



**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: WEDNESDAY
DATE: JANUARY 17, 2024
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. [23-21700](#)-A-13 **IN RE: CAROL UNTERSEHER**
[TF-1](#)

MOTION TO CONFIRM PLAN
12-12-2023 [\[35\]](#)

TERRENCE FANTAUZZI/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed December 12, 2023

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).

The debtor seeks confirmation of the Second Amended Chapter 13 Plan, ECF No. 37. The plan is supported by Schedules I and J, filed September 21, 2023, ECF No. 25. The Chapter 13 trustee has filed a non-opposition to the motion, 40.

CHAPTER 13 PLAN 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).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

2. [23-23501](#)-A-13 **IN RE: MARSHALL FINNEY**
[BLG-1](#)

MOTION TO CONFIRM PLAN
11-20-2023 [\[15\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed November 20, 2023

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).

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 17. The plan is supported by Schedules I and J, filed November 20, 2023, ECF No. 20. The Chapter 13 trustee has filed a non-opposition to the motion, 22.

CHAPTER 13 PLAN 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).

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

3. [19-23913](#)-A-13 **IN RE: GERARDO ABSALON**
[BMV-5](#)

MOTION TO VACATE DISMISSAL OF CASE
12-5-2023 [\[83\]](#)

BERT VEGA/ATTY. FOR DBT.
DEBTOR DISMISSED: 11/08/23
RESPONSIVE PLEADING

No Ruling

4. [23-23713](#)-A-13 **IN RE: JENNIFER PORE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-12-2023 [\[15\]](#)

CATHERINE KING/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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

5. [22-23014](#)-A-13 **IN RE: DANIEL/VICKI JACOBS**
[DPC-1](#)

MOTION TO DISMISS CASE
12-20-2023 [\[51\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

The Motion was withdrawn by the moving party on January 3, 2024, ECF No. 60. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

6. [23-23722](#)-A-13 **IN RE: STACEY SCARBOROUGH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-13-2023 [\[17\]](#)

NICHOLAS WAJDA/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.

7. [23-22523](#)-A-13 **IN RE: SHAWNA KARLBERG**
[DPC-2](#)

MOTION TO DISMISS CASE
12-14-2023 [\[40\]](#)

SETH HANSON/ATTY. FOR DBT.

No Ruling

8. [23-22523](#)-A-13 **IN RE: SHAWNA KARLBERG**
[SLH-1](#)

MOTION TO CONFIRM PLAN
11-27-2023 [\[35\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$12,752.40. The plan cannot be confirmed if the plan payments are not current. The proposed plan calls for payments of \$6,000 per month. First Amended Plan, Section 2.01, ECF No. 31. The petition was filed on July 31, 2023. Accordingly, a total of \$30,000 is due under the proposed plan. The trustee reports that only \$17,247.60 has been paid into the plan as of January 3, 2024.

The trustee states that the declaration submitted by the debtors describes plan terms which differ from those proposed in the 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.

9. [23-23323](#)-A-13 **IN RE: CASEY WOODBURY**
[DPC-2](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
12-6-2023 [\[38\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: September 25, 2023

Previous Chapter: 7

Previous Petition Filed: December 15, 2021

Previous Discharge: August 9, 2022

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 chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

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

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12

case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on December 15, 2021, the debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

10. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-10](#)

MOTION TO CONFIRM PLAN
11-21-2023 [\[126\]](#)

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek confirmation of the Chapter 13 Plan. For the following reasons 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).

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.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is dated October 17, 2023. Certificate of Service, ECF No. 137. Service of the motion occurred on November 28, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. 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 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.

11. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-8](#)

OBJECTION TO CLAIM OF CEFCU, CLAIM NUMBER 9
11-21-2023 [[120](#)]

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Overruled without prejudice

Order: Civil minute order

The debtors object to the claim of CEFCU, Claim No. 9. For the following reasons the objection will be overruled 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).

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.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of

the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the debtors opted to use the clerk's matrix to evidence the parties served with the objection. The matrix attached to the certificate of service is dated October 17, 2023. Certificate of Service, ECF No. 135. Service of the motion occurred on November 28, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. 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 debtors' Objection to the Claim of CEFCU, Claim No. 9, has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

12. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-9](#)

OBJECTION TO CLAIM OF NEWREZ, LLC, CLAIM NUMBER 20
11-21-2023 [\[123\]](#)

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim No. 20

Notice: LBR 3007-1(b)(1); opposition filed by claimant and Chapter 13 trustee

Disposition: Continued to March 12, 2024, at 9:00 a.m.

Order: Civil Minute Order

Petition Filed: May 28, 2023

Claim No. 20 Filed: July 26, 2023

The debtors object, for the fifth time, to the claim of NewRez, LLC, Claim No. 20.

