



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

DAY: TUESDAY
DATE: JANUARY 30, 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. [22-20800](#)-A-13 **IN RE: PAMELA PARRISH**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[76\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative 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 16, 2024

Opposition Filed: January 17, 2024 - untimely

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. The trustee contends that the plan payments are delinquent in the amount of \$579.00, with one payment(s) of \$193.00 due before the hearing on this motion.

Monthly plan payments of \$193.00 were tendered from May 2022 through August 2023. The trustee received no plan payments in the following months: September 2023; October 2023; or November 2023. Since the trustee's motion was filed a further payment of \$193.00 has come due on December 25, 2023.

CONFIRMED PLAN

The bankruptcy petition was filed April 1, 2022, and a plan was confirmed on September 20, 2022.

The confirmed plan calls for payments of \$193.00 per month for 36 months, and pays unsecured creditors no less than 4.8% to unsecured creditors. First Amended Chapter 13 Plan, Section 2.01, 2.03, 3.14, ECF No. 47. Scheduled unsecured obligations total approximately \$71,606.28. *Id.*, Section 3.14. The confirmed plan provides that payments are due on the twenty-fifth day of each month as do the Local Rules of Practice, for the United States Bankruptcy Court, Eastern District of California.

Plan payments shall be made monthly and *must be received by the trustee on the twenty-fifth (25th) day of each month beginning the month after the order for relief under chapter 13.* All plan payments to the trustee by the debtor shall be by cashier's check, money order, or electronic transfer approved by the trustee.

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

PROCEDURE

The debtor, Pamela Parrish is deceased, passing away on August 17, 2023. On October 26, 2023, the debtor's surviving spouse David James Parrish, filed a motion for appointment as the estate representative, continued administration of the estate, and waiver of requirements (PSB-5).

On December 7, 2023, the court granted Mr. Parrish's unopposed motion and ordered as follows:

IT IS FURTHER ORDERED that (1) David James Parrish is the representative of Pamela Parrish and is substituted in her place and stead; (2) *continued administration is appropriate*; (3) as to Pamela Parrish the post-petition education requirement is waived, 11 U.S.C. s 109(h); and (4) as to Pamela Parrish the certifications required by 11 U.S.C. § 1328 are waived.

Order, ECF No. 75 (emphasis added).

Opposition to Dismissal Motion

Mr. Parrish the duly appointed representative has filed an opposition which is accompanied by the declaration of a staff person employed at counsel's office. The declaration states that the opposition to this motion was filed one day late, due to inadvertence on the part of the staff person. The Chapter 13 trustee supports the allowance of the late opposition in his reply. Reply, 1:24-26, ECF No. 83. The court will allow the late opposition.

The opposition requests a continued hearing date on the motion to dismiss so that Mr. Parrish may file, serve, and set a motion for hardship discharge under 11 U.S.C. § 1328(b). For the following reasons the court denies the request for continued hearing and will grant the motion to dismiss.

MOTION TO APPOINT REPRESENTATIVE

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary. Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as

possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016 (emphasis added).

On October 19, 2023, Mr. Parrish executed a declaration in support of his motion for continued administration. The declaration stated:

The continued administration of my wife's case is possible as I will be able to continue to make the monthly payments called for under the current plan as there is room in my budget to do so.

Declaration of David James Parrish, 9:9-11, ECF No. 69.

The court relied upon the declaration of David James Parrish in finding that continued administration of the plan was appropriate under Rule 2016, stating:

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

Civil Minutes, ECF No. 74.

The court notes that at the time Mr. Parrish executed the declaration in support of continued administration he had already failed to tender the plan payment which had come due on September 25, 2023. Neither had the payments been tendered for the October 25, 2023, or November 25, 2023, prior to the hearing on the motion for continued administration. Mr. Parrish did not file any evidence correcting the evidentiary record, prior to the hearing on his motion for continued administration. Therefore, the court's order was made in reliance upon false information.

Mr. Parrish's sworn testimony regarding his ability to make plan payments is inconsistent with his simultaneous actions. He has provided no information in his opposition to the trustee's motion to dismiss which would explain the inconsistencies and has offered no evidence supporting a hardship discharge in this instance. The court finds Mr. Parrish's request to continue this motion to dismiss for the purpose of filing a motion for hardship discharge approximately 5 weeks after the court's order for continued administration is suspect.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. The court is unable to deny the motion given the outstanding delinquency and Mr. Parrish's conduct.

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 confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

2. [22-21100](#)-A-13 **IN RE: OTTIE HARRIS**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[27\]](#)

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

Motion: Trustee's Motion to Dismiss

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

Disposition: Continued to March 26, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: January 16, 2024

Opposition Filed: January 17, 2024 - untimely

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 \$1,900.00 with two payment(s) of \$1,600.00 due prior to the hearing on this motion.

The debtor filed a late opposition to the motion, seeking time to file a modified plan. Counsel for the debtor indicates that his client is elderly, experienced significant medical problems, and has had trouble in communicating with his office.

The opposition consists of unsworn statements by debtor's counsel and no evidence by the debtor regarding these conditions. The opposition does not comply with LBR 9014-1(d)(3)(D).

The trustee reports that the debtor has consistently made plan payments, although not necessarily in the correct amounts, and that he supports a continuance of the motion, or a conditional order allowing the debtor to file and have heard a motion to modify the plan. "The Trustee is not opposed to the Debtor having reasonable time, presumably not more than 90 days, to propose and file a modified the plan." Trustee Reply, 2:6-7, ECF No. 34.

Because the trustee supports the request and reports plan payments by the debtor the court will grant the request for a continuance.

On January 23, 2024, the debtor filed a modified plan and motion to modify. The court will continue this matter to coincide with the debtor's motion. If the motion to modify is not granted the court intends to rule on this motion without further notice or hearing.

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 26, 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.

3. [24-20101](#)-A-13 **IN RE: LINDA CATRON**
[LC-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
1-11-2024 [\[9\]](#)

LINDA CATRON/ATTY. FOR MV.

Tentative Ruling

Motion: Impose the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

Debtor Linda Catron seeks an order imposing the automatic stay under 11 U.S.C. 362(c)(4)(B). For the following reasons the motion will be denied.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

Local Bankruptcy Rule 9014-1(e)(3) provides, "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served."

In this case the proof of service has been attached to the motion, ECF No. 9.

NOTICE INSUFFICIENT TO REQUIRE WRITTEN OPPOSITION

The motion and notice were served on January 10, 2024. *Id.* This is only 20 days prior to the hearing on the motion. However, the notice of motion states that written opposition is required. Written opposition may only be required if sufficient notice is given under LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires at least 28 days' notice of the motion to require written opposition.

