

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Mark Houle, Presiding  
Courtroom 6C Calendar**

**Thursday, March 14, 2024**

**Hearing Room**

**6C**

10:30 AM

**8:23-11171 Alexander George Schulga**

**Chapter 13**

**#1.00 CONT. Confirmation of Chapter 13 Plan**

From: 8/31/23, 9/28/23, 10/19/23, 11/30/23, 1/11/24

EH\_\_

Docket 32

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Alexander George Schulga

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
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10:30 AM

**8:23-12085 Richard D. Langseth**

**Chapter 13**

**#2.00 CONT. Confirmation of Chapter 13 Plan**

From: 12/14/23, 1/4/24, 2/8/24

EH\_\_

**[Tele. appr. Fritz Firman, rep. Debtor]**

Docket 23

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Richard D. Langseth

Represented By  
Joseph A Weber

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12339 Laura L Ava Tesimale**

**Chapter 13**

**#3.00 CONT. Confirmation of Chapter 13 Plan**

From: 1/4/24, 2/8/24

EH\_\_

**[Tele. appr. Joseph Caceres, rep. Debtor]**

Docket 32

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Laura L Ava Tesimale

Represented By  
Charles Shamash  
Joseph E. Caceres

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12620 Lewis Fernando Garcia Pacheco**

**Chapter 13**

**#4.00 CONT. Confirmation of Chapter 13 Plan**

From: 2/15/24

EH\_\_

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lewis Fernando Garcia Pacheco

Represented By  
Joshua Sternberg

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12691 Tam Nhat Pham**

**Chapter 13**

**#5.00 CONT. Confirmation of Chapter 13 Plan**

From: 2/15/24

EH\_\_

Docket 17

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Tam Nhat Pham

Represented By  
Tina H Trinh

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12701 Douglas McKinney**

**Chapter 13**

**#6.00 CONT. Confirmation of Chapter 13 Plan**

From: 2/15/24

EH\_\_

**[Tele. appr. Wendy Locke, rep. creditor, U.S. Bank National Association]**

Docket 31

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Douglas McKinney

Represented By  
Amanda G. Billyard

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12728 Haig Joseph Garabedian**

**Chapter 13**

**#7.00 CONT. Confirmation of Chapter 13 Plan**

From: 2/15/24

EH\_\_

**[Tele. appr. Bert Briones, rep. Debtor]**

Docket 3

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Haig Joseph Garabedian

Represented By  
Bert Briones

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10046 Delia Suarez-Gonzalez**

**Chapter 13**

**#8.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 1/25/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Delia Suarez-Gonzalez

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:24-10049 Edgar Sebastian Vazquez**

**Chapter 13**

**#9.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Renee Parker, rep. creditor, New York Mellon]**

Docket 24

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Edgar Sebastian Vazquez

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10050 Dan Michael Gailey**

**Chapter 13**

**#10.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. JaVonne Phillips, rep. creditor, Specialized Loan Servicing, LLC]**

**[Tele. appr. Raymond Perez, rep. Debtor]**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Dan Michael Gailey

Represented By  
Raymond Perez

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10057 Kimberly A. De Vera**

**Chapter 13**

**#11.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Fritz Firman, rep. Debtor]**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Kimberly A. De Vera

Represented By  
Joseph A Weber

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10080 Robert E. Munck**

**Chapter 13**

**#12.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Derek May, rep. Debtor]**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert E. Munck

Represented By  
W. Derek May

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10082 Francisco Araiza**

**Chapter 13**

**#13.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Francisco Araiza

Represented By  
Steven A Alpert

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10086 Nancy Sanchez**

**Chapter 13**

**#14.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Michael H Colmenares, rep. Debtor]**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nancy Sanchez

Represented By  
Michael H Colmenares

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10092 Blanca E. Portillo**

**Chapter 13**

**#15.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 3

**\*\*\* VACATED \*\*\* REASON: NOTICE OF VOLUNTARY  
CONVERSION TO CHAPTER 7 FILED 3/13/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Blanca E. Portillo

