



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

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

DAY: TUESDAY
DATE: OCTOBER 22, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

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

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [23-22605](#)-A-13 **IN RE: ARASH RAHIMI AND NOOSHIN NAMI**
[DPC-1](#)

MOTION TO DISMISS CASE
9-17-2024 [\[30\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$8,738.70 with one payment(s) of \$5,640.14 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

2. [21-23206](#)-A-13 **IN RE: JULIEANNE/RANDY PRICE**
[MOH-4](#)

CONTINUED MOTION FOR CONTINUED ADMINISTRATION OF CASE
8-9-2024 [\[93\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

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

Randy G. Price 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 Julieanne H. Price.

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. Bankr. P. 7025, 9014(c).

Here, a Notice of Death and the required death certificate were filed on August 9, 2024, ECF No. 95.

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 applicant Randy G. Price is the spouse of the deceased debtor and is also a co-debtor in this Chapter 13 proceeding. Julieanne Price died on June 12, 2024, and this motion for appointment of a representative was filed on August 9, 2024, within the 90day statutory period.

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).

Randy G. Price has filed amended Schedules I and J in support of his performance of the Chapter 13 Plan. The Chapter 13 trustee has reviewed the amended schedule, indicates the plan payments are current, and does not oppose the motion. Status Report, ECF No. 112.

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). The court will waive the education requirement for Julieanne H. Price.

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:

Randy G. Price's 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) Randy G. Price is the representative of Julieanne H. Price and is substituted in her place and stead; (2) continued administration is appropriate; (3) as to Julieanne H. Price the post-petition education requirement is waived, 11 U.S.C. s 109(h); and (4) as to Julieanne H. Price the certifications required by 11 U.S.C. § 1328 are waived.

3. [22-22210](#)-A-13 **IN RE: SETH DIXON**
[DPC-1](#)

MOTION TO DISMISS CASE
9-18-2024 [\[19\]](#)

SETH HANSON/ATTY. FOR DBT

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,000 with one payment(s) of \$1,000 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

4. [24-22912](#)-A-13 **IN RE: JASON PEREZ AND JENNIFER BECERRA**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SERVBANK, SB
8-15-2024 [[14](#)]

KRISTY HERNANDEZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
DEBTORS DISMISSED: 10/08/24

Final Ruling

This case was dismissed on October 8, 2024. Accordingly, this motion is removed from the calendar as moot. No appearances are required.

5. [21-24114](#)-A-13 **IN RE: TRACY CRUMP**
[DPC-1](#)

MOTION TO DISMISS CASE
9-18-2024 [\[25\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 4, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,350, with one payment(s) of \$450 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 30, 31. The debtor's declaration states that the debtor has paid \$1,800, on October 7, 2024, via TFS, and that the plan payments will be received prior to the hearing on the motion. See Declaration, ECF No. 31.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

TRUSTEE REPLY

On October 15, 2024, the Chapter 13 trustee filed a reply, ECF No. 34. The trustee reports that the plan payments are current and he requests that the court deny this motion.

Accordingly, the court will deny the motion at the request of the trustee.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

6. [21-23015](#)-A-13 **IN RE: PAMELA CHRISTENSEN**
[DPC-1](#)

MOTION TO DISMISS CASE
9-17-2024 [\[20\]](#)

MARK SHMORGON/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 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$908 with one payment(s) of \$454 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

7. [24-20419](#)-A-13 **IN RE: MONIQUE ANDERSON**
[DPC-1](#)

MOTION TO DISMISS CASE
9-17-2024 [\[16\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 8, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$400, with one payment(s) of \$200 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, and Exhibits, ECF Nos. 20, 21, 23. The debtor's declaration states that the debtor tendered a payment of \$600 to the trustee on October 2, 2024, via TFS. However, there is no evidence that the trustee has received the funds.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On October 11, 2024, the Chapter 13 trustee filed a "notice of dismissal" of his motion. Because the debtor has filed written opposition to the motion the trustee may not unilaterally withdraw his objection. In this case the court will construe the notice of dismissal as the trustee's request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

8. [24-22923](#)-A-13 **IN RE: ERROL QUOCK AND IRENE WONG**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-14-2024 [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

At the request of the parties the hearing on this matter will be continued to November 19, 2024, at 9:00 a.m. The court may rule on this matter without further hearing.