PREVIOUS CHAPTER 13 CASES

The debtor has previously filed the following unsuccessful Chapter 13 cases in the Eastern District of California:

Case Number	Petition Filed	Attorney	Plan Confirmed	Date Dismissed	Reason for Dismissal
2018-23232	May 23, 2018	Eric Escamilla	No	October 19, 2018	Plan Delinquency; Failure to Confirm Plan
2018-26923	November 1, 2018	Ryan Stubbe	No	November 30, 2018	Failure to Timely File Documents
2019-24436	July 16, 2019	Pro Se	No	August 13, 2019	Failure to Timely File Documents
2023-20616	February 28, 2023	Pro Se	No	July 28, 2023	Plan Delinquency; Failure to Confirm Plan
2023-22522	July 31, 2023	Pro Se	No	October 19, 2023	Failure to File Documents

INSTANT CASE

Imposition of Stay

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed “only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed.” *Id.* (emphases added).

Discussion

The motion indicates that at least 2 or more cases were pending in the 1-year period preceding the current petition but were dismissed. A presumption that this case has not been filed in good faith arises under subsection (c)(4)(C) of section 362. See *id.* § 362(c)(4)(D)(i). Clear and convincing evidence is required to rebut the presumption. *Id.* Supporting declarations should proffer evidence that rebuts this presumption. The motion is not supported by sufficient evidence rebutting this presumption and demonstrating that the moving party is entitled to the relief requested. LBR 9014-1(d)(6).

For example, if applicable, the presumption may be rebutted by facts showing that, as to any of the prior cases in the past year that were dismissed, debtors had substantial excuse for any failure to file or amend the petition or other documents, or that such failure

was caused by the negligence of debtors' attorney. See *id.* § 362(c)(4)(D)(i)(II). Alternatively, if applicable, the declaration should address facts indicating a "substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case" or "any other reason to conclude" that the current case will result in a "confirmed plan that will be fully performed." See *id.* § 362(c)(4)(D)(i)(III).

The instant case was filed as a skeleton. A Notice of Incomplete Filing was issued and states that the following documents have not been filed: 1) Chapter 13 Plan; 2) Form 122C-1 Statement of Monthly Income; 3) Schedule A/B - Real and Personal Property; 4) Schedule C - Exempt Property; 5) Schedule D - Secured Creditors; 6) Schedule E/F - Unsecured Claims; 7) Schedule G - Executory Contracts; 8) Schedule H - Codebtors; 9) Schedule I - Current Income; 10) Schedule J - Current Expend.; 11) Statement of Financial Affairs; and 12) Summary of Assets and Liabilities. Notice, ECF No. 11.

The debtor has failed to make a prima facie case for extension of the automatic stay. The court is unable to evaluate the debtor's financial circumstances without all the factual information which is required by the missing documents.

The court notes that the failure to file documents is a reoccurring problem in the debtor's previous bankruptcy filings.

For each of these reasons the court will deny the motion.

CIVIL MINUTE ORDER

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

The debtor's Motion to Impose the Automatic Stay has been presented to the court. Having considered the [motion/application/objection] together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

4. [22-20602](#)-A-13 **IN RE: ADRIANA CHRISTIAN**
[DPC-1](#)

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

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied

Order: Civil minute order

Opposition Due: January 16, 2024

Opposition Filed: January 12, 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. The trustee contends that the plan payments are delinquent in the amount of \$795.00, with two payment(s) of \$395.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 25, 26. The debtor's declaration states that the debtor has as of January 12, 2024, made 4 payments to the trustee via TFS. The debtor contends that the plan payments are current. Declaration, 1:27-28, 2:1, ECF No. 26.

Absent opposition from the Chapter 13 trustee at the hearing on this motion, the court will deny the motion as the debtor has brought the plan payments current.

TRUSTEE REPLY

The trustee filed a reply on January 23, 2024, ECF No. 28. In his reply the trustee states that plan payments are current and requests that the motion be denied.

Accordingly, the court will deny the motion.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is denied.

5. [23-22603](#)-A-13 **IN RE: MASARU JACKSON**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[18\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: January 16, 2024

Opposition Filed: January 11, 2024 - timely

Motion to Modify Plan Filed: January 11, 2024 - 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 February 27, 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 February 27, 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.

6. [20-21905](#)-A-13 **IN RE: DIANE MORRIS**
[DPC-3](#)

MOTION TO DISMISS CASE
12-21-2023 [\[128\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: January 16, 2024

Opposition Filed: January 16, 2024 - timely

Motion to Modify Plan Filed: January 16, 2024 - 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 February 27, 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 February 27, 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.

7. [24-20005](#)-A-13 **IN RE: ROBERT CURTISS**
[PSB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-16-2024 [\[12\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

Previous Chapter 13 Filed: October 24, 2023

Previous Chapter 13 Dismissed: November 22, 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 debtor seeks an order extending the automatic stay under 11 U.S.C. § 362(c)(3).

The previous bankruptcy case was a skeleton filing with no schedules, statements or plan filed on behalf of the debtor. The debtor was represented by an attorney. The debtor's declaration in support of this motion states that: 1) the debtor filed his own petition at the courthouse; 2) that the debtor filed his own motion for additional time to file the necessary statements, schedules, and plan; and 3) due to inadequate communication with previous bankruptcy counsel the remaining documents were not filed. Declaration of Robert Corday Curtiss, ECF No. 15.

The debtor has retained a different attorney to represent him in the instant Chapter 13 case. All Statements, Schedules, and a Chapter 13 Plan have been filed in this case.

EXTENSION OF THE STAY

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

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

CIVIL MINUTE ORDER

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

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

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

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

8. [23-23514](#)-A-13 **IN RE: IGNATIUS HARRIS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
11-21-2023 [\[14\]](#)

MARIO BLANCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from December 19, 2023

Disposition: Overruled

Order: Civil minute order

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

The hearing on the Chapter 13 trustee's objection to confirmation of plan was continued to allow the parties to augment the evidentiary record. Both the debtor and the trustee have filed responses. The trustee's response states "[t]he Trustee no longer objects to confirmation and now recommends confirmation." Trustee Reply, 1:25-26, ECF No. 22.

Accordingly, the court will overrule the trustee's objection to confirmation.

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 overruled. The debtor shall submit an order confirming the plan which has been approved by the Chapter 13 trustee.

9. [22-22616](#)-A-13 **IN RE: FRANK SLAMA**
[DPC-2](#)

MOTION TO DISMISS CASE
12-21-2023 [\[37\]](#)

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 16, 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 \$3,695.08 with two payment(s) of \$925.00 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.

10. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
1-5-2024 [[159](#)]

CARL GUSTAFSON/ATTY. FOR DBT.
1/9/2024 FILING FEE PAID \$28

Final Ruling

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

11. [23-23218](#)-A-13 **IN RE: LISSA VARGAS**
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE
12-19-2023 [\[32\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Final Ruling

This case was dismissed on January 17, 2024. This motion is removed from the calendar as moot. No appearances are required.

12. [23-23722](#)-A-13 **IN RE: STACEY SCARBOROUGH**
[WLG-1](#)

MOTION TO CONFIRM PLAN
12-21-2023 [\[23\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed December 21, 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 Amended Chapter 13 Plan, ECF No. 27. The plan is supported by Schedule I filed at the inception of the case and Schedule J filed, December 13, 2023. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 30.

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.

13. [23-24522](#)-A-13 **IN RE: CHELSIE WILSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-3-2024 [\[14\]](#)

DEBTOR DISMISSED: 01/05/24

Final Ruling

This case was dismissed on January 5, 2024. This Order to Show Cause is removed from the calendar as moot. No appearances are required.

14. [23-23323](#)-A-13 **IN RE: CASEY WOODBURY**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
11-15-2023 [\[30\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from December 19, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the debtor to respond to the objection. On December 15, 2023, the debtor filed a non-opposition to the objection stating, "Debtor does not oppose the Court sustaining the Trustee's objection to confirmation." Non-Opposition, ECF No. 42.

Accordingly, the court will sustain the trustee's objection to confirmation.

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.

15. [23-23323](#)-A-13 **IN RE: CASEY WOODBURY**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON
SAVINGS FUND SOCIETY, FSB
11-16-2023 [[34](#)]

MARK SHMORGON/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from December 19, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The hearing on Wilmington Savings Fund Society, FSB's objection to confirmation was continued to allow the debtor to respond to the objection. On December 15, 2023, the debtor filed a non-opposition to the objection stating, "Debtor does not oppose the Court sustaining the Creditor's objection to confirmation." Non-Opposition, ECF No. 46.

Accordingly, the court will sustain the objection to confirmation.

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.

Wilmington Savings Fund Society, FSB'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.

16. [23-23323](#)-A-13 **IN RE: CASEY WOODBURY**
[MWP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN
11-8-2023 [\[25\]](#)

MARK SHMORGON/ATTY. FOR DBT.
MARTIN PHILLIPS/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from December 19, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

The hearing on Nina Barton, Co-Trustee of the Leon Barton and Nina Barton Living Trust Dated February 27, 1992, Leon Barton, Co-Trustee of the Leon Barton and Nina Barton Living Trust Dated February 27, 1992, Delia N. Jordan, Suzanne E. Hope, Trustee of the Suzanne E. Hope Separate Property Trust Dated May 17, 2012, Provident Trust Group, LLC FBI Delia Jordan IRA, Provident Trust Group, LLC FBO Stanley Bienus IRA, Provident Trust Group, LLC FBO Daniel Gralla Inherited IRA, Provident Trust Group LLC, Custodian FBO Akira Shinoda IRA, Kandi Dudley, Doris Keiser, John Keiser, Akira Shinoda (isaf)s' objection to confirmation was continued to allow the debtor to respond to the objection.

On December 15, 2023, the debtor filed a non-opposition to the objection stating, "Debtor does not oppose the Court sustaining the Creditor's (sic) objection to confirmation." Non-Opposition, ECF No. 44.

Accordingly, the court will sustain the objection to confirmation.

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.

Nina Barton, Co-Trustee of the Leon Barton and Nina Barton Living Trust Dated February 27, 1992, Leon Barton, Co-Trustee of the Leon Barton and Nina Barton Living Trust Dated February 27, 1992, Delia N. Jordan, Suzanne E. Hope, Trustee of the Suzanne E. Hope Separate Property Trust Dated May 17, 2012, Provident Trust Group, LLC FBI Delia Jordan IRA, Provident Trust Group, LLC FBO Stanley Bienus IRA, Provident Trust Group, LLC FBO Daniel Gralla Inherited IRA, Provident Trust Group LLC, Custodian FBO Akira Shinoda IRA, Kandi Dudley, Doris Keiser, John Keiser, Akira Shinoda (isaf)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.

17. [21-24227](#)-A-13 **IN RE: CAPRICE DANZY**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[35\]](#)

PETER BUNTING/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 16, 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 \$570.00 with two payment(s) of \$225.00 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. [23-22927](#)-A-13 **IN RE: HOWARD/MICHELE JOHNSON**
[MCT-2](#)

MOTION TO CONFIRM PLAN
12-15-2023 [\[47\]](#)

MELANIE TAVARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Matter: Motion to Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1); written opposition required
Disposition: Denied 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 motion to confirm plan filed. 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:

IT IS ORDERED that the motion to confirm Chapter 13 Plan is denied as moot.

19. [23-22927](#)-A-13 **IN RE: HOWARD/MICHELE JOHNSON**
[MCT-3](#)

MOTION TO CONFIRM PLAN
12-21-2023 [\[52\]](#)

MELANIE TAVARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Matter: Motion to Confirm Chapter 13 Plan
Notice: LBR 3015-1(d)(1); written opposition required
Disposition: Denied 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 motion to confirm plan filed. 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:

IT IS ORDERED that the motion to confirm Chapter 13 Plan is denied as moot.

20. [23-23130](#)-A-13 **IN RE: PAUL-MATTHEW FERNANDES**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[33\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

21. [23-23531](#)-A-13 **IN RE: DIEGO MUNOZ-ROCHA**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
11-22-2023 [\[15\]](#)

AUGUST BULLOCK/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from December 19, 2023

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.

22. [24-20037](#)-A-13 **IN RE: WILLIAM/LYNDA ANRIG**
[MOH-1](#)

MOTION TO RESCIND OR ANNUL THE FORECLOSURE SALE OF DEBTORS'
RESIDENCE
1-16-2024 [[13](#)]

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Motion: Rescind or Annul Foreclosure of Real Property

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

Disposition: Denied without prejudice

Order: Civil minute order

This is the debtors' motion to rescind or annul the foreclosure sale conducted on the debtor's real property pursuant to California Civil Code § 2924.

RULE 7001

The Federal Rules of Bankruptcy Procedure provide:

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) *a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;*

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

(3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;

(4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 1 727(a)(8), (a)(9), or 1328(f);

(5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;

(6) a proceeding to determine the dischargeability of a debt;

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) *a proceeding to obtain a declaratory judgment relating to any of the foregoing; or*

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

Fed. R. Bankr. P. 7001 (emphasis added).

Rule 7001(1), (9), require that the relief sought by the debtors must be obtained by filing an adversary proceeding and not by motion.