Represented By  
Anerio V Altman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10097 James Richard Blake and Laura Rae Blake**

**Chapter 13**

**#16.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Nancy Clark, rep. Debtors]**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

James Richard Blake

Represented By  
Barry E Borowitz

**Joint Debtor(s):**

Laura Rae Blake

Represented By  
Barry E Borowitz

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:24-10118 Jose Gustavo Castro Camacho**

**Chapter 13**

**#17.00** Motion to Dismiss Debtor Pursuant To 11 U.S.C. §§ 1307(c), 105(a), 109(g), And 349 With A 180-Day Bar To Refiling; Points And Authorities; And Declaration Of Michael Hauser And Exhibits  
(Motion filed 2/8/24)

EH\_\_

Docket 8

**Tentative Ruling:**

**MOTION TO DISMISS**

**3/14/2024**

**BACKGROUND**

On January 19, 2024, Jose Camacho ("Debtor") filed a voluntary Chapter 13 petition. The instant case is Debtor's fifth bankruptcy case, and fourth bankruptcy case in seventeen months.

On February 8, 2024, the United States Trustee ("UST") filed a motion to dismiss the instant case ("Motion to Dismiss").

On February 15, 2024, the Chapter 13 Trustee filed notice of a possible motion to dismiss or convert the case for cause, including dismissal with a 180-day bar, at the confirmation hearing on March 14, 2024.

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**CONT... Jose Gustavo Castro Camacho**

**Chapter 13**

No opposition has been filed.

**DISCUSSION**

11 U.S.C. § 349 provides, in relevant part:

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

U.S.C. § 349(a).

UST argues the instant case should be dismissed with prejudice under § 349(a) because Debtor filed the case in bad faith pursuant to 11 U.S.C. § 1307(c). *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (bankruptcy case dismissed with prejudice because debtor's conduct amounted to bad faith).

11 U.S.C. § 1307(c) provides that a court may dismiss a case for cause. Bad faith is cause for dismissal with prejudice under § 1307(c). *See In re Leavitt*, 171 F.3d at 1224. To determine whether bad faith dismissal is appropriate in a Chapter 13 case, the bankruptcy court should apply the "totality of the circumstances" test by considering the following factors:

- (1) whether the debtor misrepresented facts in the bankruptcy petition, unfairly manipulated the code, or filed the petition in an inequitable manor;
- (2) the debtor's history of bankruptcy filings and dismissals;

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**CONT...**

**Jose Gustavo Castro Camacho**

**Chapter 13**

(3) whether the debtor filed the instant petition only with the intent to defeat state court litigation; and

(4) whether egregious behavior is present.

*See In re Leavitt*, 171 F.3d at 1224.

Here, it appears the instant case was filed on grounds that would justify a bad faith dismissal. Debtor's history of bankruptcy filings and dismissals includes three dismissed Chapter 7 bankruptcy cases in the past seventeen months, where one case was dismissed for abuse with a 180-day bar to refile. In the instant bankruptcy case, Debtor filed a skeletal Chapter 13 petition and has not timely filed documents required by the Code. UST has presented evidence that, in the totality of the circumstances, rises to the level of actionable bad faith in connection with the bankruptcy filing.

**TENTATIVE RULING**

Based on the foregoing, the Court is inclined to GRANT the motion dismissing Debtor's case, barring Debtor from any future filings for a period of 180 days.

APPEARANCES REQUIRED.

