

**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 8, 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 8, 2022 at 1:00 p.m.**

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1. [18-26413](#)-B-13 DEBRA MAGHONEY MOTION TO VACATE DISMISSAL OF  
[PGM-1](#) Peter G. Macaluso CASE  
10-6-22 [[39](#)]  
CASE DISMISSED: 10/09/2022

**Final Ruling**

Before the court is a *Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal* filed by debtor Debra C. Maghoney. The motion is not opposed.

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 9014-1(f)(1), 1001-1(c). The motion will be decided on the papers.

**Background**

The Chapter 13 Trustee filed a motion to dismiss this case on September 13, 2022. Dkt. 33. The Trustee requested dismissal on the basis that the Debtor's confirmed plan would take 94 months to complete. The over-extension was due to a claim filed by the Internal Revenue Service. The Debtor's confirmed plan provided for a \$4,034.20 IRS priority claim. In November of 2018, the IRS filed a proof of claim that included a \$21,861.55 priority claim and \$13,078.74 unsecured claim.

The Trustee filed a Notice of Claims on May 15, 2019, which included allowed claims that would prevent the timely completion of the Debtor's plan. Dkt. 31. Debtor did not object to any claim or confirm a modified plan. See Local Bankr. R. 3007-1(d)(3) & (5).

The Trustee's motion to dismiss was set for hearing on September 27, 2022. The court posted its ruling on the Trustee's motion on its website on September 26, 2022. Because the Trustee's motion was filed, set, and served on less than 28 days' notice under Local Bankr. R. 9014-1(f)(2), the court issued a conditional ruling granting the Trustee's motion in the absence of a response or opposition filed by September 30, 2022. See dkt. 37. The court also continued the hearing to October 4, 2022, in the event a timely response or opposition was filed. See dkt. 38.

No timely response was filed. Consequently, the October 4, 2022, hearing was vacated and the case was dismissed by a order filed on October 9, 2022. See dkts. 45, 46. The Debtor paid \$25,581.00 into her plan and was in month 47 when the case was dismissed.

The Debtor moved to vacate the dismissal order on October 6, 2022 - two days *after* the continued hearing of October 4, 2022, was vacated but three days *before* the order dismissing this case was filed on October 9, 2022. The Debtor asserts that dismissal resulted from a calendaring error. The Debtor also asserts that vacating the dismissal order will allow the IRS to amend its proof of claim, which will remedy the plan's over-extension or, if not, she will modify her plan. According to the IRS, it may take "weeks" before an amended claim can be filed.

## Discussion

Although the Debtor provides no detail in support of an otherwise conclusory statement that dismissal resulted from a calendaring error, the court construes the Debtor's request for relief as one based on excusable neglect under Fed. R. Civ. P. 60(b)(1) applicable by Fed. R. Bankr. P. 9024. 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).

The *Pioneer* factors weigh in favor of relief. Danger of prejudice is minimal. Although the Debtor should have modified her plan three years ago when first notified of the over-extension, a debtor may nevertheless modify a plan "at any time after confirmation of the plan but before the completion of payments[.]" 11 U.S.C. § 1329(a). The Debtor also moved quickly and inasmuch as no prior motion to dismiss was filed, the court can presume that the Debtor made required plan payments. Reinstatement should therefore have little disruption in the case. The absence of detail regarding the circumstances of the asserted calendaring error prevent the court from fully analyzing the reason for dismissal and whether it was in the control of the Debtor or her attorney. But the court can assume that the Debtor's attorney would not intentionally or purposefully miscalendar a deadline. And given the Debtor's desire to complete payments to her creditors, it appears the Debtor is proceeding in good faith.

To the extent relief is governed by Fed. R. Civ. P. 59(e) applicable by Fed. R. Bankr. P. 9023, the court would grant the Debtor's motion for the reasons stated herein in order to prevent manifest injustice. See *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006).

For the foregoing reasons, and other good cause, the Debtor's motion to vacate will be conditionally granted: The Debtor shall have to and including **January 9, 2023**, to file, set, and serve an amended plan and motion to confirm it.

One final note. 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. [22-20214](#)-B-13 ALBERT EGU  
[JLL](#)-2 Jennifer G. Lee  
CASE DISMISSED: 10/11/2022

MOTION TO CONFIRM PLAN  
9-29-22 [[48](#)]

ORDER ISSUED 11/04/2022.