The debtors filed multiple objections to Claim No. 20 as follows:

1) Objection to Claim, ECF No. 46, filed September 21, 2023; 2) Objection to Claim, ECF No. 56, filed September 21, 2023; 3) Objection to Claim, ECF No. 70, filed October 3, 2023; and 4) Objection to Claim, ECF No. 75, filed October 5, 2023.

The previous objections were overruled without prejudice either for procedural deficiencies in the pleadings, failure to comply with Local Rules of Practice, and/or notice and service defects. The instant objection also suffers from service and notice defects as indicated below in the court's ruling.

OBJECTION

Debtors' Objection

Debtors contend that the claim incorrectly reflects amounts due for pre-petition mortgage arrearages as follows:

The Proof of Claim states incorrectly (sic) reflects pre-petition arrearages of \$8,139.74.

4. The Proof of Claim is objected to for the following reasons:

a. The mortgage has no arrearages, it is current, and has always been current.

b. The alleged "arrears" was for property taxes the loan servicer subsequently added to the mortgage payment by increasing the payment to \$4,290.36 to cover both the mortgage and the property tax.

c. The property taxes have been paid off and the mortgage payment has returned to \$3,694.66 indicating there are no arrears.

d. *Payment history is attached as evidence.*

Objection, 2:6-16, ECF No. 123, (emphasis added).

Despite the contrary assertion in the motion no evidence has been filed by the debtors in support of the objection, nor was a payment history attached as evidence.

Claimant Opposition

The claimant opposes the objection as follows:

1) the debtors have failed to comply with notice and service requirements of LBR 3007-1; 2) NewRez's claim is presumptively valid; and 3) the debtors have failed to present any evidence in support of the objection.

The court notes that the Chapter 13 trustee has also opposed the objection, contending the debtors failed to present any evidence in support of the objection. Opposition, 1:23-24, ECF No. 146.

SERVICE AND NOTICE

There are numerous errors regarding service and notice of the objection in this matter.

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).

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.

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the debtors opted to use the clerk's matrix to document parties which were served with the objection. The matrix attached to the certificate of service is dated October 17, 2023. Certificate of Service, ECF No. 136. The objection was served on November 28, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the objection and therefore does not comply with LBR 7005-1.

Certificate Fails to Indicate Service In Compliance With Rule 7004

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b).

Section 6 of the initial Certificate of Service and the second Certificate of Service (serving the Amended Notice of Hearing) are incorrectly completed as neither certificate states that service of the objection upon the claimant was made pursuant to Rule 7004. Rather the certificates each indicate that service was made pursuant to Rule 5. Certificate of Service, ECF Nos. 125, 136.

Proof of Electronic Service Fails to Comply with LBR 7005-1

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the *Clerk of the Court's Official Matrix*, as appropriate: (1) for the case or the adversary proceeding; (2) *list of ECF Registered Users*; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a), (emphasis added).

For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.

LBR 7005-1(b).

Both the initial certificate of service and the subsequent certificate of service fail to properly document electronic service upon the claimant under LBR 7005-1(b).

Under LBR 7005-1 service by electronic means may be accomplished in only two ways. The first is pursuant to LBR 7005-1(a). Under subsection (a) the party served must be a registered user of the clerk's electronic filing system. If so, then service must be documented by attaching the Clerk's Official Matrix for the list of ECF Registered Users. The official matrix of electronic users was not attached to either the initial certificate of service or the second certificate which documented service of the Amended Notice of Hearing. Additionally, the court notes that New Rez, LLC, does not appear on the court's list of registered users of the clerk's electronic filing system. As such, electronic service upon NewRez, LLC, under LBR 7005-1(a) is not possible.

The second method of electronic service is pursuant to LBR 7005-1(b). Service under subsection (b) requires that New Rez, LLC, consented to such service and that the debtors attach a copy of the written consent to the certificate(s) of service. No written consent by NewRez, LLC, was attached to either certificate of service.

The debtors have failed to demonstrate that service by electronic means on NewRez, LLC, or any other party, was proper.

Notice and Motion Improperly Identify Location of Hearing and Opposition Date

The initial notice of hearing incorrectly listed the date of the hearing as January 18, 2024, in both the heading and the body of the notice. Notice of Hearing, ECF No. 124. As such, the notice also

stated that opposition to the objection must be filed no later than January 4, 2024. *Id.* Each of the previous dates is incorrect. To correct these defects the debtors filed and served an amended notice of hearing on November 28, 2023.

The Amended Notice of Hearing corrected the hearing and opposition dates. Amended Notice of Hearing, ECF No. 133. However, in both the heading and body of the Amended Notice the courtroom is incorrectly indicated as being located on the *sixth floor*. *Id.* Department A is located on the *seventh floor*.

Moreover, as the claimant has observed in its opposition, the body of the *Objection* also conflicts with the Amended Notice regarding the date that opposition is due as follows:

NOTICE IS FURTHER GIVEN that any response must be filed with the Bankruptcy Clerk within 30 days from the date of service or such other time period as may be permitted by Fed.R.Bankr.P. 9006(f).

