



**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: MARCH 12, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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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. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[DPC-1](#)

MOTION TO DISMISS CASE
2-9-2024 [\[148\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

2. [21-23601](#)-A-13 **IN RE: POLLEN HEATH**
[JNV-8](#)

MOTION TO MODIFY PLAN
1-26-2024 [\[141\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: 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.

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 payments under the proposed plan are delinquent in the amount of \$250.00. The plan cannot be confirmed if the plan payments are not current.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 71 months to fund as proposed.

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

The court will deny modification of the debtor's plan.

MOTION FAILS TO STATE LEGAL BASIS FOR RELIEF

The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

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

The motion fails to state any legal authority for the relief which is requested. This contravenes LBR 9014-1(d)(3)(A). The court will deny the motion.

The court need not address 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.

3. [23-23501](#)-A-13 **IN RE: MARSHALL FINNEY**
[BLG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S)
1-31-2024 [[25](#)]

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

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$3,320.00

Reimbursement of Expenses: \$39.06

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Chad Johnson of the Bankruptcy Law Group, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court

allow compensation in the amount of \$3,320.00 and reimbursement of expenses in the amount of \$39.06.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

Chad Johnson of the Bankruptcy Law Group, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,320.00 and reimbursement of expenses in the amount of \$39.06. The aggregate allowed amount equals \$3,359.06. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$2,817.06 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

4. [22-23014](#)-A-13 **IN RE: DANIEL/VICKI JACOBS**
[PSB-3](#)

MOTION TO RECONSIDER
2-20-2024 [[66](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Reconsider order overruling objection [Fed. R. Civ. P. 59(e)]

Notice: LBR 9014-1(f)(2); non-opposition filed by Chapter 13 trustee

Disposition: Granted; Claim Objection sustained

Order: Civil minute order

Claim: NetCredit, Claim No. 6

Claim Filed: October 2, 2023

Bar Date: January 30, 2023

The debtors seek an order reconsidering the court's ruling which overruled the objection to Claim No. 6 filed by NetCredit.

RECONSIDERATION

Federal Rule of Civil Procedure 59(e) permits motions to alter or amend a judgment. Fed. R. Civ. P. 59(e), *incorporated by* Fed. R. Bankr. P. 9023. "Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Id.* at 1255 n.1 (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2810.1 (2d. ed. 1995)).

"A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (emphasis omitted) (internal quotation marks omitted). A clear or manifest error of law or fact "is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). "A 'manifest error' is not demonstrated by the disappointment of the losing party." *Id.*

More recently, the Ninth Circuit has established "four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curiam)).

ANALYSIS

The court overruled the objection to the claim of NetCredit because the certificate of service had not been completed. As such the court was unable to verify that service of the objection complied with Fed. R. Bankr. P. 3007. Civil Minutes, ECF No. 64.

The debtors' motion states that the certificate of service was properly completed at the filing of the objection to claim. The motion is accompanied by a copy of the completed certificate as Exhibit A, ECF No. 69.

The certificate of service was blank on the court's docket because the document was not "flattened" by counsel when it was filed. Information about how to "flatten" a document, and preventing further like occurrences when filing is available on the court's website.

The court will grant the motion to reconsider and vacate the order overruling the objection to the claim. The court finds that the objection to claim of NetCredit was properly served under Fed. R. Bankr. P. 3007.

CLAIM OBJECTION

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. *TeleVideoSys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors object to the claim of NetCredit, Claim No. 6 contending that the claim was filed after the claims bar date of January 30, 2023.

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.

The debtors' motion to reconsider the order overruling debtors' objection to the claim of NetCredit, Claim No. 6, has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that: (1) the motion is granted; and (2) the order overruling the objection to claim of NetCredit, ECF No. 65, is vacated.

IT IS FURTHER ORDERED that the debtors' 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, the court sustains the objection. The claim of NetCredit, Claim No. 6, is disallowed.

5. [24-20114](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[CCR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ELENA S. REMUS AND
DAVID ALLAN REMUS
2-15-2024 [\[21\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
CHERYL ROUSE/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to May 7, 2024, at 9:00 a.m.

Order: Civil minute order

Creditors, Elena S. Remus and David Allen Remus, object to
confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the
parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued
to May 7, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree
that the creditor's objection is well taken, the debtor(s) shall
concede the merits and file a statement of non-opposition no later
than April 9, 2024. L.R. 230(c) ("A responding party who has no
opposition to the granting of the motion shall serve and file a
statement to that effect...); LBR 1001-1(c)-(d) (omitting the
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)
disagrees with the creditor's objection, the debtor(s) shall file
and serve a written response to the objection not later than April
9, 2024; the response shall specifically address each issue raised

in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

6. [24-20114](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[CCR-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY KATHLEEN KNERAM AND
DAVID KNERAM
2-15-2024 [[26](#)]

SCOTT JOHNSON/ATTY. FOR DBT.
CHERYL ROUSE/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to May 7, 2024, at 9:00 a.m.