IT IS ORDERED THAT no later than October 22, 2024, the debtors shall either: (1) file and serve any remaining admissible evidence or argument in support of plan confirmation; or (2) file a statement indicating that they intend to file an amended plan. No later than November 5, 2024, the trustee shall file a status report regarding his objection to confirmation. The evidentiary record will close after November 5, 2024.

9. [23-22324](#)-A-13 **IN RE: NATALIA MOGANNAM**
[DPC-1](#)

MOTION TO DISMISS CASE
9-18-2024 [\[22\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 8, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$5,000, with one payment(s) of \$2,250 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 26, 27. The debtor's declaration states that the debtor fell delinquent on payments because of

medical expenses for her daughter and will bring the plan payment current by the date of the hearing on this motion. The debtor has tendered payments via TFS. See Declaration, ECF No. 26. However, the Chapter 13 trustee has not yet confirmed receipt of those payments.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency.

TRUSTEE REPLY

On October 15, 2024, the Chapter 13 trustee filed a reply, ECF No. 29. The trustee reports that the plan payments are now current, and he requests that the court deny this motion.

Accordingly, the court will deny the motion at the trustee's request.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

10. [23-22825](#)-A-13 **IN RE: KAREN JOHNSON**
[FWP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-24-2024 [[48](#)]

PETER MACALUSO/ATTY. FOR DBT.
THOMAS PHINNEY/ATTY. FOR MV.
JOSEPH J. BAMBINO, TRUSTEE OF THE BAMBINO FAMILY TRUST
DATED MAY 23, 1990 VS.
RESPONSIVE PLEADING

No Ruling

11. [23-22825](#)-A-13 **IN RE: KAREN JOHNSON**
[PGM-1](#)

MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
10-1-2024 [\[57\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

12. [23-22129](#)-A-13 **IN RE: HERMINIO/JOAN BERNAS**
[MMM-2](#)

MOTION TO INCUR DEBT
9-30-2024 [\[34\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Motion: Incur debt

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek an order authorizing the purchase of a vehicle with credit. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

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

(2) removing creditors from that list by the method described in paragraph (c) of this rule.

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

In this case the matrix attached to the certificate of service is dated September 3, 2024. See Certificate of Service, ECF No. 39. Service of the motion occurred on September 30, 2024. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Debtors' Motion to Incur Debt 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.

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

MOTION TO DISMISS CASE
9-17-2024 [\[41\]](#)

GABRIEL LIBERMAN/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 8, 2024

Opposition Filed: October 8, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$190, with one payment(s) of \$190 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of Counsel for the Debtor, ECF Nos. 45, 46. Counsel's declaration states that he assisted the debtor in his office in making the required payments via TFS which will bring the plan

payment current by the date of the hearing on this motion. See Declaration, ECF No. 46. However, the Chapter 13 trustee has not confirmed the plan payments have been received.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

14. [22-23031](#)-A-13 **IN RE: ANDREW COLLIER**
[DPC-3](#)

MOTION TO DISMISS CASE
9-20-2024 [\[59\]](#)

CANDACE BROOKS/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 8, 2024

Opposition Filed: October 8, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$7,645.00, with one payment(s) of \$3,364.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 63, 64. The debtor's declaration states that the debtor has scheduled two payments through TFS in an amount sufficient to bring the plan payments current. See Declaration, ECF No. 64. However, the Chapter 13 trustee has not confirmed receipt of the payments.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

15. [24-20037](#)-A-13 **IN RE: WILLIAM/LYNDA ANRIG**
[DPC-3](#)

MOTION TO DISMISS CASE
9-20-2024 [[72](#)]

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This case was converted to Chapter 7 on October 17, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

16. [21-21238](#)-A-13 **IN RE: RACQUEL VITOR**
[DPC-2](#)

MOTION TO DISMISS CASE
9-20-2024 [\[37\]](#)

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,118.43 with one payment(s) of \$1,486.10 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

17. [20-24139](#)-A-13 **IN RE: ARNOLD POSADAS**
[DPC-1](#)

MOTION TO DISMISS CASE
9-18-2024 [\[20\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 2, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,400, with one payment(s) of \$890 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 24, 25, 26. The debtor's declaration states that the debtor paid \$3,290 to the Chapter 13 trustee via a cashier's check. See Declaration, ECF No. 25.