<b>Party Information</b>	
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**Debtor(s):**

Jose Gustavo Castro Camacho

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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Santa Ana  
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**6C**

10:30 AM

**8:24-10118    Jose Gustavo Castro Camacho**

**Chapter 13**

**#18.00    Confirmation of Chapter 13 Plan**

EH\_\_

Docket      0

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Jose Gustavo Castro Camacho

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**6C**

10:30 AM

**8:24-10126 Jose Benjie Pacis Alvidera**

**Chapter 13**

**#19.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Jasmine Papian, rep. Debtor]**

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Jose Benjie Pacis Alvidera

Represented By  
H. Jasmine Papian

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**6C**

10:30 AM

**8:24-10127 Dawna Ludwig**

**Chapter 13**

**#20.00 Confirmation of Chapter 13 Plan**

EH\_\_

**[Tele. appr. Wendy Locke, rep. U.S. Bank Trust National Association]**

**[Tele. appr. Thomas Ure, rep. Debtor]**

Docket 22

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Dawna Ludwig

Represented By  
Thomas B Ure

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10128    Donn Allan Johnston**

**Chapter 13**

**#21.00    Confirmation of Chapter 13 Plan**

EH\_\_

Docket        13

**\*\*\* VACATED \*\*\*    REASON: CASE DISMISSED 3/8/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Donn Allan Johnston

Represented By

Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

**8:24-10129 Bernard E Germani**

**Chapter 13**

**#22.00 Confirmation of Chapter 13 Plan**

EH\_\_

Docket 0

**\*\*\* VACATED \*\*\* REASON: CASE DISMISSED 2/8/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Bernard E Germani

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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10:30 AM

**8:16-14504 Ashraf Sami Abdel Malek**

**Chapter 13**

**#23.00** Debtor's certification of compliance under 11 U.S.C. Section 1328(a) and Notice of application for entry of discharge

(Placed on calendar by chapter 13 trustee's notice of hearing filed 2/7/24)

EH\_\_

**[Tele. appr. Andy C Warshaw, rep. Debtor]**

Docket 144

**Tentative Ruling:**

**DEBTOR'S CERTIFICATION OF COMPLIANCE AND APPLICATION FOR ENTRY OF  
DISCHARGE**

**03/14/2024**

**BACKGROUND**

On October 31, 2016, Ashraf Malek ("Debtor") filed a Chapter 13 voluntary petition. On February 1, 2017, the Chapter 13 plan was confirmed.

On January 29, 2024, Debtor filed a certification of compliance under 11 U.S.C. § 1328(a) and application for entry of discharge ("Application for Discharge").

On January 30, 2024, JPMorgan Chase Bank ("Creditor") filed a response to notice of Debtor's final cure payment, stating Debtor was not current on post-petition

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**CONT...**      **Ashraf Sami Abdel Malek**  
payments.

**Chapter 13**

On February 7, 2024, the Chapter 13 Trustee ("Trustee") filed a disapproval of the Application for Discharge because post-petition mortgage payments to Creditor were unpaid.

On February 23, 2024, Creditor filed an amended response to notice of Debtor's final cure payment, stating Debtor was current on post-petition payments.

On March 4, 2024, Trustee filed an approval of Debtor's Application for Discharge, noting Creditor's amended response indicated that post-petition payments are now current.

**DISCUSSION**

11 U.S.C. § 1328(a) provides, in relevant part:

Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

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**CONT... Ashraf Sami Abdel Malek**

**Chapter 13**

Here, based on Chase's amended response, the post-petition delinquency has been cured, and Debtor's Application for Discharge now satisfies the requirements under 11 U.S.C. § 1328(a).

**TENTATIVE RULING**

Based on the foregoing, the Court is inclined to GRANT Debtor's Application for Discharge.

APPEARANCES WAIVED.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ashraf Sami Abdel Malek

Represented By  
Andy C Warshaw

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:16-14504 Ashraf Sami Abdel Malek**

**Chapter 13**

**#24.00** Creditor, Suntree Garden LLC's Motion Objecting to Discharge re: Bankruptcy Rule 7001 (objections to discharge under &sect;727(a)(8), (a)(9), and &sect;1328(f)) (Motion filed 2/13/24)

EH\_\_

Docket 149

**\*\*\* VACATED \*\*\* REASON: NOTICE OF WITHDRAWAL OF  
OBJECTION FILED 2/27/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ashraf Sami Abdel Malek