CIVIL MINUTE ORDER

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

The debtor's Motion to Vacate Foreclosure has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

23. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-2023 [\[139\]](#)

MUOI CHEA/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA MOTOR CREDIT CORPORATION VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition by the trustee and the debtors

Disposition: Denied without prejudice

Order: Civil minute order

Toyota Motor Credit Corporation ("Toyota") seeks an order for relief from the automatic stay to apply insurance proceeds to its bifurcated claim, which is currently provided for in the debtors' confirmed Chapter 13 Plan.

FACTS

The debtors' 2017 Toyota Prius has been declared a total loss. The vehicle is secured by an obligation to Toyota which is evidenced by Claim No. 6 in the amount of \$28,598.41.

The court granted the debtors' motion to value the Prius. The secured portion of the claim is \$18,716.00. Order Valuing Collateral, ECF No. 41, Civil Minutes, ECF No. 32.

The confirmed Chapter 13 Plan provides for Toyota's claim in Class 2 of the plan. Chapter 13 Plan, ECF No. 63. The plan was subsequently modified by ex-parte application and order to provide for increased plan payments and a 100% dividend to unsecured creditors. Order Modifying Plan, ECF No. 132.

The Chapter 13 trustee reports that the secured portion of Toyota's claim has been paid in full including interest pursuant to the confirmed plan. Trustee Opposition, 2:15-18, ECF No. 146. Only 15 months remain in the debtors' plan. *Id.*, 2:24. A portion of the unsecured claim has also been paid to Toyota, pursuant to the terms of the confirmed plan.

Toyota contends it is entitled to insurance proceeds sufficient to pay the unsecured portion of its claim in its entirety. Conversely, the trustee and the debtors contend that Toyota is bound by the terms of the confirmed plan and seek an order which allows the trustee to hold funds sufficient to pay the remaining balance on the unsecured portion of Toyota's claim during the remaining term of the

plan, and allow the debtors to perform the plan with regard to all unsecured claims.

CONFIRMED PLAN BINDS CREDITORS AND DEBTORS

The court notes that generally the terms of a confirmed plan are binding.

"[t]he provisions of a confirmed plan bind the debtor and each creditor ... whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). *In re Enewally*, 368 F.3d 1165, 1172 (9th Cir. 2004). Under § 1327(a), "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). "*In re Pardee*, 218 B.R. 916, 922-23 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999).

However, the court need not determine the disbursement of the insurance proceeds at this time as Toyota's service of the motion is insufficient.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Synchrony Bank. See ECF No. 8.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 144. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

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).

Because the moving party has failed to comply with Local Rules regarding service of the motion 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:

Toyota Motor Credit Corporation's Motion for Relief From the Automatic Stay 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.

24. [23-20245](#)-A-13 **IN RE: CHERYL ADLER**
[GC-3](#)

CONTINUED MOTION TO MODIFY PLAN
11-13-2023 [[60](#)]

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan
Notice: Continued from January 3, 2024
Disposition: Denied
Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification.

The hearing on this motion was continued to allow the parties to augment the evidentiary record, and to afford the Chapter 13 trustee an opportunity to review the debtor's opposition. The trustee filed a status report restating his opposition on January 16, 2024, ECF No. 75.

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5)

and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$26.89 under the proposed plan. While the delinquency is modest the modified plan cannot be approved if the plan payments are not current.

Mortgage Payments

The current confirmed plan provides for the claim of Select Portfolio, Claim No. 15, in Class 1 with monthly payments to the mortgage arrears in the amount of \$185.00, in addition to the ongoing mortgage payments. The claim (filed by U.S. Bank Trust, National Association) lists mortgage arrears in the amount of \$5,933.16. *Id.*

Conversely, the proposed modified plan provides for the payment of the claim in Class 1 but only as to the ongoing mortgage payment. Arrearage payments are not provided for in the modified plan.

The Chapter 13 trustee continues to oppose the motion as follows:

The Motion indicates Debtor received a loan modification and the mortgage arrears no longer exist, but the Trustee is to continue making the ongoing

mortgage payments for the duration of the plan (DN 60, page 2, lines 6-8).

The Debtor responded that the Debtor had in fact received a grant, not a loan modification, and the funds had been paid directly to the creditor to satisfy the pre-petition arrears. While the Trustee did provide a letter to the Debtor stating that he was not opposed to the parties discussing Debtor's eligible (sic) for available loan programs, the Trustee does not have authority to approve the Debtor's loan modification or any other grant program that the Debtor may be offered. Pursuant to the Local Bankruptcy Rules, any loan modification or new debt must be approved by the Court. This is additionally problematic for the Trustee where the Trustee was not a party to this transaction, had no idea that it even occurred, the plan still classifies the debt as a Class 1 debt and the Creditor has filed a proof of claim stating that the amount is owed.

Status Report, 3:2-16, ECF No. 75.

The debtor contends in her opposition that she received monies from the California Mortgage Relief Program. The debtor has also submitted an exhibit which shows that \$16,058.29 was remitted to the lender by the program on the debtor's behalf. Exhibit A, ECF No. 71. No further accounting has been filed in support of the motion.

Neither the debtor's declaration nor the exhibits submitted by the debtor describe the details of the transaction as a grant which does not require repayment. Nor does the remittance of \$16,058.29 by the California Mortgage Relief Program evidence that the mortgage arrears as stated in Claim No. 15 have been satisfied.

Claim No. 15 has not been withdrawn or amended by the creditor. Neither has the claim been objected to by the debtor. Until the issue regarding the arrears as stated in the claim have been resolved the feasibility of the proposed plan is in question. If the mortgage arrears still exist the debtor has not proven how they will be repaid.

The court also notes that the proposed modified plan fails to provide that payments made by the Chapter 13 trustee for mortgage arrears under the currently confirmed plan are allowed.

The court will deny the motion as the debtor has failed to prove the feasibility of the proposed plan, and need not consider the remaining issues raised in the trustee's opposition.

CIVIL MINUTE ORDER

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

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

The debtor's motion to modify a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied. The court denies modification of the chapter 13 plan.

25. [23-22345](#)-A-13 **IN RE: URIEL PIZANO**
[DPC-2](#)

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

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

26. [23-22345](#)-A-13 **IN RE: URIEL PIZANO**
[PGM-1](#)

MOTION TO CONFIRM PLAN
12-20-2023 [\[38\]](#)

PETER MACALUSO/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 \$150.00 with a further payment of \$600.00 due on January 25, 2024. The plan cannot be confirmed if the plan payments are not current.