Objection to Claim, 2:17-20, ECF No. 123.

While service of the objection did not comply with LBR 7005-1 the respondent, NewRez, LLC, has appeared, opposed the objection, and states that "NewRez is addressing the substantive arguments of the Objection in order to prevent the unnecessary re-filing of the Objection, and the continuing costs associated with the defense of these objections." Opposition, 2:8-10, ECF No. 150.

The court will accede to the claimant's desire in this matter.

CLAIM OBJECTION

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for "[a] proof of claim executed and filed in accordance with [the] rules." Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Litton Loan Servicing*, 347 B.R. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted).

NewRez's claim appears properly executed and filed in accordance with the Federal Rules of Bankruptcy Procedure. The debtors have not objected to the claim on any basis except that an improper amount is claimed for pre-petition mortgage arrearages. However, the debtors have failed to file any counter evidence in support of the objection as required.

HEARING WILL BE CONTINUED FOR ADMISSIBLE EVIDENCE

Admissible Evidence is Required

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

While the debtors have failed to file any admissible evidence in support of the objection, there is a countervailing interest in disposing of cases on their merits. See, *In re Bessler*, 2016 WL 6441235, at *4 (B.A.P. 9th Cir. 2016). As such, the court will continue the hearing on this matter to allow the debtors to provide admissible evidence, and for the claimant and Chapter 13 trustee to respond. If evidence is filed, the court may rule on this matter without further notice or hearing, or may determine that an evidentiary hearing is warranted.

The debtors are cautioned that if evidence is not properly filed as ordered, and further unreasonable delay ensues in the court's adjudication of this claim objection, then the court may dismiss the objection on the merits pursuant to Fed. R. Civ. P. 41(b). This bankruptcy proceeding was filed eight months ago. The debtor has filed four previous objections to NewRez's claim, creating the burden of defending the objections for the claimant in addition to the expense of defending the multiple objections. Moreover, the debtors have consistently failed to comply with the requirements of the court's Local Rules of Practice, creating difficulties for the court.

Fed. R. Civ. P. 41 is applicable in contested matters. Fed. R. Bankr. P. 7041.

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--**operates as an adjudication on the merits.**

Fed. R. Civ. P. 41(b) (emphasis added).

Should the debtors fail to provide admissible evidence as ordered the court is almost certain to dismiss the objection on the merits. Fed. R. Civ. P. 41(b), *Incorporated by* Fed. R. Bankr. P. 7041.

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 March 12, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than February 13, 2024, the debtor(s) shall file and serve a reply to the claimant's opposition, and file and serve admissible evidence in support of the objection. The reply shall specifically address each issue raised in the creditor's opposition, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtors' position. LBR 9014-1(d)(3)(D).

IT IS FURTHER ORDERED that the Chapter 13 trustee and the opposing claimant shall file and serve further reply and evidence, if any, no later than February 27, 2024. The evidentiary record will close after February 27, 2024.

IT IS FURTHER ORDERED that all documents filed in this matter shall comply with LBR 9014-1(c)(4), (d)(3)(D), and (d)(4). Failure to comply with the court's Local Rules of Practice may result in the imposition of sanctions or denial of relief. LBR 1001-(g).

13. [23-21727](#)-A-13 **IN RE: EVA MORRIS**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2023 [\[16\]](#)

NIKKI FARRIS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA MOTOR CREDIT CORPORATION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Subject Property: 2017 Nissan Maxima

Chapter 13 Plan: Confirmed July 19, 2023

Plan Classification: Class 4

Toyota Motor Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. 1301(a).

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

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.

Toyota Motor Credit Corporation's motion for relief from the automatic stay and the co-debtor stay has been presented to the court. Having considered the motion,

IT IS ORDERED that the motion is denied as moot.

14. [24-20027](#)-A-13 **IN RE: RASUL SHEVCHENKO**
[MS-1](#)

MOTION TO VALUE COLLATERAL OF UKRAINIAN FEDERAL CREDIT UNION
1-3-2024 [\[8\]](#)

MARK SHMORGON/ATTY. FOR DBT.

No Ruling

15. [21-23728](#)-A-13 **IN RE: DESIREE JACKSON**
[AVN-1](#)

MOTION TO MODIFY PLAN
12-5-2023 [\[39\]](#)

ANH NGUYEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order modifying the Chapter 13 Plan. For the following reasons 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).

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.

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

In this case there is no matrix attached to the certificate of service indicating the parties which were served with the motion. See Certificate of Service, ECF No. 43. Accordingly, service of the motion does not comply with LBR 7005-1(a). 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 Modify 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.

16. [21-23728](#)-A-13 **IN RE: DESIREE JACKSON**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
11-20-2023 [[32](#)]

ANH NGUYEN/ATTY. FOR DBT.

