

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

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

DAY: TUESDAY
DATE: JUNE 29, 2021
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

COURT REOPENING

Effective June 14, 2021, courthouses for the Eastern District of California are reopened to the public. General Order No. 631 ¶ 1. Each judge within the district has discretion to continue to hold hearings remotely or to hold hearings in person. *Id.* at ¶ 4. The Honorable Fredrick E. Clement will hold remote and live hearings under the following schedule:

Until July 11, 2021

From the effective date of General Order No. 631 through July 11, 2021, Department A will continue to conduct hearings exclusively on a remote basis. Persons who wish to appear must do so by way of CourtCall; reservations for such an appearance may be arranged by calling (866) 582-6878.

On and After July 12, 2021

Starting July 12, 2021, Department A will resume in person hearings. However, any person preferring to appear via CourtCall may do so, notwithstanding any limitation contained in the "Telephonic Court Appearance through CourtCall Conference Service" on the court's website.

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. 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. [19-27001](#)-A-13 **IN RE: ANTHONY/MARILYN KING**
[MRL-2](#)

MOTION FOR COMPENSATION FOR MIKALAH RAYMOND LIVIAKIS,
DEBTORS' ATTORNEY(S)
5-25-2021 [\[35\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Mikalah Raymond Liviakis has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,772.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation, ECF No. 3. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 2. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, and that the movant has shown that substantial and unanticipated post-confirmation work was necessary. The court will approve the application. Such amounts shall be perfected, and may be

adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Mikalah Raymond Liviakis's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows compensation in the amount of \$2,772.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$2,772.00.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

2. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-9-2021 [\[29\]](#)

RICHARD JARE/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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).

11 U.S.C. § 1325(a) (6)

A chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. 11 U.S.C. § 1325(a) (6).

Motion to Value Collateral

This plan relies on a Motion to Value Collateral (ECF No. 13) being filed against Ovation Sales Finance Trust to reduce the scheduled claim by over \$7,000.00. The creditor was listed in Class 2B. The court has denied that motion and, as a result, the plan does not have sufficient monies to pay the claim in full.

Class 1 Arrears

Also, the plan proposes payments of \$1,500.00 each month for the 14 months, then increases to \$2,550.00 per month for 42 months, for a total of 60 months, with 0% to unsecured creditors, ECF No. 13. However, the plan proposes \$714.29 monthly payment beginning from month 15 toward U.S. Bank's mortgage arrears of \$30,000.00. The ongoing mortgage payment to U.S. Bank c/o Fay Servicing is \$881.00. Fay Servicing has filed a mortgage claim for \$41,199.29 of arrears with an ongoing mortgage monthly payment of \$1,034.22, Claim No. 2. Fay Servicing objected to confirmation, maintaining that the arrears and payments are understated by at least \$353.20 per month, ECF No. 22. The Trustee calculates that with the arrears claim the plan will complete in 70 months. To complete the plan in the 56 months proposed, the payments would need to increase to an average of \$2,866.00 per month.

For the foregoing reasons, the court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

3. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR FAY SERVICING,
LLC
5-21-2021 [\[22\]](#)

RICHARD JARE/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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).

11 U.S.C. § 1325(a)(5)

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5). Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim.

Here the secured creditor's claim is secured by the debtor's primary residence commonly known as 7308 Villa De Sol Lane, Citrus Heights, CA 95621. The claim amount at the time of filing was \$338,714.72, with an arrearage of \$41,199.29. The creditor filed a proof of claim (Claim No. 2-1). In the plan, ECF No. 13, the debtor provided for the arrears owed to the creditor in the amount of \$30,000.00. The debtor therefore violated § 1325(a)(5) by understating the arrearage amount owed to the creditor.