Conflicting and Incomplete Income Information

The trustee contends that the income sources and amounts indicated in the debtor's Form 122C and Schedules conflict with testimony provided at the meeting of creditors. At the meeting of creditors, the debtor stated that he derives income from self-employment, operating a business called "GRO Construction". Opposition, 2:6-9, ECF No. 47. The trustee contends the plan is not feasible because of the conflicting information and raises an additional objection under 11 U.S.C. 1325(b) as it is unclear whether the information provided in Form 122C is complete and accurate.

The court has reviewed the following documents: 1) Amended Schedules I and J with business attachments, filed December 20, 2023, ECF No. 42; 2) Amended Statement of Financial Affairs, filed August 17, 2023, ECF No. 21; and 3) Amended Form 122C-2, filed August 17, 2023, ECF No. 19. The court has also reviewed the debtor's declaration in support of this motion, ECF No. 41.

The debtor's declaration provides no information regarding the debtor's income. As such it does not refute the trustee's opposition regarding the sources and amounts of the debtor's monthly income.

The debtor's amended Schedule I shows that the debtor is employed at Davis Development, and has been employed with this company for 10 years. The debtor also earns net income of \$2,175.00 per month from either self-employment or rents. Amended Schedule I, ECF No. 43. The attachment to Schedule I shows that the debtor's gross income from either self-employment or rents is \$2,700 per month and net income is \$2,175.00. However, the source(s) of the self-employment or rents is not identified in the attachment. Thus, the court cannot determine the source of the income, or if the debtor has listed all the income which he receives each month.

The debtor's amended Statement of Financial Affairs does not clarify the debtor's income. The debtor's income from the operation of "GRO Construction" in 2022 is listed as \$24,000.00. Amended Statement of Financial Affairs, No. 5, ECF No. 21. However, the document also states that GRO Construction ceased doing business February 2021. *Id.*, No. 27.

The debtor's Amended Form 122C-2 lists only income from GRO Construction and income from rents. Form 122C-2, page 9, ECF No. 19. Despite being employed at Davis Construction for 10 years no income from this source is listed in Form 122C.

The court finds that the bankruptcy schedules and related documents are inconsistent and/or incomplete regarding the debtor's current and past monthly income. As such the court cannot determine the debtor's income and finds that the debtor has failed to prove that the proposed plan is feasible. 11 U.S.C. § 1325(a)(6).

Complete and accurate income information is part of the debtor's prima facie case for confirmation and must be filed at the outset of the debtor's motion. The court will deny the motion.

Failure To Provide Financial/Business Documents

The debtor has 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 debtor failed to produce the following documents: 1) completed Business Questionnaire; 2) proof of business license and insurance.

The failure to provide complete income information makes it impossible for the chapter 13 trustee to accurately assess the debtor's 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).

DEBTOR REPLY

On January 23, 2024, the debtor filed a reply. Reply, ECF No. 54. The reply consists of unsworn factual statements made by debtor's counsel. Absent admissible evidence from the debtor regarding the

sources of his income, whether plan payments have been made, the tender of information to the trustee, and whether insurance or licenses exist or are required, the court gives no weight to the factual allegations made in the reply.

Moreover, as the court has indicated previously in this ruling, the income information is part of the debtor's prima facie case for confirmation of the plan and all the corrections to the record attempted by filing the reply should have been addressed at the outset of the motion either by declaration and/or amended schedules and statements.

Statement of Financial Affairs

The reply states as follows: "The debtor is amended (sic) question #4 and #5." *Id.*, 2:25. The court cannot determine whether the debtor has amended the Statement of Financial Affairs or will amend the document. Additionally, the court notes that an amended Statement of Financial Affairs does not appear on the court's docket currently. Moreover, the Chapter 13 trustee has not had an opportunity to review the amendments.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

27. [23-23651](#)-A-13 **IN RE: LESLIE BAKER**
[MEV-2](#)

MOTION TO CONFIRM PLAN
12-15-2023 [\[38\]](#)

MARC VOISENAT/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: Denied without prejudice

Order: Civil minute order

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

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

NOTICE CAPTION CONTAINS INCORRECT NAME OF DEBTOR

The title of the case or proceeding, the bankruptcy case, adversary proceeding, and/or miscellaneous proceeding number(s), and the Docket Control Number, if any, shall be included in the caption.

LBR 9004-2(a)(6).

The Notice of Hearing incorrectly lists the debtor's name as "Duane Alexander Ott" in the caption. Notice of Hearing, ECF No. 39. The court will not presume the conclusion any party receiving the notice would reach regarding the name of the debtor in this matter. The notice does not comply with LBR 9004-2(a)(6).

DOCUMENTS NOT SERVED

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

served at least thirty-five (35) days prior to the hearing.

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

In support of this motion to confirm the debtor has filed a Certificate of Service, ECF No. 41. The certificate does not indicate that any documents were served as required, as Section 4 of the certificate is blank. See Section 4, *id.* Neither is there an Attachment 4 affixed to the certificate which lists the documents which were served.

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

As Section 4 fails to list any of the documents which were served the court is unable to determine that service of the plan and motion comply with LBR 3015-1(d)(1).

The court will deny the motion without prejudice for improper service under LBR 3015-1(d)(1).

CIVIL MINUTE ORDER

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

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

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice. The court denies confirmation of the chapter 13 plan.

28. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
2-2-2023 [\[40\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from November 7, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

Petition Filed: December 15, 2022

Objection Filed: February 2, 2023

The hearing on the Chapter 13 Trustee's objection to confirmation has been continued multiple times to allow issues relating directly to the confirmation of the plan to be resolved by the debtor, the trustee, and the objecting creditor Richard Teague.

The debtor and creditor have agreed to a further continuance of additional contested matters to present, for court approval, a global settlement agreement. Because of the complexity of the issues and the settlement the parties requested a continuance of all matters until June 18, 2024.

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 RELIES ON MOTION TO AVOID LIEN

LBR 3015-1(i) provides that "[t]he hearing on a motion to avoid lien must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

On January 16, 2024, the Chapter 13 trustee filed a status report as required advising the court as follows:

Based on the Trustee's review of the docket and the joint status reports filed by the Debtor's attorney and Creditor's attorney, it appears that they are close to a settlement, although the Trustee has not been (sic) a party to those settlement negotiations and is unaware of the final terms and how they would affect the current plan being proposed for

confirmation. The Trustee has reviewed and filed a non-opposition to the Debtor's motion to approve compromise with Harry David Roth which will provide at least some of the funding for the Debtor's settlement with Creditor Teague.

Status Report, 2:6-13, ECF No. 168.

The trustee also indicates that the plan is not ripe for confirmation. *Id.*, 2:17-18.

In this case, the feasibility of the plan relies upon the debtor's successful avoidance of the lien of creditor Richard Teague. But the debtor has not yet obtained a favorable order on a motion to avoid the creditor's lien. Accordingly, the court must deny confirmation of the plan.