Represented By  
Andy C Warshaw

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12329    Xiaoyu Ma**

**Chapter 13**

**#25.00**    Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f)  
(Motion filed 1/13/24)

From: 2/8/24

EH\_\_

Docket      27

**\*\*\* VACATED \*\*\*    REASON: CASE DISMISSED 2/20/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Xiaoyu Ma

Represented By  
Kevin Tang

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-12749    Mohammad Rad**

**Chapter 13**

**#26.00**    Motion for Order Allowing Deduction in Disposable Income Under Part 3 of  
Official Form 122C-2

EH\_\_\_\_

**[Tele. appr. Jacqueline D Serrao, rep. Debtor]**

Docket        24

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Mohammad Rad

Represented By  
Jacqueline D Serrao

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10022 Hans Nearhoof**

**Chapter 13**

**#27.00** Motion to Convert Case From Chapter 13 to 11  
(Motion filed 2/21/24)

EH\_\_

**[Tele. appr. William H Brownstein, rep. Debtor]**

Docket 26

**Tentative Ruling:**

**MOTION TO CONVERT CHAPTER 13 TO SUBCHAPTER V, CHAPTER 11**

**03/14/2024**

**BACKGROUND**

On January 4, 2024 ("Petition Date"), Hans Nearhoof ("Debtor") filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code. Debtor is a real estate licensee/agent involved in facilitating sale and purchase of real estate transactions in the state of California and runs two sole proprietorship businesses, Re/Max Real Estate One and Veritas-Global Group LLC. On January 17, 2024, the Debtor filed his Chapter 13 plan [Dkt. No. 12].

Debtor' primary residence is a real estate property located on 2495 Tequesta #18, Tustin, Orange County, CA 92782 (the "Property") which is encumbered by a promissory note held by Bank of New York Melon through Nationalstar Mortgage LLC. On January 26, 2024, Bank of New York Melon as trustee of Nationalstar Mortgage LLC, the secured creditor/party in interest, objected to the plan on grounds of wrong classification and infeasibility.

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**CONT...**

**Hans Nearhoof**

**Chapter 13**

On February 13, 2024, the Debtor filed amendments to his schedules and statements [Dkt. No. 19] and a motion for order imposing a stay or continuing the automatic stay [Dkt. No. 20]. On the same day, chapter 13 trustee, Amrane Cohen ("Trustee"), filed his objection to the plan. Trustee's objections include wrong classification of claims, feasibility, deficient form filings, and missing documents.

On February 21, 2024, Debtor filed the present motion to convert this bankruptcy case to chapter 11 subchapter V or alternatively under chapter 11.

Debtor has two prior failed chapter 13 cases [8:17-bk-13818-MH in 2017 and 8:23-bk-11747-MH in 2023]. In the 2023 case, Debtor, appearing *propria persona*, anticipated receiving a commission of sufficient funds to reinstate the arrearage in his mortgage. The case was dismissed since Debtor failed to receive the commission and did not have sufficient funds to reinstate his mortgage or to satisfy his other creditor claims.

**DISCUSSION**

**Legal Standard:**

Unlike the standard of conversion under 11 U.S.C. § 1307(c) (where debtor holds a wholly voluntary and non-waivable right to convert a chapter 13 to chapter 7), a debtor under 11 U.S.C. § 1307(d) does not have an absolute right to convert to a chapter 13 case to chapter 11. *See In re Elwell* (Bankr. D. Conn. Feb. 14, 2020, No. 17-51442) 2020 Bankr. LEXIS 395, at \*4-5; *In re Hanson*, 282 B.R. 240, 246 (Bankr. D. Colo. 2002) (holding conversion of a chapter 13 to a chapter 11 case is not a matter of right). Conversion of a chapter 13 case to chapter 11 is at the discretion of the court. *See* 11 U.S.C. § 1307(d).

There are two primary issues involved in this motion:

- I. "Regarding [d]ebtors' request to convert to subchapter V, the threshold question is whether [d]ebtors are eligible for subchapter V relief." *In re McCune*, 635 B.R. 409, 418-19 (Bankr. D.N.M. 2021).