The opposition does not fully resolve the grounds for dismissal, as the trustee has not yet confirmed receipt of the funds. A delinquency still exists as of the date of the opposition. A

statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On October 3, 2024, the Chapter 13 trustee filed a “Notice of Dismissal” of his motion, ECF No. 28. Because the debtor has filed written opposition to the motion the trustee may not unilaterally withdraw his objection.

In this case the court will construe the notice of dismissal as the trustee’s request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

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

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

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

18. [23-22239](#)-A-13 **IN RE: JEFFREY/DIANNA BAILEY**
[CYB-1](#)

MOTION TO EMPLOY DANA LIZIK AS SPECIAL COUNSEL
9-16-2024 [\[67\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Employ Special Counsel

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

Disposition: Approved

Order: Prepared by moving party

Special Counsel: Johnson Law Group

Subject of Representation: injuries arising out of pre-petition
injuries caused by use of 3M Combat Arms Version 2 Earplug

Employment: 11 U.S.C. §§ 327, 328

Terms of Employment: contingent, 40% of gross recovery, plus costs

Unopposed applications 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).

CHAPTER 13 TRUSTEE NON-OPPOSITION

The Chapter 13 trustee has filed a late response to the motion, ECF No. 73. In this instance the court will allow the late response. The trustee indicates he has no opposition to the motion.

EMPLOYMENT

The debtor in this Chapter 13 case moves to employ Johnson Law Group to represent the estate on a contingent fee basis with respect to the matters described herein. Johnson Law Group has previously represented the debtor(s) with respect to the same matter.

Prior to the date of the petition during military service, the debtor Jeffrey Bailey sustained an injury resulting from use of a 3M Combat Arms Version 2 Earplug, for which a cause of action lies; that cause of action appears to be property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

Johnson Law Group represented the debtor in the Combat Arms Version 2 Settlement Program. The manufacturer of the device, in an effort to resolve the claim, has submitted an offer to Proposed Special Purpose Counsel of \$10,000.

Counsel has significant firsthand experience with this case. The debtor deems it appropriate that Proposed Special Purpose Counsel be retained to assist in administering the proceeds from the offer of settlement for the Liability Claim. See Employment Agreement, Exhibit B, ECF No. 65.

Proposed Special Counsel proposes to divide the 40% contingency fee on the same terms previously agreed to with the Debtor: Jeffrey Bailey. See Exhibit A, ECF No. 70.

EMPLOYMENT

A Chapter 13 debtor in possession may employ counsel to represent the estate. 11 U.S.C. § 327. Employment may be for all purposes or for a limited purpose. The burden of proving eligibility is on the applicant. *In re Big Mac Marine, Inc.*, 326 B.R. 150, 154 (8th Cir. BAP 2005). Where the trustee seeks to employ special counsel that has previously represented the debtor employment is governed by § 327(e). That section provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

In most instances, "in the best interest of the estate" means reasonably likely to recover non-exempt assets that may be administered for creditors, 11 U.S.C. § 704(a)(1). Proposed special counsel must not hold or represent "any adverse interest" to the debtor or to the estate "with respect to the matter on which the attorney is to be employed." Adverse interest means "the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holding, Inc.*, 355 B.R. 139, 148-49 (9th Cir. BAP 2006), *aff'd and adopted*, 530 F.3d 832 (9th Cir. 2008). See *In re Grant*, 507 B.R. 306, 308-10 (Bankr. E.D. Cal. 2014) (holding that there is adverse interest where the attorney to be employed asserts a charging lien—at least if avoidable, or where the debtor argues that the proceeds of the action are exempt under applicable law).