No Ruling

17. [23-22628](#)-A-13 **IN RE: MIGUEL DIAZ AND GUADALUPE SANCHEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
12-20-2023 [[21](#)]

TIMOTHY WALSH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 3, 2024

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. For the reasons stated in the motion, cause exists under § 1307(c)(6) to

dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,050.00 with one payment(s) of \$350.00 due prior to the hearing on this motion.

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 confirmed chapter 13 plan in this case. The court hereby dismisses this case.

18. [23-23928](#)-A-13 **IN RE: THOMAS/DIANE FOSTER**
[BLG-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
12-18-2023 [\[20\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject Property: 2009 Volkswagen Passat

Value: \$500.00

Security Interest: Non-Purchase Money

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).

The debtors seek an order valuing the collateral of OneMain Financial Group, LLC.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2009 Volkswagen Passat. The debt owed to the respondent is not secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$500.00.

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 value collateral consisting of a motor vehicle 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 motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2009 Volkswagen Passat has a value of \$500.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$500.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

19. [23-23928](#)-A-13 **IN RE: THOMAS/DIANE FOSTER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-20-2023 [\[26\]](#)

CHAD JOHNSON/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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

20. [23-23829](#)-A-13 **IN RE: AARON MCCONVILLE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-13-2023 [\[35\]](#)

DEBTOR DISMISSED: 12/20/23

Final Ruling

This case was dismissed on December 20, 2023. This objection is removed from the calendar as moot. No appearances are required.

21. [23-20730](#)-A-13 **IN RE: JEREMY BAILEY**
[BLG-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S)
12-1-2023 [\[65\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$5,960.00

Reimbursement of Expenses: \$74.82

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, Chad M. Johnson has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,960.00 and reimbursement of expenses in the amount of \$74.82.

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 court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. 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.

Chad Johnson’s application for allowance of interim 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 on an interim basis. The court allows interim compensation in the amount of \$5,960.00 and reimbursement of expenses in the amount of \$74.82. The aggregate allowed amount equals \$6,034.82. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$5,492.82 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

22. [22-20532](#)-A-13 **IN RE: KELLI SIMPSON**
[DPC-3](#)

MOTION TO DISMISS CASE
12-20-2023 [\[89\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to February 27, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: January 3, 2024

Opposition Filed: January 2, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

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 confirmed plan.

Counsel for the debtor has requested a continuance of the hearing on the motion. The plan was to complete after funds from the sale of real property were forwarded to the trustee from escrow. According to the trustee the demand for payment from escrow was incorrect and the entire amount needed to complete the plan was therefore not tendered to the trustee. Motion, 2:3-7, ECF No. 89.

Counsel for the debtor also reports that the debtor is currently experiencing significant health issues. Given these extraordinary circumstances the court will grant the debtor's request for a continued hearing. The court will require the parties to file a joint status report 14 days prior to the continued hearing date, thus the court will continue the hearing an additional two weeks beyond the debtor's requested date.

CIVIL MINUTE ORDER

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

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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date the parties shall file a joint status report updating this motion to dismiss.

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-22-2023 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

24. [23-23232](#)-A-13 **IN RE: MAI TRANG LE AND NHAT TRAN**
[DPC-1](#)

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

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from December 5, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Peter Macaluso is ordered to appear personally in this matter at 9:00 a.m. on January 17, 2024, in Department A.

Appearance by telephone or Zoom is not allowed.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from December 5, 2023, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTORS FAILED TO RESPOND AS ORDERED

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).

On December 7, 2023, the court ordered:

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 nonopposition 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.

Order, ECF No. 36, (emphasis added).

The debtors failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtors to file a pleading in this matter by December 12, 2023. The debtors have failed to file any document which would apprise the court of their position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtors concede the objection.

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 contends that the plan is over-extended because of two priority claims filed by the Internal Revenue Service and Franchise Tax Board. The court's docket shows that the debtors have not objected to either of the priority claims.

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.

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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,600.00. The plan cannot be confirmed if the plan payments are not current.

Failure To Provide Financial/Business Documents

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors. The debtors failed to produce the following documents: 1) completed Business Questionnaire for the ebay business; 2) bank statements; 3) 2021/2022 tax returns; 4) completed Business Questionnaire for the Smog Zone business; and 5) 6 months of Profit and Loss Statements.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court will sustain the trustee's objection.

Schedules I and J

The debtor has not supported the plan by filing the required business attachments to Schedules I and J. The trustee reports that the debtors testified at the meeting of creditors that they operate a small business on E-Bay. The filed schedules show that one of the debtors is self-employed. Without complete and accurate income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (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.

25. [23-23232](#)-A-13 **IN RE: MAI TRANG LE AND NHAT TRAN**
[EAT-1](#)

CONTINUED 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.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from December 5, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Peter Macaluso is ordered to appear personally in this matter at 9:00 a.m. on January 17, 2024, in Department A. Appearance by telephone or Zoom is not allowed.

