



**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: DECEMBER 5, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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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. [22-20800](#)-A-13 **IN RE: PAMELA PARRISH**
[PSB-5](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,
CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AND REQUEST
TO EXTEND TIME AS TO DEBTOR
10-26-2023 [\[67\]](#)

PAULDEEP BAINS/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); non opposition filed by trustee

Disposition: Granted

Order: Civil minute order

David James Parrish, 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, debtor Pamela Parrish. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 72.

DEFAULT

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

DISCUSSION

Suggestion of Death

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

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

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

Here, David James Parrish filed the Notice of Death of Debtor with this motion on October 26, 2023, ECF No. 70. While the debtor died on August 17, 2023, Mr. Parrish filed the Notice of Death as soon as was able. Fed. R. Civ. P. 6(b)(1)(B) provides as follows:

(b) Extending Time.

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Fed. R. Civ. P. 6.

As there is no opposition by the Chapter 13 trustee or any creditor to the motion the court will grant the motion to extend time to file the Notice of Death.

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).

David James Parrish is the deceased debtor's spouse, and the debtor's successor in interest.

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).

David James Parrish states that he desires and is able to continue making the plan payments under the confirmed Chapter 13 plan. Declaration, ECF No. 69.

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.

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).

11 U.S.C. 727(a) (11).

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. § 109(h) (4) (emphasis added).

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

WAIVER OF § 1328 CERTIFICATIONS

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

CIVIL MINUTE ORDER

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

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

2. [19-23913](#)-A-13 **IN RE: GERARDO ABSALON**
[BMV-4](#)

MOTION TO VACATE DISMISSAL OF CASE
11-8-2023 [\[77\]](#)

BERT VEGA/ATTY. FOR DBT.
DEBTOR DISMISSED: 11/08/2023

Final Ruling

Motion: Vacate Dismissal of Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order vacating the dismissal of the Chapter 13 case pursuant to Fed. R. Civ. P. 60(b) on the grounds of excusable neglect. For the following reasons the motion will be denied without prejudice.

SERVICE

In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

Fed. R. Bankr. P. 9014(a).

A motion to vacate the dismissal of a bankruptcy proceeding is a contested matter under Fed. R. Bankr. P. 9014(a). In this case all creditors and parties in interest are impacted by the motion and are entitled to notice of the motion.

A certificate of service was filed in support of this motion, ECF No. 80. The certificate fails to indicate that the debtor served all creditors and interested parties. *Id.*, page 2, No. 5. Moreover, there is no matrix attached to the certificate of service indicating that all creditors and interested parties in this case were served.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's motion to vacate its order granting relief from the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

3. [23-20616](#)-A-13 **IN RE: LINDA CATRON**
[LC-34](#)

CONFIRMATION OF PLAN
10-2-2023 [\[82\]](#)

LINDA CATRON/ATTY. FOR MV.
DEBTOR DISMISSED: 07/28/23

Final Ruling

This case was dismissed on July 28, 2023. This motion is removed from the calendar as moot. No appearances are required.

4. [23-23225](#)-A-13 **IN RE: ANDREY PENKOV**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-8-2023 [\[30\]](#)

DANIEL REPP/ATTY. FOR DBT.

Final Ruling

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

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

CIVIL MINUTE ORDER

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

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

5. [23-22927](#)-A-13 **IN RE: HOWARD/MICHELE JOHNSON**
[MCT-1](#)

MOTION TO CONFIRM PLAN
10-31-2023 [\[34\]](#)

MELANIE TAVARE/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

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

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).

For the following reason 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).

Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

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

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

The movants have failed to use Form EDC 7-005 in memorializing service in this matter. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The debtors' motion to confirm plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

6. [23-21228](#)-A-13 **IN RE: DONALD CRAIG**

MOTION TO SET ASIDE DISMISSAL OF CASE
11-15-2023 [\[46\]](#)

ELIZABETH HURWITZ/ATTY. FOR DBT.
DEBTOR DISMISSED: 05/05/2023

Final Ruling

Motion: Vacate Dismissal

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion requests the court vacate the order of dismissal entered in this case.