Where the applicant wishes to define the terms of employment it may also seek approval under § 328. The section provides:

The trustee...with the court's approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of

employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C. § 328(a).

The court will grant the motion. The court authorizes employment of the law firm of Johnson Law Group as special purpose counsel pursuant to 11 U.S.C. § 327. The court further authorizes payment of a contingency fee of forty percent (40%), plus costs incurred under 11 U.S.C. § 328(a). Compensation and reimbursement of expenses shall only be paid upon the court's approval of a motion seeking approval of the settlement and payment of proposed special purpose counsel. Fed. R. Bankr. P. 9019.

The debtor shall submit an order granting the motion which is consistent with this ruling.

19. [23-22239](#)-A-13 **IN RE: JEFFREY/DIANNA BAILEY**
[CYB-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH 3M COMPANY, AEARO TECHNOLOGIES LLC, 3M
OCCUPATIONAL SAFETY, AEARO HOLDING LLC, AEARO INTERMEDIATE
LLC, AEARO LLC
9-16-2024 [\[62\]](#)

CANDACE BROOKS/ATTY. FOR DBT.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

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

TRUSTEE NON-OPPOSITION

The Chapter 13 trustee filed a late response to this motion, ECF No. 75. In this instance the court will allow the late response. The trustee indicates he does not oppose the motion.

FACTS

Prior to the date of the petition during military service, the debtor Jeffrey Bailey sustained an injury resulting from use of a 3M Combat Arms Version 2 Earplug, for which a cause of action lies; that cause of action appears to be property of the estate, subject to any applicable exemptions. 11 U.S.C. § 541.

Johnson Law Group represented the debtor in the Combat Arms Version 2 Settlement Program. The manufacturer of the device, in an effort to resolve the claim, has submitted an offer to Special Purpose Counsel of \$10,000.

The debtor, upon advice of counsel, elected to participate in the Master Settlement Agreement, dated August 29, 2023. See Exhibit A, ECF No. 65.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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 approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion as Exhibit A and filed at docket no. 65.

20. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**
[DPC-2](#)

MOTION TO DISMISS CASE
9-20-2024 [\[53\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to November 19, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 8, 2024 - timely

Motion to Modify Plan Filed: October 7, 2024 - timely

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

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is November 19, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

TRUSTEE REQUEST FOR DISMISSAL OF MOTION

The court notes that the trustee has requested his motion be dismissed as the court previously approved a proposed sale of the debtor's residence. However, the trustee has provided no evidence that the sale has closed, or that the trustee is in possession of the proceeds as ordered. Order, ECF No. 71. The court will continue the hearing as requested by the debtor.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to November 19, 2024, at 9:00 a.m.

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

21. [24-21247](#)-A-13 **IN RE: SCOTT SINCLAIR**
[DPC-1](#)

MOTION TO DISMISS CASE
9-17-2024 [\[18\]](#)

MIKALAH LIVIAKIS/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 8, 2024

Opposition Filed: October 7, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,050, with one payment(s) of \$525 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 22, 23. The debtor's declaration states that the debtor will pay \$1,575.00 to the trustee prior to the hearing on the motion. See Declaration, ECF No. 23.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A

statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

22. [24-23447](#)-A-13 **IN RE: STEPHANIE CHITWOOD**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-25-2024 [\[21\]](#)

EVAN LIVINGSTONE/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to December 3, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 3, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 5, 2024, the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition to the objection. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and

include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 19, 2024. The evidentiary record will close after November 19, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

23. [24-23447](#)-A-13 **IN RE: STEPHANIE CHITWOOD**
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY M&T BANK
9-26-2024 [\[25\]](#)

EVAN LIVINGSTONE/ATTY. FOR DBT.
DANE EXNOWSKI/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 3, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, M&T 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 3, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 5, 2024, the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition to the objection. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 19, 2024. The evidentiary record will close after November 19, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

24. [24-24247](#)-A-13 **IN RE: NEERAJ BHARDWAJ**
[SMJ-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-7-2024 [\[8\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

No Ruling

25. [22-22749](#)-A-13 **IN RE: MICHAEL WYCLIFFE AND REBECCA WEAVER**
[DPC-1](#)

MOTION TO DISMISS CASE
9-18-2024 [\[67\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The hearing on the trustee's motion to dismiss will be continued at the request of the debtors. The debtors' state that they wish to account for money order payments tendered without bearing the bankruptcy case number.