11 U.S.C. § 1325(a) (6)

A chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. 11 U.S.C. § 1325(a) (6). The plan proposes payments of \$1,500.00 each month for the 14 months, then increases to \$2,550.00 per month for 42 months, for a total of 60 months, with 0% to unsecured creditors, ECF No. 13. However, the plan proposes \$714.29 monthly payment beginning from month 15 toward U.S. Bank's mortgage arrears of \$30,000.00. The ongoing mortgage payment to U.S. Bank c/o Fay Servicing is \$881.00. Fay Servicing has filed a mortgage claim for \$41,199.29 of arrears with an ongoing mortgage monthly payment of \$1,034.22. The arrears and payments are understated by at least \$353.20 per month, ECF No. 22. The Trustee calculated that with the arrears claim the plan will complete in 70 months, ECF No. 29. To complete the plan in the 56 months proposed, the payments would need to increase to an average of \$2,866.00 per month.

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.

U.S. Bank Trust National Association's (c/o Fay Servicing) objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

4. [21-21504](#)-A-13 **IN RE: SALLY ALLEN**
[RJ-1](#)

MOTION TO VALUE COLLATERAL OF OVATION SALES FINANCE TRUST
6-3-2021 [\[25\]](#)

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

Disposition: Denied without prejudice

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 respondent 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).

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. Under this rule, a motion lacking proper grounds for relief (or lacking a statement of the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

Here the last statement in the motion states the value of the collateral should be \$8,000.00, ECF No. 25. However, the beginning of the motion, the supporting declaration and the plan all state the value of the collateral as \$1,500.00. Since the requested value of the collateral is ambiguous, the court will deny this motion without prejudice since it fails to comply with F.R.B.P. 9013.

CIVIL MINUTE ORDER

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

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.

5. [20-23407](#)-A-13 **IN RE: KUN BERNARDINO**
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-25-2021 [\[51\]](#)

MARK WOLFF/ATTY. FOR DBT.
ERIN MCCARTNEY/ATTY. FOR MV.
CIT BANK, N.A. VS.
DEBTOR DISMISSED: 06/09/21

Final Ruling

The case having been dismissed, the matter is dropped as moot.

6. [21-20417](#)-A-13 **IN RE: DANE CUMMINGS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-10-2021 [\[67\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

7. [21-20922](#)-A-13 **IN RE: KYLE ASH**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-2021 [\[27\]](#)

JOSEPH ROSENBLIT/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
ACM INVESTOR SERVICES, INC. VS.

No Ruling

8. [20-24628](#)-A-13 **IN RE: NGOC LIEN NGUYEN**
[PGM-1](#)

CONTINUED MOTION TO CONFIRM PLAN
3-23-2021 [\[34\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [20-24628](#)-A-13 **IN RE: NGOC LIEN NGUYEN**
[PGM-3](#)

MOTION TO VALUE COLLATERAL OF CALIFORNIA STATEWIDE CDC
5-26-2021 [\[65\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This motion having been withdrawn by the movant, ECF No. 78, the court will drop this matter from the calendar as moot.

10. [16-23134](#)-A-13 **IN RE: DANA DREBERT**
[MOH-2](#)

MOTION FOR HARDSHIP DISCHARGE
6-15-2021 [\[68\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

This matter is continued to August 3, 2021, at 9:00 a.m. Not later than July 13, 2021, the debtor will file and serve on the trustee supplemental Schedules I and J, as well as a declaration(s) so that parties in interest and the court may gauge whether medication is practicable. 11 U.S.C. § 1328(b)(3). Not later than July 27, 2021, the trustee shall, and any other party, may file a response thereto. The court will issue a civil minute order.

11. [20-23434](#)-A-13 **IN RE: TAMARA GEREN**
[DPC-3](#)

MOTION TO DISMISS CASE
5-25-2021 [\[70\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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 trustee moves to dismiss this chapter 13 case. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 11.5 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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. The court hereby dismisses this case.

12. [21-21435](#)-A-13 **IN RE: WILLIAM/CHERYL HOKE**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEWREZ, LLC
5-11-2021 [\[11\]](#)

ROBERT GIMBLIN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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).

11 U.S.C. § 1325(a)(5)

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim

holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5). Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim.