The motion will be denied for the following reason.

SERVICE

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 2) A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e)(1), (2).

The motion was not properly served as required by Fed. R. Bankr. P. 9014, LBR 9014-1(e)(1), (2). There is no certificate of service filed in this matter. The motion will be denied without prejudice.

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

The lack of a docket control number on the papers filed in this matter violates the court's local rules. LBR 9014-1(c)(1) mandates the use of docket control numbers to be used on each document filed with the bankruptcy court in this district, including proofs of service.

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

The debtor's Motion to Vacate Dismissal has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

7. [23-23130](#)-A-13 **IN RE: PAUL-MATTHEW FERNANDES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-15-2023 [\[24\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

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

8. [23-23232](#)-A-13 **IN RE: MAI TRANG LE AND NHAT TRAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-9-2023 [\[27\]](#)

PETER MACALUSO/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 January 17, 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 January 17, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elects not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than December 12, 2023.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than December 12, 2023. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than December 12, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will close after December 19, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

9. [23-23232](#)-A-13 **IN RE: MAI TRANG LE AND NHAT TRAN**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE LOAN
TRUST 2021-F, MORTGAGE-BACKED SECURITIES, SERIES 2021-F
11-9-2023 [\[31\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DARLENE VIGIL/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 January 17, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Ajax Mortgage Loan Trust 2021-F Mortgage-Backed
Securities, Series 2021-F, 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 January 17, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elects not to oppose the
objection then the debtor(s) shall file and serve a statement of
non-opposition no later than December 12, 2023.

IT IS FURTHER ORDERED that unless this case is voluntarily converted
to chapter 7, dismissed, or the creditor's objection to confirmation
is withdrawn, the debtor(s) shall file and serve a written response
to the objection not later than December 12, 2023. The response
shall specifically address each issue raised in creditor's objection
to confirmation, state whether the issue is disputed or undisputed,
and include admissible evidence in support of the debtor's position.
If the debtors elect to file a modified plan in lieu of filing a
response, then a modified plan shall be filed, served, and set for
hearing not later than December 12, 2023.

IT IS FURTHER ORDERED that the creditor shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will close after December 19, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

10. [19-24633](#)-A-13 **IN RE: MANUEL LOPEZ AND PAMELA CORREA LOPEZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
9-20-2023 [\[79\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from November 7, 2023

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

Order: Civil minute order

The hearing on the Chapter 13 trustee's motion to dismiss was continued to coincide with the debtors' motion to modify the plan (PGM-4). The court has continued the hearing on the plan modification - requiring further evidence in support of the motion.

The scheduled hearing on the modification is January 3, 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 intends to 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 January 3, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee continues 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.*

11. [19-24633](#)-A-13 **IN RE: MANUEL LOPEZ AND PAMELA CORREA LOPEZ**
[PGM-4](#)

MOTION TO MODIFY PLAN
10-24-2023 [\[83\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

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

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).

The Chapter 13 trustee contends that the debtors have failed to: 1) accurately state why the plan payments became delinquent; or 2) indicate all reasons for the modification of the Chapter 13 plan in their declaration.

The court will continue the hearing on this motion 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:

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 continued to January 3, 2024, at 9:00 a.m.

IT IS FUTHER ORDERED that no later than December 5, 2023, the debtors shall file and serve all additional evidence in support of the motion.

IT IS FURTHER ORDERED that no later than December 19, 2023, the Chapter 13 trustee shall file any further opposition to the motion. The trustee shall apprise the court whether his opposition to the motion has been satisfied. The evidentiary record will close after December 19, 2023. No further evidence or argument may be filed without leave of court. The court may rule on this motion without further notice or hearing.

