:** Overruled as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C.

§ 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

#### **CIVIL MINUTE ORDER**

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

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

33. [23-22072](#)-A-13     **IN RE: RODNEY ANDREWS**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
8-15-2023    [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** Continued from September 12, 2023  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

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

#### **CIVIL MINUTE ORDER**

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

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

34. [23-22072](#)-A-13      **IN RE: RODNEY ANDREWS**  
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ABFC 2002-WF2  
TRUST, ABFC MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES  
2002-WF2, U.S. BANK NATIONAL ASSOCIATION  
7-20-2023    [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

### **Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from September 12, 2023

**Disposition:** Overruled as moot

**Order:** Civil minute order

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

### **CIVIL MINUTE ORDER**

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

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

35. [23-22376](#)-A-13      **IN RE: BRANDON VILICANA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-22-2023    [\[43\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
10/2/2023 FINAL INSTALLMENT FEE PAID \$234

### **Final Ruling**

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

36. [23-22080](#)-A-13     **IN RE: MICHAEL/ANGELIQUE VALERA**  
[RAS-1](#)

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY U.S.  
BANK TRUST NATIONAL ASSOCIATION  
8-10-2023    [\[23\]](#)

ERIC SCHWAB/ATTY. FOR DBT.  
FANNY WAN/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** Continued from September 12, 2023

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

U.S. Bank Trust, N.A., objects to confirmation of the debtors' plan. The hearing on this matter was continued to allow the parties to augment the evidentiary record. The debtors have failed to oppose the objection as ordered or to file an amended plan.

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).

### **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 Fails to Cure Mortgage Arrears

The objecting creditor is provided for in Class 1 of the proposed Chapter 13 Plan. Chapter 13 Plan, Section 3.01, ECF No. 15. The claim filed by the creditor indicates that \$84,452.35 is owed in mortgage arrears on the petition date. Claim No. 14.

The proposed Chapter 13 plan fails to provide any cure of the mortgage arrears owed to the objecting creditor. 11 U.S.C. § 1322(b)(5). As such the plan does not satisfy the requirements of 11 U.S.C. §§ 1322(b)(5), 1325(a)(1). Accordingly, the court will sustain the objection.

## CIVIL MINUTE ORDER

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

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

U.S. Bank Trust, N.A.'s objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

37. [19-27883](#)-A-13     **IN RE: MIRANDA CASTRO**  
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK  
9-12-2023    [\[73\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
DEBTOR DISCHARGED: 04/06/2020

### Final Ruling

**Motion:** Objection to Discharge

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

**Disposition:** Sustained

**Order:** Civil minute order

**Instant Petition Filed:** December 23, 2019

**Chapter:** 7

**Discharge Entered:** April 6, 2020

**Converted to Chapter 13:** July 24, 2023

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

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

The debtor received a Chapter 7 discharge in this case prior to conversion to Chapter 13. Consequently, the trustee contends the debtor is ineligible for a Chapter 13 discharge.



## **OBJECTION TO DISCHARGE - 11 U.S.C. § 1328(f)**

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

*Boukatch v. MidFirst Bank (In re Boukatch)*, 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)(1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive

discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) s chapter 7 case on December 23, 2019 debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

#### **CIVIL MINUTE ORDER**

The court finds that the debtor is not entitled to a discharge in this case. 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 Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that because a Chapter 7 discharge was previously entered, the clerk shall not enter a Chapter 13 discharge in this case.

38. [23-20883](#)-A-13     **IN RE: MELISSA CHAVEZ**  
[PLC-3](#)

AMENDED MOTION TO CONFIRM PLAN  
9-11-2023    [\[46\]](#)

PETER CIANCHETTA/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).

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

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a prior motion to confirm plan by the debtor filed on July 28, 2023, ECF No. 31.

#### **MULTIPLE CHAPTER 13 PLANS**

In addition to filing multiple motions with the same docket control number the debtor filed multiple Chapter 13 Plans on the same date. On September 11, 2023, the debtor filed a plan titled "Chapter 13 Plan - Amended", ECF No. 44. On the same date the debtor filed another plan with the same title, ECF NO. 49.

The court cannot determine which plan is the subject of this motion. The court notes that the Chapter 13 trustee also raised this as part of his opposition to the motion. Accordingly, the motion will be denied.

#### **CHAPTER 13 PLAN NOT SERVED**

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, *the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it*. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

LBR 3015-1(d)(1) (emphasis added).

In support of this motion to confirm the debtor filed two Certificates of Service, ECF Nos. 45, 50. Neither of the certificates lists the Chapter 13 Plan as a document which was

served on interested parties as required. See Section 4, ECF Nos. 45, 50.

LBR 3015-1(d)(1) requires that the debtor serve the plan under consideration with a motion to confirm. The purpose of the rule requiring service of the plan with a motion to confirm is to assure adequate notice of the plan terms upon all interested parties. If the plan is not served notice is not properly accomplished.

The court will deny the motion for improper service under LBR 3015-1(d)(1).

#### **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.

39. [23-22596](#)-A-13     **IN RE: CHARNEL JAMES**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
9-27-2023    [\[34\]](#)

#### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); no written opposition required

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local

Bankruptcy Rule 3015-1. The debtor has the burden of proving that the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

#### **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 \$4,354.12. The plan cannot be confirmed if the plan payments are not current.

#### Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

### Failure To Provide Financial/Business Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtor(s) failed to produce the following documents: 1) completed Business Questionnaire; 2) 2 years of income tax returns; 3) 6 months of profit and loss statements; 4) 6 months of bank statements; 5) proof of business license and insurance or written statements that no such documentation exists.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

### **FAILURE TO FILE TAX RETURNS**

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308." 11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

If the debtor has not filed 2017 through and including 2022 tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308. The trustee reports that the debtor testified at the meeting of creditors that she had not filed tax returns for the tax years 2017 through and including 2022.

The court will sustain the objection to confirmation and need not reach the remaining bases raised in the trustee's objection.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

40. [23-22596](#)-A-13     **IN RE: CHARNEL JAMES**  
[DPC-2](#)

MOTION TO DISMISS CASE  
9-27-2023    [\[38\]](#)

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

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

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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 \$4,354.12, with another payment of \$4,354.12 due prior to the date of 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. 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 chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

41. [23-21497](#)-A-13     **IN RE: CHRISTOPHER HIGGINBOTHAM**  
[DPC-2](#)

MOTION TO DISMISS CASE  
9-18-2023    [\[36\]](#)

PATRICIA WILSON/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:** October 3, 2023

**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 \$1,830.00 with a further payment of \$1,830.00 due September 25, 2023. The trustee also moves for dismissal because the debtor has failed to file an amended plan following a hearing where the court denied confirmation of the debtor's previously filed Chapter 13 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 and the debtor's failure to file an amended plan in this case. The court hereby dismisses this case.