Here the secured creditor filed its Proof of Claim (Claim No. 2-1) in the amount of \$549,740.40, including arrearage in the amount of \$23,971.18. The claim is secured by the real property commonly known as 9974 Mountain Oak Court, Browns Valley, CA 95918, which is the debtor's primary residence. According to the plan, the movant is placed in Class 4. Therefore, the debtors represented under penalty of perjury that the claim is not in default. However, the arrearage on the creditor's claim is in the amount of \$23,971.18. The debtors failed to provide for the curing of the aforementioned default of \$23,971.18. The court will sustain the creditor's objection under 11 U.S.C. §1325(a)(5).

11 U.S.C. § 1325(a)(6)

A chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. 11 U.S.C. § 1325(a)(6). According to the plan, the debtors will make monthly payments of \$2,500.00 for 60 months to the Trustee for a base plan amount of \$150,000.00, ECF No. 3. However, according to the Schedules, the debtors have a monthly net income of only \$2,500.00, ECF No. 1. This amount will be insufficient to fund the plan, absent the debtors' amending their plan and related schedules, once the arrears on the creditor's claim (\$23,971.18) is fully provided for. The court will sustain the creditor's objection under 11 U.S.C. §1325(a)(6).

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.

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

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

13. [21-21435](#)-A-13 **IN RE: WILLIAM/CHERYL HOKE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-9-2021 [\[19\]](#)

ROBERT GIMBLIN/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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).

11 U.S.C. § 1325(a)(5)

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan, (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value at least equal to the allowed amount of such claim, or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5). Section 1325(a)(5)(B)(ii) read together with § 1322(b)(5) requires that the plan provide for payment in full of the delinquent prepetition arrearage as part of the allowed amount of the secured claim.

The claim of NewRez LLC d/b/a Shellpoint Mortgage Servicing is misclassified as a class 4 claim. The pre-written language of the form plan defines class 4 claims as secured claims paid directly by debtor or third party and mature after the completion of this plan, are not in default are not modified by this plan. The creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing filed Claim No. 2-1 and an Objection to Confirmation of Chapter 13 Plan (Item 12), stating an arrearage amount of \$23,971.18. Therefore, the claim should be Class 1 instead of Class 4.

11 U.S.C. § 1325(a)(6)

A chapter 13 plan must be feasible, and the debtor must show ability to comply with its terms. 11 U.S.C. § 1325(a)(6). According to the plan, the debtors will make monthly payments of \$2,500.00 for 60 months to the trustee for a base plan amount of \$150,000.00, ECF No. 3. However, according to the schedules, the debtors have a monthly net income of only \$2,500.00, ECF No. 1. If the plan and schedules accounted for the arrears stated in NewRez LLC's Proof of Claim, the plan would not be feasible.

Also, at the Meeting of the Creditors, the debtor testified that he stopped his voluntary contribution to his retirement plan of \$1,036.00. The trustee requested that Schedule I be amended to remove the deduction of \$1,036.00 and to update income and that Schedule J be amended to list accurate income and expenses. To date, no amendments have been filed. The debtors have failed to carry their burden of showing that the plan complies with 11 U.S.C. §1325(a)(6).

CIVIL MINUTE ORDER

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

14. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[GC-2](#)

OBJECTION TO CLAIM OF HOME POINT FINANCIAL CORPORATION,
CLAIM NUMBER 4
4-12-2021 [\[69\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

This matter has been continued to September 21, 2021, at 9:00 a.m., ECF No. 94.

15. [20-24947](#)-A-13 **IN RE: DANIEL MCARTHEY**
[GC-3](#)

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES,
AND CHARGES
4-21-2021 [[74](#)]

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

This matter has been continued to September 21, 2021, at 9:00 a.m.
ECF No. 95.

16. [21-21060](#)-A-13 **IN RE: CATHERINE EFHAN**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
5-25-2021 [[24](#)]

THOMAS AMBERG/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Objection: Discharge in Chapter 13 case

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

Disposition: Sustained

Order: Prepared by moving party

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).