12. [23-22236](#)-A-13 **IN RE: STEVEN POWERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-13-2023 [[34](#)]

JIN KIM/ATTY. FOR DBT.
11/4/23 FINAL INSTALLMENT PAID \$84

Final Ruling

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

13. [23-23039](#)-A-13 **IN RE: DALIA MUNIZ**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-1-2023 [\[17\]](#)

LEN REIDREYNOSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Exemptions

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

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

Order: Civil minute order

The Chapter 13 trustee objects to the debtor's claim of exemptions. However, the substance of the objection is unclear to the court. The objection states:

The Trustee *does* believe the Court would consider tax refunds as 'disposable earnings of an individual debtor for any work week that is subject to levy under an earnings withholding order', C.C.P §706.050(a), and allow this exemption.

Trustee Objection to Exemptions, 1:26-27, 2:1-2, ECF No. 17(emphasis added).

Because of the wording of the objection, it is unclear to the court whether the trustee objects to the claimed exemption. Moreover, assuming the trustee objects to the claim of exemption, the trustee cites no legal authority for his position as required by Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A). Neither does the trustee make a legal argument or provide analysis.

The debtor has filed a response to the objection; however, the response does not address the issue of whether tax refunds are exempt under C.C.P. § 706.050(a).

The court will continue the hearing on this matter to allow the parties to clarify and augment the record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to January 3, 2024, at 9:00 a.m. No later than December 5, 2023, the Chapter 13 trustee shall supplement his objection. The trustee's supplemental pleading shall state his objection, shall be supported by *legal argument, cite legal authority, and comply with Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A)*.

IT IS FURTHER ORDERED that if the debtor(s) elects not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than December 19, 2023.

IT IS FURTHER ORDERED that no later than December 19, 2023, the debtor shall file a response to the trustee's supplemental pleading. The response shall specifically address each issue raised in the trustee's objection, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. The evidentiary record will close after December 19, 2023. The response shall comply with Fed. R. Bankr. P. 9013, LBR 9014-1(d) (3) (A).

14. [20-21047](#)-A-13 **IN RE: PAUL DENNO AND SANDRA MURRAY**
[CK-2](#)

MOTION TO MODIFY PLAN
10-27-2023 [\[264\]](#)

CATHERINE KING/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

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

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

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).

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).

The Chapter 13 trustee contends the plan is not feasible. The proposed plan calls for the sale of real property located at 20450 Terry Lane, Redding within 12 months. However, the plan does not state that the sale proceeds will be paid into the plan or indicate the amount anticipated from the sale of the property.

The motion to modify states there is approximately \$56,633.41 left to be paid into the plan, or \$60,184.28 including trustee compensation. The list price for the property is \$75,000.00. While it appears the net proceeds will be sufficient to pay closing costs, commissions and the remaining amounts of the Chapter 13 Plan, this information is not in the plan and a proposed lump sum payment amount is not provided.

As such the trustee cannot determine if the plan is feasible.

The court notes that the debtors have attempted multiple times to modify the plan with previous counsel, and have already paid \$174,983.09 into the plan which satisfied secured claimants.

The court will continue the hearing on this matter to allow the parties to confer and provide appropriate language resolving the trustee's opposition. The parties shall file a joint status report indicating whether the trustee's opposition has been resolved and indicating any language to be included in the order confirming the modified plan. If the matter is not resolved 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 hearing on the motion is continued to January 3, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the parties shall file a joint status report no later than December 19, 2023. The status report shall state whether the parties have resolved the trustee's opposition and indicate any language the parties propose to add to the order confirming the modified plan.

15. [23-21351](#)-A-13 **IN RE: TANYA HALL**
[DPC-2](#)

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

TIMOTHY WALSH/ATTY. FOR DBT.

No Ruling

16. [23-21351](#)-A-13 **IN RE: TANYA HALL**
[TJW-1](#)

MOTION TO CONFIRM PLAN
10-12-2023 [\[45\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.