IT IS ORDERED that the hearing will be continued until December 3, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than November 12, 2024, the debtors shall file and serve any additional admissible evidence. No later than November 26, 2024, the Chapter 13 trustee shall file and serve a status report. The court may rule on this motion without further hearing.

26. [23-23949](#)-A-13 **IN RE: TANGELA BABBITT**
[DPC-2](#)

MOTION TO DISMISS CASE
9-18-2024 [\[96\]](#)

MARK SHMORGON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to November 19, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 8, 2024 - timely

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

A modified plan has been filed and set for hearing in this case. The scheduled hearing on the modification is November 19, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not

been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to November 19, 2024, at 9:00 a.m.

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

27. [24-24252](#)-A-13 **IN RE: GUY ARCHBOLD**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-8-2024 [\[14\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

28. [24-21356](#)-A-13 **IN RE: RYAN OHLINGER**
[GC-1](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
GLAZER AND CHERRY FOR GERALD GLAZER, DEBTORS ATTORNEY(S)
6-24-2024 [\[20\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

No Ruling

29. [24-21356](#)-A-13 **IN RE: RYAN OHLINGER**
[GC-2](#)

MOTION TO CONFIRM PLAN
8-26-2024 [\[61\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

No Ruling

30. [24-22457](#)-A-13 **IN RE: HELMUTH/ANGELA BURROWS**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-20-2024 [\[61\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.
BMO BANK N.A. VS.
WITHDRAWN BY M.P.

Final Ruling

The motion was withdrawn on October 4, 2024, by the moving party, Notice of Withdrawal, ECF No. 72. Fed. R. Civ. P. 41. Accordingly, the motion is removed from the calendar.

31. [24-23958](#)-A-13 **IN RE: FERMIN MARTINEZ JAIME**
[MHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-8-2024 [\[17\]](#)

PETER MACALUSO/ATTY. FOR DBT.
BRADFORD BARNHARDT/ATTY. FOR MV.
CRISTOBAL PINEDO VS.

Tentative Ruling

Motion: Stay Relief to Pursue State-Court Litigation
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only to the extent specified in this ruling
Order: Civil minute order

Subject: Pending state-court litigation described in the motion

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).

Cristobal Pinedo seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) to pursue the following action in state court: *Cristobal Pinedo v. Ulises Martinez-Solis, et al.*, Solano County Superior Court, Case No. FCS055719.

STAY RELIEF

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

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

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

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. *But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from*

applicable insurance proceeds; or (2) by filing a proof of claim in this court.

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state-court litigation described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

32. [21-22261](#)-A-13 **IN RE: AMANDA VASCONCELLOS**
[DPC-2](#)

MOTION TO DISMISS CASE
9-18-2024 [\[41\]](#)

MARK BRIDEN/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 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,500.00 with one payment(s) of \$750.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

33. [22-21468](#)-A-7 **IN RE: SANDRA PEREIRA**
[DPC-2](#)

MOTION TO DISMISS CASE
9-20-2024 [\[32\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
CASE CONVERTED: 10/02/24

Final Ruling

This case was converted to Chapter 7 on October 2, 2024. Accordingly, the court will remove this motion from the calendar as moot. No appearances are required.