The hearing on Ajax Mortgage Loan Trust's objection to confirmation was continued from December 5, 2023, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

DEBTORS FAILED TO RESPOND AS ORDERED

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).

On December 7, 2023, the court ordered:

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 nonopposition 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.

Order, ECF No. 37, (emphasis added).

The debtors failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection.

The court's ruling requires the debtors to file a pleading in this matter by December 12, 2023. The debtors have failed to file any document which would apprise the court of their position regarding the creditor's objection to confirmation.

The debtors' failure to comply with the court's order further delayed the hearing on the creditor's objection, and has caused additional, unnecessary work for the court.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to apprise the court whether the debtors concede the objection.

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 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).

Business Income is Speculative

The objecting creditor contends that the \$1,500.00 per month indicated by the debtors on Schedule I as business income is speculative. As such, the creditor disputes the debtors' ability to tender a plan payment sufficient to pay the creditor's claim, currently schedule in Class 1 of the plan.

The court agrees with the objecting creditor. As the court has already ruled on the Chapter 13 trustee's objection to confirmation that the plan is not feasible (DPC-1) it will sustain this objection as well. The debtors have failed to file required attachments reflecting business income and expenses to Schedules I and J. The debtors have failed to provide documents to the trustee which document the business income and expenses including tax returns, profit and loss statement, and bank statements.

The court will sustain the 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.

Ajax Mortgage Loan Trust 2021-F, Mortgage-Backed Securities, Series 2021-F, by U.S. Bank National Association, as Indenture 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.

26. [22-20338](#)-A-13 **IN RE: TRACEY FERNANDEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
12-20-2023 [\[27\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 3, 2024

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. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,585.00 with one payment(s) of \$ 1,195.00 due prior to the hearing on this motion.

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 confirmed chapter 13 plan in this case. The court hereby dismisses this case.

27. [23-22345](#)-A-13 **IN RE: URIEL PIZANO**
[DPC-2](#)

MOTION TO DISMISS CASE
12-13-2023 [\[34\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 30, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: January 3, 2024

Opposition Filed: January 3, 2024

Motion to Modify Plan Filed: December 20, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is January 30, 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 may 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 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects 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.

28. [23-23751](#)-A-13 **IN RE: EULA BANKS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-13-2023 [\[26\]](#)

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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

29. [19-27553](#)-A-13 **IN RE: DIANA PRASAD**
[KMM-1](#)

MOTION TO APPROVE LOAN MODIFICATION
12-8-2023 [\[29\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Approval of Mortgage Loan Modification

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

Disposition: Denied without prejudice

Order: Civil minute order

Specialized Loan Servicing, LLC, seeks an order authorizing the debtor to enter into a loan modification agreement affecting the real property commonly known as 149 Gold Hill Way, Vallejo, California. The Chapter 13 trustee opposes the motion.

For the following reasons the motion will be denied.

If the trustee will not give the consent required by Subparagraphs (A), (B), (C), or (D) of this Paragraph (1) or if the debtor wishes to incur new debt or transfer property on terms and conditions not authorized by those Subparagraphs, *the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice*, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

LBR 3015-1(h)(1)(E)) (emphasis added).

Under LBR 3015-1(h)(1)(E) the movant is not the proper party to bring the instant motion. This prerogative belongs to the debtor. Accordingly, the motion will be denied without prejudice. The debtor may seek authorization to enter into the proposed loan modification if desired.

Additionally, the court notes that the motion was not served on all creditors and parties entitled to notice under LBR 3015-1(h)(1)(E). Only the debtor, her attorney of record, the U.S. Trustee, and the Chapter 13 trustee were served with the motion. Certificate of Service, Part 5, Attachment 6A1, ECF No. 33.

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.

Specialized Loan Servicing, LLC's motion to authorize loan modification 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.

30. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[AIN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PLATINUM LOAN
SERVICING, INC
12-21-2023 [[33](#)]

PETER MACALUSO/ATTY. FOR DBT.
ALAN NAHMIAS/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 February 27, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Platinum Loan Servicing, Inc., 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the objecting creditor shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the creditor's objection will be sustained on the grounds stated in the objection without further notice or hearing.

31. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
12-20-2023 [\[28\]](#)

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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

32. [23-23664](#)-A-13 **IN RE: JEFFREY/LAURIE SWENSON**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
12-13-2023 [\[52\]](#)

GARY FRALEY/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: October 16, 2023

Previous Chapter: 7

Previous Petition Filed: March 8, 2023

Previous Discharge: June 12, 2023

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 chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

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

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously

imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on March 8, 2023, the debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. 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 Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

33. [23-24064](#)-A-13 **IN RE: RICARDO CORTEZ**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-20-2023 [\[13\]](#)

TIMOTHY WALSH/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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

34. [23-23769](#)-A-13 **IN RE: JENNIFER KATZ**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-13-2023 [\[28\]](#)

CATHERINE KING/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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

35. [23-23769](#)-A-13 **IN RE: JENNIFER KATZ**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
11-30-2023 [\[22\]](#)

CATHERINE KING/ATTY. FOR DBT.
JAVONNE PHILLIPS/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 February 27, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, U.S. Bank, National Association, 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 and to allow the objecting
creditor to serve the objection and notice of continued hearing on
parties which have filed a request for special notice.

