

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

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

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: November 1, 2022**

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

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

November 1, 2022 at 1:00 p.m.

---

1. [21-23801](#)-B-13 ROBERT MOLINA MOTION TO SET ASIDE DISMISSAL  
Nicholas Wajda OF CASE  
9-16-22 [[110](#)]  
CASE DISMISSED: 09/09/2022

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has reviewed the motion. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. The court has determined that oral argument will not assist in the decision-making process or resolution of the amended motion. See Local Bankr. R. 9014-1(h); *Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, \*1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). The court therefore issues these findings of fact and conclusions as a Final Ruling. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to conditionally grant the motion to vacate dismissal.

Debtor moves to vacate the order dismissing this Chapter 13 case. The Chapter 13 case was dismissed on September 9, 2022, for delinquency in plan payments and failure to file, set, and serve an amended plan. The failure to file an amended plan was not due to the Debtor's lack of diligence or any intent to delay, but rather due to lack of coordination with the attorney handling confirmation and the undersigned attorney, Mr. Carlos Alsina-Batista, who was solely dealing with the contentious adversary proceeding *Christina Molina v. Robert F. Molina*, adv. no. 21-23801. The adversary proceeding was in substantial discovery proceedings and has a final pretrial hearing scheduled for November 22, 2022.

After the protracted discovery, the parties reached an agreement in principle and exchanged settlement documents during the last week of August 2022. Despite the parties' good faith in reaching an agreement, Debtor was unavailable and uncommunicative to approve the agreement's terms due to his work as a contractor with the U.S. Department of Defense and, for the whole month of August and until the first week of September, was secluded and uncommunicative in training. The situation was compounded since Mr. Kirk Rimmer, attorney for Ms. Christina Molina, went on vacation and was not available to jointly file the stipulation and proposed judgment, resolving all matters between the parties, which would entail surrender of previously disputed collateral and substantial monthly payments through the bankruptcy plan.

Debtor states that without resolution of the pending adversary proceeding, a confirmable plan was simply not possible. This situation was further compounded because Mr. Alsina-Batista was not attorney of record in the underlying bankruptcy case, and thus did not receive notice of the motion to dismiss hearing and dismissal order. If Mr. Alsina-Batista's inadvertent mistake had not occurred, he would have appeared at the hearing to inform the court that plan confirmation depended on resolution of the adversary proceeding.

**Discussion**

Filed within fourteen days of the entry of the dismissal order, the Debtor's motion is

November 1, 2022 at 1:00 p.m.

governed by Federal Rule of Civil Procedure ("Civil Rule") 59(e) which is applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006). There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

The court will grant the Debtor's motion in order to prevent manifest injustice. According to the Debtor, the adversary proceeding filed in this Chapter 13 case (which remains pending) has been resolved and the parties' agreement resolving the adversary proceeding will facilitate confirmation of a Chapter 13 plan.

The Debtor has also demonstrated that dismissal resulted from the excusable neglect of his attorney. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. Debtor moved quickly---seven days after this case was dismissed to set aside the dismissal order. Vacating dismissal will not delay these proceedings since the Debtor states that he is up to date with plan payments. Dismissal also resulted from an oversight by counsel Mr. Alsina-Batista, who was not the attorney in the undersigned bankruptcy case, did not receive notice of the motion to dismiss hearing, and was solely dealing with the adversary proceeding's litigation. And there is no indication of any bad faith by the Debtor.

Therefore, the Debtor's motion to vacate the order dismissing this Chapter 13 case will be conditionally granted, the dismissal order at dkt. 108 vacated, and this case ordered reinstated provided, that by **November 15, 2022**, (1) a stipulation and/or judgment resolving the above-referenced adversary proceeding is filed and (2) the Debtor files, sets, and serves a Chapter 13 plan and motion to confirm it. If either condition is not satisfied by November 15, 2022, this case will again be dismissed without further hearing.

The Debtor shall file a status report regarding the satisfaction of the conditions by no later than **12:00 p.m. on November 14, 2022**.

Further, by vacating the dismissal order which caused the automatic stay of 11 U.S.C. § 362(a) to terminate, upon entry of the order vacating the dismissal order, the automatic stay of § 362(a) is revived for all purposes and as to all parties in interest - but only upon entry of the order vacating the dismissal order and for acts occurring thereafter. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); *Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring)

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

The court will issue an order.