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).

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 73 months to fund as proposed.

The plan does not provide for payments to the trustee in an amount necessary for the execution of the plan. See 11 U.S.C. § 1322(a)(1). The court cannot confirm a plan with a period longer than 60 months. See 11 U.S.C. § 1322(d).

The court will deny confirmation of the debtor's 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 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.

17. [21-24053](#)-A-13 **IN RE: ALICIA MORELAND**
[TLA-1](#)

MOTION TO MODIFY PLAN
10-25-2023 [\[42\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

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. Creditor NewRez, LLC, also opposes the motion.

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).

NEW REZ, LLC, OPPOSITION

The debtor's confirmed plan provided for the claim of NewRez, LLC, in Class 4. Accordingly, when the plan was confirmed, the automatic stay was terminated as to the creditor. The proposed modified plan places arrears in Class 1 of the plan. The opposition filed by NewRez, LLC, is limited in that it seeks only to prevent the reimposition of the automatic stay regarding its claim. The opposing creditor indicates its willingness to clarify this in the order granting the modification.

On November 14, 2023, the debtor filed a reply indicating her willingness to clarify that the automatic stay was not reimposed as to the opposing creditor's claim. Reply, ECF No. 55. The court will require this to be clarified in the order confirming the modified plan.

TRUSTEE OPPOSITION

The Chapter 13 trustee opposes the proposed modification contending that the plan will pay 48.4% to unsecured creditors, as opposed to the 42% proposed in the motion and 43% proposed in the plan. The debtor's reply, filed November 14, 2023, indicates the debtor's willingness to include a 48.4% dividend to unsecured creditors in the order confirming the modified plan. Reply, ECF No. 55. As no creditors will be prejudiced by this minor modification to the proposed plan the court will require the change to the percentage paid to unsecured creditors in the order confirming the modified 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 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 granted. The debtor shall submit an order confirming the modified plan which is consistent with the court's ruling. The order shall be approved by the Chapter 13 trustee and counsel for NewRez, LLC.

18. [23-22264](#)-A-13 **IN RE: CHARLISA/ARTHUR HUDSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-13-2023 [\[51\]](#)

RYAN WOOD/ATTY. FOR DBT.

Final Ruling

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

19. [23-22264](#)-A-13 **IN RE: CHARLISA/ARTHUR HUDSON**
[RCW-4](#)

MOTION TO CONFIRM PLAN
10-25-2023 [\[47\]](#)

RYAN WOOD/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN NOT SERVED WITH MOTION

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

and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

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

In support of this motion to confirm the debtors have filed a Certificate of Service, ECF No. 50. The certificate does not list the Chapter 13 Plan as a document which was served on interested parties. See Section 4, *id.*

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

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

CIVIL MINUTE ORDER

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

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

The 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.

20. [23-22766](#)-A-13 **IN RE: DANIEL/DANIELLE CALVILLO**
[CAS-1](#)

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

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from October 17, 2023

Disposition: Resolved by Stipulation

Order: Civil minute order

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

Ally Bank objected to confirmation of the debtors' plan contending that the proposed rate of interest to be paid on its claim failed to comply with the requirements of *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The hearing on the objection was continued to allow the debtors to respond to the objection.

On October 17, 2023, the parties filed a stipulation with the court which provides that interest on the opposing creditor's claim will be paid at 10%. The stipulation is signed by counsel for the: 1) objecting creditor; 2) debtors; and 3) Chapter 13 trustee.

Accordingly, the court will approve the stipulation and remove the matter from the calendar as resolved by stipulation.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the objection has been resolved by stipulation. The court approves the stipulation filed on October 17, 2023, ECF No. 23. The debtors shall submit an order confirming the Chapter 13 plan which is consistent with the terms of the stipulation, and which has been signed by the Chapter 13 trustee.

21. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[DPC-1](#)

MOTION TO DISMISS CASE
10-26-2023 [\[35\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: November 21, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan.