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**Chapter 13**

To be eligible for subchapter V relief, a debtor under 11 U.S.C. § 1182(1)(A) must be:

1) a person, 2) must be engaged in commercial or business activities, 3) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount of not more than \$7,500,000, and 4) not less than 50 percent of which arose from the commercial or business activities of the debtor.

11 U.S.C. § 1182(1)(A)

"[T]he burden to prove eligibility for subchapter V should be placed on the debtor." *NetJets Aviation, Inc. v. RS Air, LLC (In re RS Air, LLC)*, 638 B.R. 403, 414 (B.A.P. 9th Cir. 2022)

II. "When a debtor seeks to convert a [c]hapter 13 to [c]hapter 11, a court should consider factors such as whether the debtor 1) filed the initial bankruptcy petition and sought to convert in good faith, 2) is able to effectuate a plan, and 3) has caused prejudicial delay to creditors." *In re Elwell*, 2020 Bankr. LEXIS 395, at \*5.

**Analysis:**

Issue 1: Debtor is not eligible for subchapter V relief.

Applying the four elements required to satisfy 11 U.S.C. § 1182(1)(A) eligibility, only the fourth element is at issue, which focuses the Court's analysis on whether 50 percent of Debtor's aggregate debts arose from commercial or business activities.

The Debtor is a real estate agent, and the main question is whether the debts arose from the Debtor's commercial or business activities as a real estate agent. Ninth Circuit courts have generally held that the scope of commercial or business activities is very broad and applied a "totality of circumstances" test. *See In re RS Air, LLC*, 638 B.R., at 410. While Debtor is in the business of assisting in buying and selling of real estate properties for the purpose of earning income, the debts listed in Debtor's chapter 13 petition and in the proofs of claims are primarily consumer debts<sup>1</sup> consisting of: mortgage payments, IRS taxes, HOA fees. As the record presents, these

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debts are not a result of Debtor's business activities or transactions.

The evidence shows, as of the Petition Date, Debtor's total debts were \$829,025.47. Fifty percent of that amount is \$414,512.735, the minimum debt that should be arising from Debtor's commercial or business activities for Debtor to be eligible to proceed under subchapter V. However, debt in the amount of \$740,784.79 is mortgage payment on the Debtor's primary residence. The following debts are listed on Debtor's bankruptcy petition:

<b>Proof of Claim</b>	<b>Creditor</b>	<b>Amount</b>
1	IRS	\$17,364.18
2	Corte Villa Homeowners Association	\$13,485.32
3	Nationalstar Mortgage LLC	\$740,784.79
4	LVNV Funding, LLC	\$2,181.44
		<b>Total: \$ 829,025.47</b>

There is a long line of cases<sup>2</sup> which hold that a residential mortgage fell within the definition of "consumer debt". However, in *In Aspen Skiing Co. v. Cherrett (In re Cherrett)*, 873 F.3d 1060, 1067 (9th Cir. 2017), the Ninth Circuit concluded that "[w]e have never . . . held that debts used to purchase homes are consumer debts as a matter of law . . . ." "We must look to the purpose of the debt in determining whether it falls within the statutory definition." *Id.* "The [c]ourts determine the debtor's purpose as of the time the debt was incurred." *Id.*

In the case at hand, the Debtor has not made any showing that the mortgage debt was incurred for the purpose of Debtor's commercial or business activities rather than for the purpose of Debtor's primary residence. In fact, the Debtor currently resides in the Property and has claimed homestead exemption on the Property under CA Civ Pro Code § 704.730 (a)(2). There is no indication that the Property is being used towards