SERVICE AND NOTICE

Special Notice Creditors

The objection will be continued to allow the objecting creditor to
serve the objection on creditors which have filed a request for
special notice.

The following parties filed a request for special notice: Nationstar
Mortgage. See ECF No. 8.

The certificate of service does not indicate that special notice
party was served with the objection. See Certificate of Service, p.
2, No. 5, ECF No. 25. Moreover, there is no attachment which
indicates the special notice creditor was served.

Notice

"The due process requirements for notice are relatively minimal;
they merely require notice 'reasonably calculated, under all the
circumstances, to apprise interested parties of the pendency of the

action and afford them an opportunity to present their objections.'"
In re 701 Mariposa Project, LLC, 514 B.R. 10, 15 (B.A.P. 9th Cir.
2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S.
306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

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).

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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than January 30, 2024, the objecting creditor shall file and serve the notice of continued hearing and objection on all parties which have filed a request for special notice.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the objecting creditor shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the creditor's objection will be sustained on the grounds stated in the objection without further notice or hearing.

36. [23-22270](#)-A-13 **IN RE: GARY GILLIAM AND CARRIE NOAH-GILLIAM**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
10-24-2023 [\[35\]](#)

Final Ruling

This case was dismissed on January 8, 2024. Accordingly, this motion is removed from the calendar as moot. No appearances are required.

37. [23-24270](#)-A-13 **IN RE: DAVID SIMMONS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-18-2023 [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.
12/26/23 FINAL INSTALLMENT PAID \$155

Final Ruling

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

38. [23-23071](#)-A-13 **IN RE: ROBIN IMFELD**
[MOH-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
1-3-2024 [\[38\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject Property: 3690 Marguerite Avenue, Corning, California

Judicial Lien Avoided: \$3,149.53 - Portfolio Recovery Associates, LLC

All Other Liens:

- first deed of trust Roundpoint Mortgage Servicing \$330,894.00

- second deed of trust Us Bank \$38,345.97

Exemption: \$160,000

Value of Property: \$511,000

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).

The debtor seeks an order avoiding the judicial lien of Portfolio Recovery Associates, LLC, under 11 U.S.C. § 522(f).

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

39. [23-22072](#)-A-13 **IN RE: RODNEY ANDREWS**
[CLH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2023 [[96](#)]

PETER MACALUSO/ATTY. FOR DBT.
CHARLES HASTINGS/ATTY. FOR MV.
PETER SCHLATTER VS.
RESPONSIVE PLEADING

Final Ruling

This case was dismissed on the trustee's motion to dismiss (DPC-2). Accordingly, the motion for stay relief is moot. This matter will be removed from the calendar. No appearances are required.

40. [23-22072](#)-A-13 **IN RE: RODNEY ANDREWS**
[DPC-2](#)

MOTION TO DISMISS CASE
12-13-2023 [[92](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 3, 2024

Opposition Filed: January 3, 2024 - timely

Amended Plan Filed: plan not filed - untimely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

Petition Filed: June 23, 2023

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$2,700.00 with one payment(s) of \$1,000.00 due prior to the hearing on this motion.

The trustee also argues for dismissal because the debtor has failed to file an amended plan after the court denied confirmation of the most recently filed plan on November 10, 2023.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The debtor has filed a timely opposition, contending that the plan payments have been brought current. However, the opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtor delivered the payment of \$2,700.00 to the chapter 13 trustee or the method of delivery. Neither is there any evidence that the debtor made the additional the additional \$1,000.00 plan payments, which came due December 25, 2023.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

UNTIMELY OPPOSITION - AMENDED PLAN NOT FILED

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B).

The trustee also moves for dismissal because the debtor has failed to file an amended plan. An amended plan has not yet been filed. Instead, the opposition requests a 30 continuance of the hearing on the trustee's motion.

The court is aware that the motion to dismiss was filed December 13, 2023. As such the debtor has already had 35 days to resolve the grounds for dismissal or to file an amended plan and motion to confirm.

Additionally, the court notes that this case was filed on June 23, 2023, and the opposition only states that the debtor needs additional time to negotiate with two creditors - the Franchise Tax Board, and Peter Schlatter. The court notes that creditor Schlatter has filed a motion for stay relief for cause under 11 U.S.C. §§ 362(d)(1), (2).

The opposition fails to sufficiently detail the reasons for the requested continuance, neither does it sufficiently describe the debtor's efforts and due diligence in negotiating with the Franchise Tax Board or Peter Schlatter. The opposition merely asserts that "Counsel has been actively working with Creditors to resolve objections and properly provide for all filed claims, i.e., Franchise Tax Board and Peter Schlatter." Opposition, 2:2-4, ECF No. 104.

The Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor **prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss.** Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j).

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. 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 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 granted. The debtor has failed to make all payments due under the chapter 13 plan in this case or to file an amended Chapter 13 Plan. Delinquency and the failure to file an amended plan constitute cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

41. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-6-2023 [\[37\]](#)

GEOFF WIGGS/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
SANTANDER CONSUMER USA INC. VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2016 Mitsubishi Outlander

Cause: § 362(d)(1) delinquent payments

Pre-Petition Delinquency: 2.89 payments totaling \$1,835.55

Post-Petition Delinquency: 2 payments totaling \$1,267.30

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).

Santander Consumer U.S.A., Inc., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The movant is in possession of the subject property as it was surrendered to the movant on November 1, 2023. The Chapter 13 trustee filed a non-opposition to the motion, ECF No. 51.

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 2 postpetition payments are past due. The total postpetition delinquency is approximately \$1,267.30.

Alternatively, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

CO-DEBTOR STAY OF § 1301

The scope of the automatic stay is broader in chapter 13 cases than it is in chapters 7 and 11 cases. Section 1301(a) creates a co-debtor stay applicable in chapter 13 cases. 11 U.S.C. §§ 1301(a).

"After a Chapter 12 or 13 petition is filed, the stay extends to individuals who are "codebtors" with the debtor on a consumer debt—e.g., relatives, friends and others who cosigned or guaranteed a note (or other obligation) with the debtor." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:145 (rev. 2018). "The codebtor stay only applies where the codebtor is liable on the consumer debt and liable with the debtor to a third party. Stated otherwise, both the debtor and the codebtor must be liable to a third party and liable on the particular debt the third party is trying to collect." *Id.* ¶ 8:147.

RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c) (2)

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c) (2), 1201(c) (2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

When the plan pays only a fraction of the amount owed to the creditor on the claim for which the co-debtor is liable, the creditor is nevertheless entitled to relief from the co-debtor stay. The bankruptcy appellate panel has held that the co-debtor stay should be lifted when the plan provided for only 15% of the creditor's claim. The panel reasoned, "There is no limitation on the creditor's right to sue the co-debtor for the amount not provided for by the plan. There is no requirement that suit be deferred while the debtor pays under the plan during a period of years." *In re Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982).

"It would make little sense to defer such relief when it is known that the creditor will never receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the debtor has in effect stated [in the plan] the respective dimensions of his liability and that of the co-maker. Section 1301(a) (2) provides the creditor with freedom to pursue, to the latter extent, its claim against a co-debtor." *Id.*

In this case, the plan provides for the surrender of the subject vehicle. As a result, the movant is entitled to relief from the co-debtor stay in this case.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

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.

Santander Consumer U.S.A., Inc.'s motion for relief from the automatic stay 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 motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2016 Mitsubishi Outlander, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that the co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

42. [23-23872](#)-A-13 **IN RE: BRENDA/NAI SAEPHANH**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
11-27-2023 [\[15\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
CHERYL SKIGIN/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 February 27, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Ally Bank, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the objecting creditor shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the creditor's objection will be sustained on the grounds stated in the objection without further notice or hearing.

43. [23-21578](#)-A-13 **IN RE: GREGORIO TOSTADO**
[DPC-1](#)

MOTION TO DISMISS CASE
12-20-2023 [\[25\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 3, 2024

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. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,830.00 with one payment(s) of \$915.00 due prior to the hearing on this motion.

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 confirmed chapter 13 plan in this case. The court hereby dismisses this case.

44. [23-23585](#)-A-13 **IN RE: CHARLES WATERS**
[CK-1](#)

MOTION TO VALUE COLLATERAL OF PERSOLVE LLC AND/OR MOTION TO
AVOID LIEN OF PERSOLVE LLC
12-14-2023 [[13](#)]

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption or Motion to Value
Collateral

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order either avoiding the lien of Persolve, LLC, or valuing the collateral held by the creditor. The motion is brought under 11 U.S.C. § 506(a), (d), and Fed. R. Bankr. P. 3012. Motion, 1:25-26, ECF No. 13.

For the following reasons the motion will be denied without prejudice.

The heading of the motion states that is a Motion to Value Collateral and Motion to Avoid Judicial Lien. Motion, page 1, ECF No. 13. The first line of the motion states that the motion is a motion to avoid the judicial lien of the respondent. *Id.*, 1:18-19.

REQUESTED RELIEF IS UNCLEAR

At the time this case was filed, Persolve, LLC, held a judgment against the debtor from a lawsuit entitled Persolve LLC, dba Account Resolution Associates vs. Charles Waters, Case no. 18CV1580 filed in the Shasta

County Superior Court, judgement entered May 18, 2009, renewed December 24, 2018. Said judgment was recorded in the Shasta County Recorder's office on March 3, 2023, Document no. 2023-0004119 encumbering his real property at 35737 Corinthians Way, Shingletown, California with a balance owed at the time this case was filed of \$41,769.67.