TRUSTEE WITHDRAWAL - Fed. R. Civ. P. 41

The trustee filed a timely 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. 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.

22. [23-22977](#)-A-13 **IN RE: JEFFREY VAN DEN OEVER**
[DPC-2](#)

MOTION TO DISMISS CASE
11-1-2023 [\[26\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: November 21, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to attend meeting of creditors, failure to provide tax returns, failure to complete schedules and plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4), to dismiss the case. The trustee states:

The Debtor is delinquent in Plan payments to the Trustee. The exact amount cannot be ascertained as there is no monthly plan payment listed in the plan, which is essentially blank as to all information needed. The case was filed on 8/30/2023 so the first plan payment was due on 9/25/2023 with a second plan payment due on 10/25/2023. Neither payment was made, and the Debtor has paid \$0.00 into the plan to date.

The Plan in §2.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13.

Motion to Dismiss, 1:25-28, 2:1-6, ECF No. 26.

The debtor has failed to commence making payments under the plan, 11 U.S.C. § 1307(c)(4).

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting on October 19, 2023. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion.

The court finds that the debtor's failure to attend the meeting of creditors constitutes unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

FAILURE TO PROVIDE REQUIRED DOCUMENTS

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

The debtor failed to provide the trustee with a copy of the Federal income tax return for the most recent tax year a return was filed. As such, the debtor has failed to comply with 11 U.S.C. §521(e)(2)(A)(i). The debtor also failed to provide the trustee with copies of payment advices or other evidence of income received within the 60 day period prior to the filing of the petition. As such, the debtor has failed to comply with 11 U.S.C. §521(a)(1)(B)(iv).

INACCURATE AND INCOMPLETE SCHEDULES

The trustee reports that the following documents are incomplete: 1) Chapter 13 Plan (blank except for signature); 2) Schedule H; 3) Form 122C; 4) Schedule J; 5) Schedule G; 6) Schedules D/E/ and F (only one creditor is listed); and 7)

Schedule C (no exemptions are claimed). Without complete information the trustee is unable to complete his analysis of the plan and its compliance with 11 U.S.C. § 1325(a)(1), (3), (4), (6).

The court finds that the debtor's failure to complete all required schedules, statements and the plan fully and accurately constitutes unreasonable delay which is prejudicial to creditors, 11 U.S.C. § 1307(c)(1).

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.

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

MOTION TO DISMISS CASE
11-1-2023 [\[40\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

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 plan, and failed to confirm a plan. Motion to Dismiss, 1:25-28, 2:1-9, ECF No. 40. A Chapter 13 Plan has never been confirmed in this case.

COMPLIANCE WITH RULE 9013

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request.

11 U.S.C. § 1307(c)(6)

(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—

. . .

(6) material default by the debtor with respect to a term of a *confirmed plan*;

. . .

11 U.S.C. § 1307(c)(6) (emphasis added).

Because a plan has never been confirmed in this case the motion is not properly brought under 11 U.S.C. § 1307(c)(6). The motion will be denied without prejudice.

The motion will be denied without prejudice as follows.

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 without prejudice.

24. [23-23286](#)-A-13 **IN RE: SUMMER PARRISH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-8-2023 [\[16\]](#)

CARL GUSTAFSON/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 January 17, 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 January 17, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor(s) elect not to oppose the objection then the debtor(s) shall file and serve a statement of non-opposition no later than December 12, 2023.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than December 12, 2023. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than December 12, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will close after December 19, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

25. [23-24054](#)-A-13 **IN RE: TEODULFO/ANNALYN DELA CRUZ**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-17-2023 [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no 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). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order extending the automatic stay under 11 U.S.C. § 362(c)(3).

EXTENSION OF THE STAY

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to

be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

26. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-17-2023 [[10](#)]

PETER MACALUSO/ATTY. FOR DBT.

No Ruling