34. [22-23071](#)-A-13 **IN RE: DOUGLAS/PHATHUMPORN OVERSTREET**
[DPC-4](#)

MOTION TO DISMISS CASE
9-20-2024 [\[55\]](#)

CANDACE BROOKS/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 8, 2024

Opposition Filed: October 7, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$3,179.18, with one payment(s) of \$3,219.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 59, 60. The debtor's declaration states that the debtors have scheduled one payment via TFS to be paid to the trustee and will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 60.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

35. [24-21272](#)-A-13 **IN RE: KRISTINA WOYICKI**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-2-2024 [\[31\]](#)

MATTHEW GRECH/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from September 10, 2024

Disposition: Granted

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

The hearing on this motion was continued to coincide with the debtor's motion to confirm a Chapter 13 Plan. The court denied the motion to confirm (MGG-1) because the trustee reports the plan payments are delinquent under the proposed amended plan.

DISMISSAL

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 \$564.00.

The debtor has filed a timely motion to confirm an amended plan as opposition to the motion. The debtor also filed a declaration stating that she would make the plan payment due August 25, 2024. Declaration, ECF No. 36. As the court has indicated previously in this ruling the trustee reports that plan payments are delinquent pursuant to the proposed amended plan.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the 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.

36. [24-21272](#)-A-13 **IN RE: KRISTINA WOYICKI**
[MGG-1](#)

MOTION TO CONFIRM PLAN
9-9-2024 [\[38\]](#)

MATTHEW GRECH/ATTY. FOR DBT.
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).

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 \$564.00. The plan cannot be confirmed if the plan payments are not current.

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.

37. [20-25073](#)-A-13 **IN RE: MARGARET FELIX**
[DPC-1](#)

MOTION TO DISMISS CASE
9-18-2024 [\[52\]](#)

MARK SHMORGON/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 8, 2024

Opposition Filed: September 20, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$200.00, with one payment(s) of \$100.00 due before the hearing on this motion.

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

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

38. [24-23773](#)-A-13 **IN RE: SAMUEL ALFARO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-30-2024 [[14](#)]

THOMAS AMBERG/ATTY. FOR DBT.
9/30/2024 INSTALLMENT FEE PAID \$78

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

39. [24-22275](#)-A-13 **IN RE: AARON LAURANT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-26-2024 [[33](#)]

MUOI CHEA/ATTY. FOR DBT.
9/27/2024 FINAL INSTALLMENT FEE PAID \$78

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

40. [23-22376](#)-A-13 **IN RE: BRANDON VILLCANA**
[DPC-1](#)

MOTION TO DISMISS CASE
9-20-2024 [\[55\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: October 8, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,772, with one payment(s) of \$1,384 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of Clancy Callahan, ECF Nos. 59, 60. The declaration states that the debtor has tendered one payment via TFS and brought another payment into counsel's office which was forwarded by Ms. Callahan to the trustee. These payments will bring the plan payment current. See Declaration, ECF No. 60. However, the Chapter 13 trustee has not confirmed receipt of the payments.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

TRUSTEE REPLY

On October 15, 2024, the Chapter 13 trustee filed a reply, ECF No. 62. The trustee reports that the plan payments are current, and he requests that the court deny the motion to dismiss.

Accordingly, the court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

41. [23-21777](#)-A-13 **IN RE: KEITH/LESLIE MCCOMBS**
[DPC-1](#)

MOTION TO DISMISS CASE

9-17-2024 [\[62\]](#)

SETH HANSON/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 8, 2024

Opposition Filed: October 8, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,775, with one payment(s) of \$1,775 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 66, 67. The debtor's declaration states that the debtor has tendered two payments of \$1,750 to the trustee. See Declaration, ECF No. 67. It does not appear that these amounts are sufficient to bring the plan payments current, and the Chapter 13 trustee has not confirmed receipt of the payments.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

42. [23-21777](#)-A-13 **IN RE: KEITH/LESLIE MCCOMBS**
[SLH-3](#)

MOTION TO MODIFY PLAN
9-12-2024 [\[57\]](#)

SETH HANSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5)

and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

TRUSTEE OPPOSITION

The motion seeks confirmation of the First Modified Chapter 13 Plan filed May 22, 2024, ECF No. 59. The trustee incorrectly states that the plan has not been filed and was served only as an exhibit. The proposed plan appears on the court’s docket. The proposed plan was also filed as an exhibit and served on all interested parties.