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any commercial or business activities. In absence of such showing, the Debtor's mortgage debts are consumer debts and not commercial/business debts. *Compare In re Blue*, 630 B.R. 179, 194 (Bankr. M.D.N.C. 2021) (debtor's obligations arising out of mortgage did not arise from commercial or business operations since she incurred mortgage debt on the property for purpose of residence, and that it is a personal, non-business debt) with *In re Ventura*, 615 B.R. 1 (Bankr. E.D.N.Y. 2020) (where debtor's primary residence was a mansion that also operated as a bed and breakfast. At the time of purchase, debtor intended to operate it as a bed and breakfast and the bankruptcy court found that debtor's primary purpose in incurring the mortgage was to operate a bed and breakfast, and therefore the debt was not consumer debt.); *In Aspen Skiing Co. v. Cherrett (In re Cherrett)*, 873 F.3d 1060 (9th Cir. 2017) (where even though debtor obtained a loan to buy personal residence, the debt was not a consumer debt because loan had a business purpose to provide debtor a place to stay in Colorado while he oversaw the expansion of his business there. Debtor did not intend to relocate himself or his family to Colorado and the debt did not go toward the purchase of a primary residence but only towards a business purpose.)

As such, the Court finds the \$414,512.735, which is more than 50 percent of Debtor's total debt, did not arise from Debtor's commercial or business activities but from Debtor's purpose of primary residence. Since the debts are primarily consumer debts, the Debtor does not qualify as a debtor for the purposes of subchapter V.

Issue 2: Debtor is unable to effectuate a plan required for a conversion to chapter 11.

Applying three factors required for conversion of chapter 13 to chapter 11, the second factor is at issue. The Debtor's has failed to establish the likelihood of effectuating a successful reorganization plan under chapter 11.

To convert their case to a case under chapter 11 outside of subchapter V, debtors must show that there is a reasonable possibility that they will be able to confirm a chapter 11 plan within a reasonable time. *See In re Funk*, 146 B.R. 118, 124 (D.N.J. 1992) (stating that conversion was not appropriate where the debtors did not show they had the ability to propose a plan within a reasonable period of time or that there is some reasonable prospect of reorganization in a chapter 11.)

Debtor has not provided the Court with any information regarding what his chapter 11

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plan would look like. Debtor's current chapter 13 plan proposes to pay \$500 and \$210 per month from Debtor's monthly income of \$1,467.00<sup>3</sup>. Further, the plan proposes a payment of \$265,000 in 6 months. Debtor contends that, as an active real estate agent, he has several pending transactions which are anticipated to result in sufficient income to cure all loan arrearage amounts and to provide substantial future income. [Dkt. No. 32, Pgs. 9-10, Declaration of Hans Nearhoof, Exhibit 1] However, this commitment is speculative.

The issue of attempting to project a non-salaried, sales commissioned debtor's future disposable income often involves some degree of speculation. However, the Arizona Bankruptcy Court tackled this issue in *In re Martin*, 233 B.R. 436, 445 (Bankr. D. Ariz. 1999). The court in *In re Martin* acknowledged that the income of a real estate salesperson can fluctuate wildly from period to period. However, in that case the debtor, a real estate agent, was able to show through her prior years' tax returns and most recent one-year income stream that she had a higher income to meet the projections in plan.

In the case at hand, the Debtor has not filed any proof of income, business budget, bank statements, federal or state income tax returns which would assist the Court to ascertain if the Debtor's plan is feasible, even assuming the Debtor proposed specific plan terms. In absence of such showing, the Court finds this funding source speculative and thus violative of 11 U.S.C. § 1325(a)(6). The Court also notes that the Debtor has been through a similar situation in the past, during his 2023 bankruptcy petition [8: 23-bk-11747-MH], where he anticipated receiving a commission of sufficient funds to reinstate the arrearage in his mortgage and to fully pay his other creditor claims. That case was dismissed since the Debtor failed to receive these commissions or arrange alternative funding to execute a confirmable plan.