**Final Ruling**

No appearance at the November 8, 2022, hearing is required.

3. [19-21429](#)-B-13 JAYCEE DEVERA  
[JCK](#)-5 Gregory J. Smith

MOTION TO MODIFY PLAN  
10-3-22 [[85](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a supplemental ex parte motion to dismiss its opposition, the opposition is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed October 3, 2022, will be confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor 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.

4. [20-24252](#)-B-13 CHRISTINA/RICHARD LOPEZ MOTION FOR RELIEF FROM  
[CLB](#)-1 Michael K. Moore AUTOMATIC STAY  
10-5-22 [[57](#)]

WELLS FARGO BANK, NA VS.

ORDER ISSUED 11/04/2022.

**Final Ruling**

No appearance at the November 8, 2022, hearing is required.

5. [22-21557](#)-B-13 MARINA GALINDO  
[GEL](#)-2 Gabriel E. Liberman

OBJECTION TO CLAIM OF STOCKTON  
MORTGAGE, CLAIM NUMBER 6  
10-7-22 [[64](#)]

ORDER ISSUED 11/04/2022.

**Final Ruling**

No appearance at the November 8, 2022, hearing is required.

6. [19-24770](#)-B-13 FRANCISCO NUNEZ AND MOTION TO MODIFY PLAN  
[JCK-1](#) MICAELA ALANIZ-NUNEZ 9-29-22 [[36](#)]  
Gregory J. Smith

### **Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). 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 permit the requested modification and confirm the modified plan.

First, the Chapter 13 Trustee objects to confirmation of the plan on grounds that the plan does not provide for post-petition arrears owed to Class 1 creditor Gild Mortgage Company representing the month of July 2022. Debtors filed a response stating that they will provide for the post petition arrears totaling \$973.35 in the order confirming the modified plan.

Second, the Trustee objects to confirmation on grounds that the plan does not list the claim of the U.S. Department of Housing and Urban Development ("HUD"). Debtors filed a response stating that the HUD claim is considered "Closed" on the Trustee's report. The reason is that the second deed of trust is not payable until there is a sale or refinance of the real property. The Debtors state they will provide for HUD's closed claim in the order confirming.

Provided that the above specifications are provided for in the order confirming, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be 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.



7. [22-20487](#)-B-13 GALDINA SANCHEZ  
[JCK-1](#) Gregory J. Smith

MOTION TO MODIFY PLAN  
9-29-22 [[20](#)]

**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 Debtor has 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 Debtor 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.

8. [22-21087](#)-B-13 MIGUEL ANGEL AGUIRRE AND MOTION TO CONFIRM PLAN  
NORA ANGEL 9-22-22 [[44](#)]  
Ryan C. Wood

### **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, Debtors failed to reference a docket control number in the motion to confirm plan and supporting documents pursuant to Local Bankr. R. 9014-1(c)(1).

Second, based on a review and analysis of Debtors' schedules, Debtors have non-exempt assets available for distribution to Debtors' general unsecured creditors of \$81,733.00 and non-priority general unsecured claims totaling \$158,728.94. Accordingly, in order to meet the liquidation test of 11 U.S.C. § 1325(a)(4), Debtors' plan must pay 51.5% to general unsecured creditors. Debtors' plan pays 41.15% and therefore fails the liquidation test.

Third, Debtors must file amended Form 122C-1 to accurately reflect Debtors' income. Without an amended form, it cannot be determined whether Debtors' projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors under the plan.

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.

9. [21-24098](#)-B-13 JOHN FORDON  
[RJ-7](#) Richard L. Jare

MOTION TO CONFIRM PLAN  
9-22-22 [[85](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor 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. [19-25214](#)-B-13 MICHAEL YBARRA  
[RDG](#)-4 David Foyil

CONTINUED OBJECTION TO CLAIM OF  
AFNI, INC., CLAIM NUMBER 8  
9-28-22 [[90](#)]

**Final Ruling**

This matter was continued from November 1, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 4, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 99, sustaining the objection to claim, shall become the court's final decision. The continued hearing on November 8, 2022, at 1:00 p.m. is vacated.

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

The court will issue an order.