However, the plan is not clearly identified in the motion. Going forward counsel should identify in the motion the plan which is the subject of any motion to confirm or modify.

The trustee also opposes the motion because the plan calls for an 18% distribution to unsecured creditors. However, the trustee’s calculation, made after the claims bar date, shows that the plan will pay 28% to unsecured creditors.

The court will approve the plan only if the debtors agree to the make the following adjustments in the order confirming the modified plan: (1) the order shall identify the plan as the First Modified Chapter 13 Plan, filed May 22, 2024, ECF No. 59; and (2) the unsecured creditors shall receive no less than 28%.

Absent these provisions the court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

43. [23-23177](#)-A-13 **IN RE: LISA/RICHARD VIRAMONTES**
[DPC-1](#)

MOTION TO DISMISS CASE
9-17-2024 [\[20\]](#)

SETH HANSON/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 8, 2024

Opposition Filed: September 27, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,575.00, with one payment(s) of \$1,050.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 24, 25. The debtor's declaration states that the delinquency occurred when debtors' son had unexpected emergency medical expenses, and that debtors will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 25.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

44. [24-23477](#)-A-13 **IN RE: JOSHUA WILLIAMS**
[BRL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FOOTHILL MORTGAGE FUND
OF OLYMPIA, LLC
9-24-2024 [\[21\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
BENJAMIN LEVINSON/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 3, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Foothill Mortgage Fund of Olympia, LLC, 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 3, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 5, 2024, the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition to the objection. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 19, 2024. The evidentiary record will close after November 19, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

45. [24-23477](#)-A-13 **IN RE: JOSHUA WILLIAMS**
[CCR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL JACOB AND
DENISE MEIER
9-26-2024 [\[30\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
CHERYL ROUSE/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 3, 2024, at 9:00 a.m.

Order: Civil minute order

Creditors, Michael Jacob and Denise Meier, object 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 3, 2024, at 9:00 a.m. The court may rule in this matter
without further hearing.

IT IS FURTHER ORDERED that no later than November 5, 2024, the
debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree
that the creditor's objection is well taken, the debtor(s) shall
concede the merits and file a statement of non-opposition to the
objection. L.R. 230(c) ("A responding party who has no opposition
to the granting of the motion shall serve and file a statement to
that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of
L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)
disagrees with the creditor's objection, the debtor(s) shall file
and serve a written response to the objection; the response shall

specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 19, 2024. The evidentiary record will close after November 19, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

46. [24-23477](#)-A-13 **IN RE: JOSHUA WILLIAMS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-26-2024 [\[26\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to December 3, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to December 3, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than November 5, 2024, the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition to the objection. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 19, 2024. The evidentiary record will close after November 19, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, then the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

47. [24-22678](#)-A-13 **IN RE: ALAN/MEGAN KENNEDY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-7-2024 [\[17\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 10, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Eric Schwab is ordered to personally appear in this matter at 9:00 a.m. on October 22, 2024, in Department A.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from September 10, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; or (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

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).

On September 16, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to October 22, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that *the debtor(s) shall do one of the following:*

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 24, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the

applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than September 24, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than October 8, 2024. The evidentiary record will close after October 8, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than September 24, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

Order, ECF No. 33, (emphasis added).

The debtor(s) failed to file: (1) any opposition to the trustee's objection; (2) an amended plan; or (3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by September 24, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor concedes the objection.

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 initial objection to confirmation was based upon counsel's failure to attend the meeting of creditors on August 1, 2024. The debtors and counsel attended the continued meeting of creditors on August 22, 2024, and the trustee concluded the meeting. The trustee augmented his objection to include the following objection, ECF No. 21.

The plan does not comply with § 1325(b) because it neither pays unsecured creditors in full nor provides payment to unsecured creditors of all projected disposable income. See 11 U.S.C. § 1325(b). Form 122C-2 shows projected monthly disposable income of \$33,422.68 over the next five years. The plan only pays unsecured creditors 9% on projected unsecured debt of \$681,979.00.