The confirmation requirement found in 11 U.S.C. § 1325(a)(6), limits approval only to those plans when "the debtor will be able to make all payments under the plan and to comply with the plan." Thus, 11 U.S.C. § 1325(a)(6) requires that visionary or speculative chapter 13 plans not be approved. *In re Martorana*, No. 07-13861bf, 2008 Bankr. LEXIS 1460, at \*9 (Bankr. E.D. Pa. Apr. 11, 2008). Further, chapter 13 plans that "propose payments using funds from unidentified and uncertain sources are scrutinized very carefully, and plans that are vague about the timing and means of payment are not confirmable." *Paulson v. Wein (In re Paulson)*, 477 B.R. 740, 746

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(B.A.P. 8th Cir. 2012).

**Chapter 13**

Since, the Debtor has not identified a viable and confirmable source of funding to confirm a plan, conversion to chapter 11 is not sufficiently supported. Lack of evidence on the possibility of reorganization, therefore, is a reasonable basis to deny a motion to convert to chapter 11. *See In re Tsung Yu Chien*, No. CV 19-2131 JGB, 2020 U.S. Dist. LEXIS 126601 (C.D. Cal. Apr. 2, 2020) (Appellate court upheld the bankruptcy court decision to deny motion to convert because the debtor failed to establish that there is a likelihood of successful reorganization). Here, Debtor has not shown that there is a reasonable possibility he will be able to effectuate a chapter 11 plan.

Thus, since the Debtor does not qualify as a debtor under subchapter V of chapter 11, and without a confirmable plan in prospect, the Debtor has not carried his burden of proving cause to support a conversion.

**TENTATIVE RULING**

Based on the foregoing, the Court is inclined to **DENY** the motion.

**APPEARANCES REQUIRED.**

Footnotes:

<sup>1</sup> The term "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose. 11 USC § 101(8)

<sup>2</sup> *In re Lemma*, 393 B.R. 299 (Bankr. E.D.N.Y. 2008) (residential mortgage loan secured by real property that was the debtor's residence was a consumer debt incurred by individuals primarily for a personal purpose); *In re Hall*, 258 B.R. 45 (Bankr. M.D. Fla. 2001) (a purchase money mortgage on a residence is a consumer debt); *In re Vianese*, 192 B.R. 61 (Bankr. N.D.N.Y. 1996) (mortgage on debtor's residence and home equity loan are debts incurred primarily for personal purposes).

<sup>3</sup> Debtor's schedules I lists a monthly income of \$1,467.00 per month.

<b>Party Information</b>
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**Debtor(s):**

Hans Nearhoof

Represented By  
William H Brownstein

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**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:20-10017 Almazella Northington**

**Chapter 13**

**#28.00** Trustee's Motion to Dismiss Case failure to make plan payments

EH\_\_

**[Tele. appr. Norma Duenas, rep. Debtor]**

Docket 173

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Almazella Northington

Represented By  
Norma Duenas

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-10187 Frances Carmen Donoghue**

**Chapter 13**

**#29.00** Trustee's Motion to Dismiss Case failure to make plan payments

EH\_\_

Docket 50

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Frances Carmen Donoghue

Represented By  
Michael T Reid

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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**8:23-10969 Kwadwo Hwenso Asare-Antwi**

**Chapter 13**

**#30.00** Trustee's Motion to Dismiss Case

EH\_\_

Docket 66

**\*\*\* VACATED \*\*\* REASON: WITHDRAWAL OF MOTION FILED  
3/11/24**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kwadwo Hwenso Asare-Antwi

Represented By  
Allan O Cate

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10022 Hans Nearhoff**

**Chapter 13**

**#31.00** Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate re 2495 TEQUESTRA, TUSTIN, CA 92782 (Motion filed 2/13/24)

MOVANT: HANS NEARHOFF

EH\_\_\_\_

**[Tele. appr. William H Brownstein, rep. Debtor]**

Docket 20

**Tentative Ruling:**

**3/14/2024**

According to 11 U.S.C. § 362(c)(3)(B),

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

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**CONT...**

**Hans Nearhoff**

**Chapter 13**

Here, the Debtor filed the instant Chapter 13 petition on January 4, 2024. On February 13, 2024, 40 days after the filing of the petition, the instant motion to continue the automatic stay was filed. Pursuant to 11 U.S.C. § 362(c)(3)(B), the motion was filed outside of the timeframe allowed by the Bankruptcy Code, and thus the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hans Nearhoff