Moreover, the court notes that the contingent malpractice cause of action which is an asset of the bankruptcy estate is the subject of a motion to compromise controversy before this court. An amended plan will be required to incorporate into the plan the amount of the anticipated settlement.

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.

29. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-2](#)

CONTINUED OBJECTION TO HOMESTEAD EXEMPTION
2-24-2023 [\[64\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
ALAN NAHMIAS/ATTY. FOR MV.

Final Ruling

Objection: Homestead Exemption

Notice: Continued from November 7, 2023

Disposition: Continued to June 18, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor Richard Teague objects to the debtor's claim of exemption in her real property residence. The objection is opposed by the debtor.

A joint status report has been filed which states that after mediation, and further work with counsel, the parties have reached a global settlement of the issues raised in this objection and other motions concerning these parties which are before the court in this case. Status Report, ECF No. 165.

The parties have requested a continuance of this matter until June 18, 2024, at 9:00 a.m., so that a settlement agreement may be executed and a motion to compromise controversy, and other related motions, may be filed and heard by the court.

The stipulation also extends dates for discovery and other related matters.

The court will continue the matter as requested and approve the extension of discovery, opposition, and hearing dates as indicated in the stipulation.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to June 18, 2024, at 9:00 a.m. If the court has not approved the settlement agreement prior to the continued hearing date, then no later than 14 days prior to the hearing date the parties shall file a joint status report apprising the court of the status of this proceeding.

30. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-2](#)

CONTINUED MOTION OBJECTION/REBUTTAL TO DECLARATION OF JOSEPH
LYNCH IN SUPPORT OF OPPOSITION TO MOTION TO AVOID LIEN AND
OPPOSITION TO HOMESTEAD EXEMPTION
4-18-2023 [\[105\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Objection: Rebuttal to Declaration re Homestead

Notice: Continued from November 7, 2023

Disposition: Continued to June 18, 2024, at 9:00 a.m.

Order: Civil minute order

A joint status report has been filed which states that after mediation, and further work with counsel, the parties have reached a global settlement of the issues raised in this objection and other motions concerning these parties which are before the court in this case. Status Report, ECF No. 165.

The parties request a continuance of this matter until June 18, 2024, at 9:00 a.m., so that a settlement agreement may be executed and a motion to compromise controversy, and related motions between the parties, may be filed and heard by the court.

The stipulation also extends dates for discovery and other related matters.

The court will continue the matter as requested and approve the extension of discovery, opposition, and hearing dates as indicated in the stipulation.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection is continued to June 18, 2024, at 9:00 a.m. If the court has not approved the settlement agreement prior to the continued hearing date, then no later than 14 days prior to the hearing date the parties shall file a joint status report apprising the court of the status of this proceeding.

31. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-1](#)

CONTINUED MOTION TO AVOID LIEN OF RICHARD TEAGUE
1-27-2023 [\[23\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien

Notice: Continued from November 7, 2023

Disposition: Continued to June 18, 2024, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of creditor Richard Teague under 11 U.S.C. § 522(f). The motion is opposed by the creditor.

A joint status report has been filed by the parties which states that after mediation, and further work with counsel, the parties have reached a global settlement of the issues raised in this motion and related motions concerning these parties in this case. Status Report, ECF No. 165.

The parties request a continuance of this matter until June 18, 2024, at 9:00 a.m., so that a settlement agreement may be executed and a motion to compromise controversy, and related motions, may be filed and heard by the court.

The stipulation also extends dates for discovery and other related matters.

The court will continue the matter as requested and approve the extension of discovery, opposition, and hearing dates as indicated in the stipulation.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to June 18, 2024, at 9:00 a.m. If the court has not approved the settlement agreement prior to the continued hearing date, then no later than 14 days prior to the hearing date the parties shall file a joint status report apprising the court of the status of this proceeding.

32. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH HARRY DAVID ROTH
12-30-2023 [\[160\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Debtors, Harry David Roth

Dispute Compromised: Malpractice

Summary of Material Terms: \$190,000 payable to the Chapter 13 trustee

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 debtors seek an order approving the settlement of a malpractice claim which is an asset of the bankruptcy estate. The debtors and defendant Harry David Roth have agreed to a settlement of \$190,000. The parties have agreed that the proceeds shall be delivered to the Chapter 13 trustee for distribution in the instant case. While the Chapter 13 trustee was not a party to the settlement agreement, he has filed a non-opposition to this motion with the understanding that the funds will be payable to the bankruptcy estate. Non-Opposition, ECF No. 167.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily

attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement filed concurrently with the motion as Exhibit A, ECF No. 162. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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 approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 162. The proceeds will be paid to the Chapter 13 trustee.

33. [22-21655](#)-A-13 **IN RE: FLOYDETTIE JAMES**
[DPC-2](#)

MOTION TO DISMISS CASE
12-21-2023 [\[31\]](#)

MATTHEW GRECH/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss case

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

Disposition: Denied without prejudice

Order: Civil minute order

The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Capital One Auto Finance, a division of Capital One, N.A. Department AIS Portfolio Services, LLC. See ECF No. 12.

The Certificate of Service, states that the special notice parties were served with the motion. See *Certificate of Service*, Section 5, ECF No. 34. However, there is no attachment which includes the special notice parties in the matrix. Counsel for the trustee is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

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).

Because the moving party has failed to comply with Local Rules regarding service of the motion 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 Chapter 13 trustee's Motion to Dismiss 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.

34. [22-23156](#)-A-13 **IN RE: KELLY JONES**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[29\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the moving party

Order: Civil minute order

Opposition Due: January 16, 2024

Opposition Filed: January 16, 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.

The debtor has filed a timely opposition, ECF Nos. 33, 34

TRUSTEE REPLY – Fed. R. Civ. P. 41

The trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

35. [23-23658](#)-A-13 **IN RE: NATHANIEL DIAS**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
12-6-2023 [\[14\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from January 3, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The court finds that the debtor has failed to prove the plan is feasible under 11 U.S.C. § 1325(a)(6).

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).

Schedules I and J

The trustee objected to confirmation contending that he was unable to determine if the plan was feasible under 11 U.S.C. § 1325(a)(6) as the debtor's Schedules I and J were outdated. The debtor testified at the meeting of creditors that he had a new employer and the trustee requested amended schedules.

The debtor filed amended Schedules I and J on January 6, 2024, ECF Nos. 20, 21, 22. The schedules evidence the following changes to the debtor's budget.