2. [21-21302](#)-B-13 PETER/REBECCA ORNELAS MOTION TO MODIFY PLAN  
[TAA](#)-4 Kevin Tang 9-22-22 [[71](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

### **Final Ruling**

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

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

The court's decision is to grant the motion to extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on September 3, 2022, for failure to make plan payments (case no. 20-23782, dkt. 165). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that their prior bankruptcy failed due to both Debtors having sustained health issues that caused a loss of Debtor Lawrence Boldon's income and a strain on Debtors' marriage. The issue has been resolved since both Debtors are receiving medical treatment and now Debtor's ability to earn is no longer impacted.

The Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

### **Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, parties in interest were not required to file a written response or opposition.

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

The court's decision is to **conditionally sustain the objection to Claim No. 8 of AFNI Inc. and continue the matter to November 8, 2022, at 1:00 p.m.**

The Chapter 13 Trustee requests that the court disallow the claim of AFNI, Inc. ("Creditor"), Claim No. 8. The claim is asserted to be in the amount of \$11,368.97. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was October 29, 2019. The Creditor's claim was filed September 1, 2022.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

**Conditional Nature of this Ruling**

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, November 4, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 8, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on November 8, 2022, at 1:00 p.m.

5. [21-22917](#)-B-13 STEVEN/EMELDA CLYMER MOTION TO CONFIRM PLAN  
[GMW](#)-5 G. Michael Williams 9-12-22 [[109](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

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

The court's decision is to not confirm the second amended plan.

First, the projected disposable income available to be applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B) is \$830.17 for 60 months or \$49,810.20, which would result in a 45% dividend to the general unsecured creditors. Debtors' plan provides for an 18% distribution to general unsecured creditors. Therefore, Debtors' plan fails to comply with 11 U.S.C. § 1325(b)(1)(B) and cannot be confirmed.

Second, Line 23 of Debtors' Amended Form 122C-2 includes a deduction for optional telephone and telephone services in the amount of \$710.00 but their motion and declaration indicate that the monthly expense is actually \$445.17. Debtors have failed to file an amended Form 122C-2 and amended Schedules I and J to reflect the correct amount. The plan fails to comply with 11 U.S.C. § 1325(b).

Third, Debtors are \$2,800.00 delinquent in plan payments. The last payment in the amount of \$1,040.00 was posted on August 16, 2022. The Debtors may not be able or willing to make plan payments based on their current delinquency. 11 U.S.C. §§ 1325(a)(2) and (a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will issue an order.



6. [22-21126](#)-B-13 DOUGLAS/NYLA STONE  
[CRG](#)-3 Carl R. Gustafson

CONTINUED MOTION TO CONFIRM  
PLAN  
9-9-22 [[56](#)]

### **Final Ruling**

No appearance on November 1, 2022, hearing is required.

An appeal in this case affecting confirmation was dismissed by the Bankruptcy Appellate Panel on October 17, 2022. See BAP #22-1184, dkt. 8. This court is awaiting the BAP's mandate (which the BAP has ordered held for 21 days). *Id.* at dkt. 10.

The confirmation hearing is continued to November 15, 2022, at 1:00 p.m.

The court will issue an order.

7. [22-20534](#)-B-13 JESUS GARCIA-GURROLA MOTION TO CONFIRM PLAN  
[ES-4](#) Eric L. Seyvertsen 9-20-22 [[42](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). However, no plan was filed to accompany the motion. Therefore, the motion to confirm plan is denied.

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

The court will issue an order.

8. [21-23254](#)-B-13 DAVID/ANN READING  
[TLC](#)-1 Tamie L. Cummins

MOTION TO MODIFY PLAN  
9-14-22 [[43](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

9. [19-24459](#)-B-13 ROGELIO/TANYA DELGADILLO MOTION TO MODIFY PLAN  
[LBF](#)-1 Lauren Franzella 9-19-22 [[30](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

10. [22-21576](#)-B-13 MARITZA RODRIGUEZ MOTION TO CONFIRM PLAN  
[JBR](#)-1 Jennifer B. Reichhoff 9-10-22 [[14](#)]

**Final Ruling**

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

11. [18-27085](#)-B-13 ANGELA EALY-HALE AND MOTION FOR RELIEF FROM  
[ASW](#)-2 DONNIE HALE AUTOMATIC STAY  
Peter G. Macaluso 10-3-22 [[82](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

**Final Ruling**

No appearance at the November 1, 2022, hearing is required.

This hearing is determined to be a preliminary hearing with a final hearing set on November 15, 2022, at 1:00 p.m.. The automatic stay and any co-debtor stay shall remain in effect pending further order of the court. Processing of the above-referenced payment may moot the motion. See 11 U.S.C. § 362(e).

Creditor Deutsche Bank National Trust Company shall withdraw the motion if the default is cured upon processing of payment.

The court will issue an order.