The court sustains the objection and denies confirmation 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.

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.

48. [24-22678](#)-A-13 **IN RE: ALAN/MEGAN KENNEDY**
[GAL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2024 [\[26\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
GARRY MASTERSON/ATTY. FOR MV.
TOYOTA INDUSTRIES COMMERCIAL FINANCE, INC. VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2022 Hang Cha Forklift; 2021 Hang Cha Forklift

Cause: Delinquent payments; 2 months/\$1,018.23

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).

Toyota Industries Commercial Finance, Inc. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The Chapter 13 trustee filed non-opposition to the motion, ECF No. 36. The trustee also reports that the debtors provide for the movant's claim in Class 3 of the proposed Chapter 13 Plan which has not yet been confirmed.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 2 postpetition payments are past due. The total postpetition delinquency is approximately \$1,018.23.

Alternatively, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2022 Hang Cha Forklift and 2021 Hang Cha Forklift, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

49. [24-23479](#)-A-13 **IN RE: EVELYN DOMONDON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-26-2024 [\[42\]](#)

Final Ruling

This case was dismissed on October 8, 2024. Accordingly, this objection is removed from the calendar as moot. No appearances are required.

50. [23-20883](#)-A-13 **IN RE: MELISSA CHAVEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
9-18-2024 [\[94\]](#)

PETER CIANCHETTA/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 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,895.68 with one payment(s) of \$565.02 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

51. [24-22983](#)-A-13 **IN RE: AMELIA ALLEN**
[PGM-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
9-16-2024 [\[36\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject: 4496 Big Branch Road, Shingle Springs, California

Judicial Lien Avoided: \$3,235.28 - Capital One Bank (USA) N.A.

All Other Liens:

- Deed of Trust; PHH Mortgage \$565,558.40

Exemption: \$600,000

Value of Property: \$589,000

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).

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that

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

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

52. [24-22687](#)-A-13 **IN RE: DANIEL/ANN KRAMER**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-7-2024 [\[28\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 10, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The debtor(s) filed opposition as ordered and the trustee filed a reply.

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).

Trustee Reply

The trustee indicates in his reply that the plan overextension issues raised in the objection to confirmation have been resolved with the amended claim filed by the IRS. He also states the plan payments are current. Reply, ECF No. 43. Finally, the trustee requests that his objection be overruled, as long as the debtor includes the additional payments totaling \$70,000 in the order confirming the plan.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which is consistent with the lump sum payments proposed in the debtors' response, ECF No. 41, and which has been approved by the Chapter 13 trustee.

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.

53. [23-23390](#)-A-13 **IN RE: AARON/REBECCA ULDALL**
[DPC-2](#)

MOTION TO DISMISS CASE
9-18-2024 [\[82\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: October 8, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the plan are delinquent in the amount of \$9,120.00 with one payment(s) of \$4,560.00 due prior to the hearing on this motion.

On October 10, 2024, the debtors filed a response stating that they do not oppose the trustee's motion to dismiss. Response, ECF No. 88. Accordingly, the court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

54. [24-23592](#)-A-13 **IN RE: TRINIDAD SANCHEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-25-2024 [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Overruled

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

On October 8, 2024, the debtor filed a response to the trustee's objection to confirmation, ECF No. 26. On October 15, 2024, the Chapter 13 trustee filed a reply wherein he agreed with the debtor's position as stated in the response. Trustee Reply, ECF No. 28. The trustee requests that the court overrule the objection.

Accordingly, the court will overrule 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.

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.

55. [24-22793](#)-A-13 **IN RE: JERYL/KATHERINE CHASE**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
8-8-2024 [\[16\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 10, 2024

Disposition: Overruled

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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).

Trustee Reply

The trustee indicates in his reply that the issues raised in the objection to confirmation have been resolved with the debtor's attendance at the continued meeting of creditors. He also states the plan payments are current. Reply, ECF No. 22. Finally, the trustee requests that his objection be overruled.

Accordingly, the court will overrule the objection. The debtor(s) shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

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.