Represented By

William H Brownstein

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:24-10442 Sardar Irtiza Mahmood**

**Chapter 13**

**#32.00** Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate REAL PROPERTY - located at 836 S. Magnolia Ave., Anaheim, CA 92804-4043 (Motion filed 2/26/24)

MOVANT: SARDAR IRTIZA MAHMOOD

EH\_\_

Docket 10

**Tentative Ruling:**

**3/14/2024**

Debtor had a previous case dismissed on January 25, 2024, less than one year prior to the instant petition date. The previous case was dismissed because Debtor failed to make plan payments. Therefore, the instant case was presumptively filed in bad faith pursuant to 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). Section 362(c)(3)(C) requires that the presumption of bad faith be rebutted by "clear and convincing" evidence.

Here, the Debtor's declaration filed in support of his motion to continue the stay lacks detail and is vague. The declaration states that the Debtor did not complete the prior Chapter 13 plan due to "illness," and further states that the Debtor was incapacitated for 3 weeks and unable to perform any of his duties. However, the declaration does not provide any detail regarding the exact time frame of when the Debtor was incapacitated, if a hospital or doctor's visit was necessary, and the nature and severity of the Debtor's physical symptoms. Therefore, the evidence presented by the Debtor is not clear and convincing to rebut the presumption of bad faith because it appears to lack detail.

Based on the foregoing, the Court is inclined to DENY the motion to continue the automatic stay.

APPEARANCES REQUIRED.

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**CONT... Sardar Irtiza Mahmood**

**Chapter 13**

**Party Information**

**Debtor(s):**

Sardar Irtiza Mahmood

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-11462 Richard Garcia**

**Chapter 13**

**#33.00** CONT. Motion For Sanctions for Violation of the Automatic Stay  
(Motion filed 12/20/23)

From: 1/11/24, 2/29/24

EH\_\_

**[Tele. appr. JaVonne Phillips, rep. Quality Loan Services Corp.]**

**[Tele. appr. Andrew Bison, rep. Debtor]**

Docket 104

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Garcia

Represented By  
Andrew S Bisom

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-11462 Richard Garcia**

**Chapter 13**

Adv#: 8:23-01131 Garcia v. Stephen Edwards Trust

**#34.00** CONT. Status Conference re Complaint by Richard Garcia against Stephen Edwards Trust; Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment)),(72 (Injunctive relief - other))

From 1/25/24, 2/29/24

EH\_\_

**[Tele. appr. JaVonne Phillips, rep. Defendant]**

**[Tele. appr. Andrew Bison, rep. Plaintiff]**

Docket 1

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Garcia

Represented By  
Andrew S Bisom

**Defendant(s):**

Stephen Edwards Trust

Pro Se

**Plaintiff(s):**

Richard Garcia

Represented By  
Andrew S Bisom

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:23-11462 Richard Garcia**

**Chapter 13**

Adv#: 8:23-01131 Garcia v. Stephen Edwards Trust

**#35.00** CONT. Status Conference re: Counterclaim Stephen Edward, as Trustee of the Stephen Edward Trust UDT 7/19/23 vs. Richard Garcia; Quality Loan Service corp; All Persons Unknown, claiming any Legal or Equitable Right, Title, Lien Estate or Interest in the property and Roes 1 to 20

From: 2/29/24

EH\_\_

**[Tele. appr. JaVonne Phillips, rep. Defendant]**

**[Tele. appr. Andrew Bison, rep. Plaintiff]**

Docket 8

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Garcia

Represented By  
Andrew S Bisom

**Defendant(s):**

Stephen Edwards Trust

Pro Se

**Plaintiff(s):**

Richard Garcia

Represented By  
Andrew S Bisom

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se