The schedule shows an additional \$2,085 gross income, with \$370 more in transportation which was \$100 before, another \$406.52 for taxes which was \$608.00 before, \$220 entertainment which was \$0 before, \$0 now for vehicle tax/registration where \$22, a new \$258.75 voluntary retirement which was \$0 before, and a \$659 for medical insurance which was \$0 before.

Trustee Reply, 1:25-28, ECF No. 29.

The debtor has failed to explain the need for any of the changes to his expenses. No declaration was submitted detailing the reasons for the changes to the debtor's budget. No documents were submitted as evidence of expenses including as the trustee notes, any proof of the amount of the medical insurance expense as required by 11 U.S.C. § 1325(b). The

court finds that the debtor has failed to prove that his proposed plan is feasible.

Accordingly, the court will sustain the trustee's objection and need not address the remaining issues raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

36. [20-24667](#)-A-13 **IN RE: WENDY SILVA**
[DPC-1](#)

MOTION TO DISMISS CASE
12-21-2023 [\[44\]](#)

RONALD HOLLAND/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: January 16, 2024

Opposition Filed: January 19, 2024 - untimely

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

Best Interests of Creditors/Estate: Dismiss

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 \$2,964.88 with two payment(s) of \$2,263.92 due prior to the hearing on this motion.

DEBTOR OPPOSITION

On January 19, 2024, the debtor filed opposition to the motion. 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 court notes that the debtor(s) did not file a request for enlargement of time to oppose the motion under Fed. R. Bankr. P. 9006(b). In the future counsel shall seek the court's permission to file late opposition.

The opposition is supported by a detailed declaration of the debtor. Declaration of Wendy Renee Silva, ECF No. 49. The declaration details what caused the plan payments to become delinquent and states that the debtor has made the following payments via TFS:

A payment of \$1,900 made on January 17, 2024
A payment of \$1,900 made on January 18, 2024
A payment of \$634.04 was also made on January 18, 2024.

Id., 2:15-17.

The declaration also states that the debtor will pay the remaining delinquency prior to January 30, 2024.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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.

37. [23-21868](#)-A-13 **IN RE: JEREMY NAVA-SALINAS**
[MDM-5](#)

CONTINUED MOTION TO CONFIRM PLAN
9-25-2023 [\[47\]](#)

MATTHEW METZGER/ATTY. FOR DBT.

Tentative Ruling

Motion: Confirm Chapter 13 Plan

Notice: Continued from December 19, 2023

Disposition: Denied

Order: Civil minute order

Attorney Anuar Ramirez-Medina is ordered to appear at the hearing on this matter. The appearance may be made via Zoom or telephone.

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.

PROCEDURE

The hearing on this motion has been continue twice. The first continuance required attorney Anuar Ramirez-Medina, who represents objecting creditor Reimundo Rubio-Lopez, to: 1) become admitted to the Eastern District of California; and 2) to file opposition to the motion. Counsel is now admitted to the Eastern District, but failed to file opposition as ordered.

At the continued hearing the court ordered as follows:

IT IS ORDERED THAT the hearing on this motion will be continued to January 30, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if creditor Reimundo Rubio-Lopez elects not to oppose the motion then he shall file and serve a statement of nonopposition no later than January 9, 2024.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the

debtor's motion to confirm is withdrawn, then creditor Reimundo Rubio-Lopez shall file and serve written opposition to the motion not later than January 9, 2024.

IT IS FURTHER ORDERED that the Chapter 13 trustee and the debtor shall file and serve a reply, if any, no later than January 16, 2024. The evidentiary record will close after January 16, 2024. The court may rule on this motion without further notice or hearing.

Order, ECF No. 63.

Both the debtor and the Chapter 13 trustee have complied with the court's order and filed status reports on January 16, 2024.

CREDITOR OPPOSITION

On January 16, 2024, the objecting creditor filed a document titled "Notice of Motion and Motion Opposing Debtor's Second Amended Plan", which the court deems an opposition to the motion, ECF No. 66. The document is improperly titled and should have been titled "Opposition to Debtor's Motion to Confirm Second Amended Plan".

The single document contains 53 pages and contains: 1) a Notice of Motion and Motion; 2) Points and Authorities; 3) Multiple Exhibits; and 4) a Certificate of Service.

Opposition is Untimely

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.

The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a

factual issue is both material and in dispute. Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P. 43(c).

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

The objecting creditor has failed to timely file an opposition on or before January 9, 2024, as ordered. The court will hear from counsel for the creditor regarding this issue.

Additionally, the creditor incorrectly titled and filed an objection to confirmation which is supported by a declaration when initially opposing the motion, ECF Nos. 55, 56, 57.

Exhibits

Exhibits.

- 1) *Separate Exhibit Document(s).* Exhibits shall be filed as a separate document from the document to which it relates and identify the document to which it relates (such as "Exhibits to Declaration of Tom Swift in Support of Motion for Relief From Stay"). A separate exhibit document may be filed with the exhibits which relate to another document, or all of the exhibits may be filed in one document, which shall be identified as "Exhibits to [Motion/Application/Opposition/...]."
- 2) *Exhibit Index.* Each exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document.
- 3) *Numbering of Pages.* The exhibit document pages, including the index page, and any separator, cover, or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit.

LBR 9004-2(d)(1), (2), (3) (emphasis added).

Multiple exhibits filed by the creditor are attached to the opposition filed at ECF No. 66. This violates LBR 9004-2(d)(1). Moreover, the exhibits are not referenced in the index by page number, nor are the exhibit pages numbered as required under LBR 9004-2(d)(2), (3). The purpose of LBR 9004-2(d)(1), (2), (3) is to ensure that the court and all interested parties can efficiently and accurately locate and review appropriate documents in support of a motion. This is particularly important where there are multiple documents submitted as exhibits. In the future, failure to follow local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

Service

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

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

The creditor has failed to use Form 7-005 in memorializing service of the opposition, ECF No. 66. Service does not comply with LBR 7005-1.

Service Via Email

- (a) 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.
- (b) 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(a)(b).

The certificate of service purports to serve the trustee and the debtor by email service. However, the certificate does not attach the clerk's matrix of registered users as required if service was under LBR 7005-1(a). Neither does the

certificate include the required evidence of written consent if service was pursuant to LBR 7005-1(b).

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).

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 objecting creditor contends the plan is not proposed in good faith, 11 U.S.C. § 1325(a) (3).

As the creditor has raised the issue of good faith the court will hear from the parties regarding a continued hearing for the debtor to provide rebuttal evidence or the need for an evidentiary hearing.