Motion, 2:11-19, ECF No. 13.

The court cannot determine if the debtor seeks an order valuing the collateral of Persolve, LLC, under § 506(a), or the avoidance of a judicial lien under § 522(f). The motion only cites authority under § 506(a) which pertains to the valuation of collateral.

Given the contentions in the motion, it appears that the debtor seeks an order avoiding the judicial lien of Persolve, LLC. However, the debtor has cited no legal authority for a motion to avoid a judicial lien. The debtor has instead cited § 506(a) which pertains to the valuing of collateral. Given this discrepancy the court cannot determine the relief that is requested. Neither will the court presume what conclusion the respondent creditor may have reached upon receipt of the motion. LBR 9014-1(d)(3)(A).

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003).

No Evidence of Judicial Lien

Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).

LBR 9014-1(d)(3)(D).

To the extent the motion seeks avoidance of a judicial lien, the motion is again denied without prejudice. The debtor has failed to provide any admissible evidence of a judicial lien. The exhibits submitted do not contain a copy of the recorded abstract of

judgment. Neither does the debtor's declaration provide any testimony regarding the judicial lien.

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 debtor's Motion to Avoid Judicial Lien or Value Collateral 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.

45. [23-23286](#)-A-13 **IN RE: SUMMER PARRISH**
[DPC-1](#)

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

CARL GUSTAFSON/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.

On December 19, 2023, and as a courtesy to the court the Chapter 13 trustee filed a notice indicating that the debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot. Notice, ECF No. 28.

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.

46. [23-23987](#)-A-13 **IN RE: DALE/MARILYN BURDICK**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-20-2023 [\[15\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.

Final Ruling

This case was dismissed on January 12, 2024. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

47. [23-24087](#)-A-13 **IN RE: KERRY LUCY**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-20-2023 [\[16\]](#)

SETH HANSON/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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

48. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[DPC-4](#)

CONTINUED MOTION TO DISMISS CASE
10-23-2023 [\[164\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case
Notice: Continued from November 21, 2023
Disposition: Withdrawn by moving party
Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan and has failed to confirm a plan.

The debtor has filed a timely opposition to the motion. The hearing was continued to allow the parties to meet and confer.

TRUSTEE REPLY – Fed. R. Civ. P. 41

The trustee filed a timely request to withdraw his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. The trustee has indicated that the plan payments are now current.

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.

49. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[RJ-6](#)

MOTION TO CONFIRM PLAN
11-8-2023 [\[174\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to March 12, 2024, at 9:00 a.m.

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).

NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir. 2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Notices Contain Conflicting Provisions

The debtor filed an initial notice of hearing which stated that the hearing would take place on January 17, 2024, at 2:00 p.m. in Department E. Notice of Hearing, ECF No. 175. As such the notice incorrectly identified the location and time of the hearing.

On November 9, 2023, the debtor filed an amended notice of hearing. Amended Notice of Hearing, ECF No. 181. The amended notice contains conflicting provisions. The caption of the notice indicates that the motion will be heard on January 17, 2024, at 9:00 a.m. on the sixth floor. The body of the notice states that the hearing will be heard on January 27, 2024, at 9:00 a.m. on the seventh floor. The notice is inconsistent regarding the date and location of the hearing. The court will not presume the conclusion an opposing party might reach about when and where the hearing will be held.

The Chapter 13 trustee does not oppose the motion as the debtor has turned over funds from a previously undisclosed Wells Fargo Bank Account in the amount of \$7,411.41. The trustee requests that the order confirming the plan state that the "\$7,411.41 shall be an extra bonus payment into the plan for the benefit of unsecured creditors."

CONTINUED HEARING

The court will continue the hearing so that the debtor can file and serve a notice of continued hearing on all interested parties, and for the debtor to file a reply which indicates her position regarding the trustee's requested language.

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 hearing on this motion is continued to March 12, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than January 31, 2024, the debtor(s) shall file and serve a notice of continued hearing on all interested parties. The notice shall correctly identify the date, time, and place of the continued hearing, as well as contain all relevant provisions required by LBR 9014-1. The notice shall advise all potential respondents that opposition to the motion shall be filed and served no later than February 27, 2024.

IT IS FURTHER ORDERED that no later than March 5, 2024, the debtor shall file and serve a reply to the trustee's initial response to the motion. The court intends to rule in this matter without further notice or hearing.

50. [23-23697](#)-A-13 **IN RE: SAM/CHREB ROS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-13-2023 [\[19\]](#)

MOHAMMAD MOKARRAM/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 February 27, 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 February 27, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than January 30, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than January 30, 2024; the response shall specifically address each issue raised in the 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 debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than February 13, 2024. The evidentiary record will close after February 13, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than January 30, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.