In Chapter 13 discharge is governed by 11 U.S.C. § 1328. As pertinent here, that section reads:

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

11 U.S.C. § 1328(f)(1).

Here, the debtor filed a Chapter 7 case on August 21, 2019, and received a discharge. *In re Efhan*, No. 19-25245 (Bankr. E.D. Cal. 2019). This case was filed March 25, 2021. Since it is within 4 years of her previous case the debtor does not qualify for a Chapter 13 discharge in this case.

17. [20-22366](#)-A-13 **IN RE: PHILIP/YVETTE HOLDEN**
[MJG-1](#)

MOTION TO MODIFY PLAN
4-29-2021 [\[42\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, April 29, 2021

CHAPTER 13 PLAN 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).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

18. [20-22366](#)-A-13 **IN RE: PHILIP/YVETTE HOLDEN**
[RPZ-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2021 [\[28\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.
FEDERAL HOME LOAN MORGAGE CORP. VS.
RESPONSIVE PLEADING

No Ruling

19. [19-24669](#)-A-13 **IN RE: RAMON CAPARAS**
[AF-7](#)

MOTION TO MODIFY PLAN
4-30-2021 [\[129\]](#)

ARASTO FARASAD/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); trustee's non-opposition
filed

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, April 30, 2021

DEFAULT OF RESPONDENT

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).

CHAPTER 13 PLAN 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).

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

DOCKET CONTROL NUMBER

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. The movant used the same docket control number AF-7 for a previously-denied Motion to Modify Plan, ECF No. 116. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

20. [21-21269](#)-A-13 **IN RE: WILLIAM AMUNDSON**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
5-19-2021 [\[16\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Objection: Discharge in Chapter 13 case

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

Disposition: Sustained

Order: Prepared by moving party

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).

In Chapter 13 discharge is governed by 11 U.S.C. § 1328. As pertinent here, that section reads:

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

11 U.S.C. § 1328(f)(1).

Here, the debtor filed a Chapter 7 case on November 1, 2017, and received a discharge. *In re Amundson*, No. 17-27275 (Bankr. E.D. Cal. 2019). This case was filed April 7, 2021. Since it is within 4 years of her previous case the debtor does not qualify for a Chapter 13 discharge in this case.

21. [21-22073](#)-A-13 **IN RE: TROY TATE**
[DPC-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
6-4-2021 [[10](#)]

DAVID CUSICK/ATTY. FOR MV.

No Ruling

22. [20-25379](#)-A-13 **IN RE: JOANNE ASPIRAS**
[DPC-1](#)

MOTION TO DISMISS CASE
5-26-2021 [[63](#)]

PETER CIANCHETTA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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).

DELINQUENCY

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2,842.34.

11 U.S.C. § 1307(c)

Cause exists under § 1307(c)(1) to dismiss the case. The debtor has failed to confirm a plan within a reasonable time. The case has been pending for approximately 7 months, yet a plan has not been confirmed. This constitutes unreasonable delay by the debtor that is prejudicial to creditors. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss 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. The court hereby dismisses this case.

23. [21-21583](#)-A-13 **IN RE: DAVID ERLICHMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-4-2021 [\[14\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
6/4/21 FINAL INSTALLMENT PAID \$313

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

24. [19-24685](#)-A-13 **IN RE: EMILIA ARDELEAN**
[TBG-2](#)

STATUS CONFERENCE RE: MOTION TO CONFIRM PLAN
10-11-2019 [\[37\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

25. [19-26686](#)-A-13 **IN RE: TRACEY TURRUBIATE**
[PGM-2](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S
ATTORNEY
5-18-2021 [\[54\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Approved

Order: Civil minute order

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Peter G. Macaluso has applied for an allowance of compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$1,100.00 and reimbursement of expenses in the amount of \$0.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation, ECF No. 14. The plan also shows

the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c), ECF No. 13. The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

The court finds that the compensation and expenses sought are reasonable, and that the applicant sufficiently showed that substantial and unanticipated post-confirmation work was necessary. The court will approve the application. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Peter G. Macaluso's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved. The court allows compensation in the amount of \$1,100.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$1,100.00.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.