In the absence of a continued hearing the court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

38. [22-23071](#)-A-13 **IN RE: DOUGLAS/PHATHUMPORN OVERSTREET**
[DPC-2](#)

MOTION TO DISMISS CASE
12-21-2023 [\[32\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative 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 16, 2024

Opposition Filed: January 12, 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. The trustee contends that the plan payments are delinquent in the amount of \$6,412.17, with two payment(s) of \$3,219.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 36, 37. The debtor's declaration states that the debtors made a payment in December 2023 via TFS, and then two subsequent payments of \$3,219.00 through TFS in January 2024. The debtors intend to tender the January 2024 payment via Money Gram which will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 37.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

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 confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

39. [22-22985](#)-A-13 **IN RE: BRANDY ORR**
[DPC-2](#)

MOTION TO DISMISS CASE
12-21-2023 [[39](#)]

MATTHEW DECAMINADA/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 16, 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 \$800.00 with two payment(s) of \$400.00 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.

40. [23-23286](#)-A-13 **IN RE: SUMMER PARRISH**
[CRG-1](#)

MOTION TO CONFIRM PLAN
12-13-2023 [\[22\]](#)

CARL GUSTAFSON/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: Granted

Order: Civil minute order

Plan: First Amended Chapter 13 Plan, filed December 13, 2023

The motion requests confirmation of the First Amended Chapter 13 plan in this case, ECF No. 23. 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. The trustee contends that the proposed payments of attorney compensation do not comply with LBR 2016-1(c)(4)(B).

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).

ATTORNEY COMPENSATION PAYMENTS IMPROPERLY SCHEDULED IN PLAN

After confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel *equal monthly installments over the term* of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received. *Debtor(s)' counsel is enjoined from front-load payment of fees and/or costs.*

LBR 2016-1(c)(4)(B) (emphasis added).

The proposed plan has a term of 60 months. First Amended Chapter 13 Plan, Section 2.03, ECF No. 23. The plan calls for monthly payments of \$260.00 for attorney compensation. *Id.*, Section 3.06. The balance due on the attorney compensation is \$9,349.00. *Id.*, Section 3.05. Payments of \$260.00 per month would pay the balance of compensation due in 36 months. This violates LBR 2016-1(c)(4)(B) which requires that compensation be amortized over the plan term of 60 months.

The Chapter 13 trustee has no further objection to plan confirmation and suggests that a change to the monthly rate of compensation would

resolve his objection. The trustee proposes that the Order Confirming the Plan contain a provision which changes the payment of monthly attorney compensation to \$155.82. Opposition, 2:3-4, ECF No. 31.

DEBTOR REPLY

On January 17, 2024, the debtor filed a reply which states "[t]he Debtor agrees with the Trustee that the monthly dividend to the attorney shall be \$155.82 and that this can be resolved in the Order Confirming Plan."

Accordingly, the court will grant the motion. The Order Confirming the Plan shall provide that monthly attorney compensation payments are \$155.82.

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 granted. The debtor shall submit an Order Confirming the Plan which complies with the court's ruling, and which has been approved by the Chapter 13 trustee.

41. [23-23986](#)-A-13 **IN RE: DANETTE SPANGLER**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
12-21-2023 [\[21\]](#)

MICHAEL HAYS/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: November 7, 2023

Previous Chapter: 7

Previous Petition Filed: June 22, 2020

Previous Discharge: October 19, 2020

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 June 22, 2020, 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.

42. [23-23390](#)-A-13 **IN RE: AARON/REBECCA ULDALL**
[KLG-1](#)

MOTION TO CONFIRM PLAN
12-11-2023 [\[31\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

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

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

DOCUMENTS NOT SERVED

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, *the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it.* Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

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

In support of this motion to confirm the debtor has filed a Certificate of Service, ECF No. 34. The certificate does not indicate that any documents were served as required, as Section 4 of the certificate is blank. See Section 4, *id.* Neither is there an Attachment 4 affixed to the certificate which lists the documents which were served.

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

As Section 4 fails to list any of the documents which were served the court is unable to determine that service of the plan and motion comply with LBR 3015-1(d)(1).

The court will deny the motion without prejudice for improper service under LBR 3015-1(d)(1).

CIVIL MINUTE ORDER

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

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

The debtor's motion to confirm a chapter 13 plan has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing, presented at the hearing,

IT IS ORDERED that the motion is denied without prejudice. The court denies confirmation of the chapter 13 plan.

43. [23-22093](#)-A-13 **IN RE: GURPREET SANGHA**
[SLH-1](#)

OBJECTION TO CLAIM OF TPINE LEASING CAPITAL LP, CLAIM NUMBER
7
12-15-2023 [[16](#)]

SETH HANSON/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Objection to Claim

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

Disposition: Sustained

Order: Civil Minute Order

Deadline to File Non-Governmental Claims: September 5, 2023

Claim Filed: November 16, 2023

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). 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 objects to the claim of TPine Leasing Capital LP, Claim No. 7, contending that the claim was filed after the deadline to file claims.

LEGAL STANDARDS

Ordinarily, in chapter 13 and 12 cases, late-filed claims are to be disallowed if an objection is made to the claim. 11 U.S.C. § 502(b)(9). Some exceptions for tardily filed claims apply in chapter 7 cases. See *id.* And these exceptions permit the tardily filed claims in chapter 7 but may lower the priority of distribution on such claims unless certain conditions are satisfied. See *id.* § 726(a)(1)-(3).

Some exceptions also exist under the Federal Rules of Bankruptcy Procedure. See *id.* § 502(b)(9); Fed. R. Bankr. P. 3002(c). Federal Rule of Bankruptcy Procedure 9006(b)(3) provides that "[t]he court may enlarge the time for taking action under [certain rules] only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 3002(c) is identified in Rule 9006(b)(3) as a rule for which the court cannot enlarge time except to the extent and under the conditions stated in the rule. *Id.*

In short, the general rule in chapter 13 and 12 cases is that a creditor must file a timely proof of claim to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules. See *In re Barker*, 839 F.3d 1189,

1196 (9th Cir. 2016) (holding that bankruptcy court properly rejected creditor's proofs of claim that were filed late in a chapter 13 case even though the debt had been scheduled). A plain reading of the applicable statutes and rules places a burden on each creditor in such cases to file a timely proof of claim. Absent an exception under Rule 3002(c), a claim will not be allowed if this burden is not satisfied. Id. at 1194.

DISCUSSION

Here, the respondent's proof of claim was filed after the deadline for filing proofs of claim. None of the grounds for extending time to file a proof of claim under Rule 3002(c) are applicable. Fed. R. Bankr. P. 3002(c)(1)-(6). The exceptions in § 502(b)(9) for tardily filed claims under § 726(a) do not apply. So, the claim will be disallowed.

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.

Debtor's objection to claim 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 objection,

IT IS ORDERED that the objection is sustained. Claim No. 7 will be disallowed.