Order: Civil minute order

Creditors, Kathleen Kneram and David Kneram, object to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

7. [24-20114](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-14-2024 [[15](#)]

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee’s Objection to Confirmation of Plan

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

Disposition: Continued to May 7, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee’s objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) (“A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee’s objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the trustee’s objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support

of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 24, 2024. The evidentiary record will close after April 24, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

8. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[DPC-4](#)

OBJECTION TO CLAIM OF MDG USA INC., CLAIMNUMBER 15
1-24-2024 [[218](#)]

MARK WOLFF/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
DEBTOR NON-OPPOSITION

Final Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Civil minute order

The Chapter 13 Trustee objects to the claim of MDG USA, Inc., Claim No. 15. The debtor has filed a non-opposition to the objection, ECF No. 223. The objection will be overruled without prejudice as follows.

INCORRECT AND CONFLICTING NOTICE PROVISIONS

"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)).

Objections to proofs of claims in the Eastern District are governed by LBR 3007-1.

LBR 3007-1(b)

In the Eastern District of California notice of an objection to proof of claim must comply with the requirements of LBR 3007-1(b)(1), (2). The rule allows a choice of two different notice periods. LBR 3007-1(b)(1) requires 44 days' notice of the objection and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 3007-1(b)(2) requires only 30 days' notice of the objection and does not require the opposing party to file and serve written opposition prior to the hearing. See, LBR 3007-1(b)(1), (2).

The notice filed and served in this matter states that "NOTICE IS HEREBY GIVEN PURSUANT TO LBR 3015-1(c)(4) & 9014-1(f)(2)". Notice of Trustee's Objection Claim, 1:21, ECF No. 219. LBR 3015-1 and 9014-1 are inapplicable in an objection to claim.

Moreover, LBR 9014-1(f)(2) specifically states that written opposition to a motion is not required. Conversely, the trustee's notice indicates that written opposition to the objection is required no later than February 27, 2024. Notice, 2:14, ECF NO. 219.

The court will not presume the conclusion an opposing party might reach about whether written opposition is required. The notice given in this matter does not satisfy the requirements of LBR 3007-1.

Creditors and parties in interest have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Further, LBR 9014-1(d)(3) requires that the notice of hearing advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with the opposition. Because creditors do not have adequate notice of when and how to present their objections, due process has not been satisfied.

The court will overrule the objection to claim without prejudice.

CIVIL MINUTE ORDER

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

The trustee's objection to claim has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

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

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

TRACY WOOD/ATTY. FOR DBT.

Final Ruling

Objection: Objection to Claim No. 20
Notice: Continued from January 17, 2024
Disposition: Overruled with prejudice
Order: Civil Minute Order

Petition Filed: May 28, 2023
Claim No. 20 Filed: July 26, 2023

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

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

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

The previous objections were overruled without prejudice either for procedural deficiencies in the pleadings, failure to comply with Local Rules of Practice, and/or notice and service defects.

The hearing on the instant objection was continued to allow the objecting debtor to submit admissible evidence and for the claimant and the trustee to respond.

OBJECTION

Debtors' Objection

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

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

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

- a. The mortgage has no arrearages, it is current, and has always been current.
- b. The alleged "arrears" was for property taxes the loan servicer subsequently added to the mortgage payment by increasing the payment to \$4,290.36 to cover both the mortgage and the property tax.

- c. The property taxes have been paid off and the mortgage payment has returned to \$3,694.66 indicating there are no arrears.
- d. *Payment history is attached as evidence.*

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

Claimant Opposition

The claimant opposes the objection as follows:

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

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

CLAIM OBJECTION

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

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

HEARING CONTINUED FOR ADMISSIBLE EVIDENCE

Admissible Evidence is Required

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

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

While the debtors have failed to file any admissible evidence in support of the objection, there is a countervailing interest in

disposing of cases on their merits. See, *In re Bessler*, 2016 WL 6441235, at *4 (B.A.P. 9th Cir. 2016). As such, the court continued the hearing on this matter to allow the debtors to provide admissible evidence, and for the claimant and Chapter 13 trustee to respond. The court stated:

If evidence is filed, the court may rule on this matter without further notice or hearing, or may determine that an evidentiary hearing is warranted.

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

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

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

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

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

Civil Minutes, ECF No. 156.

Debtors Failed to Submit Evidence as Ordered

In its previous ruling the court ordered:

IT IS ORDERED THAT the hearing on this objection will be continued to March 12, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than February 13, 2024, the debtor(s) shall file and serve a reply to the claimant's opposition, and file and serve

admissible evidence in support of the objection. The reply shall specifically address each issue raised in the creditor's opposition, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtors' position. LBR 9014-1(d) (3) (D).

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

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

Order, ECF No. 166.

The debtors have failed to file any additional evidence in support of the objection. As no evidence was submitted with the objection when filed, the objection is unsupported by any admissible evidence.

The court will overrule the objection with prejudice as indicated in its previous ruling.

CIVIL MINUTE ORDER

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

The debtors' Objection to the Claim of NewRez, LLC, Claim No. 20, has been presented to the court. Having considered the objection together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the objection is overruled with prejudice.

10. [24-20025](#)-A-13 **IN RE: MATTHEW MAURICE**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-15-2024 [[20](#)]

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to May 7, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support

of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 24, 2024. The evidentiary record will close after April 24, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

11. [24-20027](#)-A-13 **IN RE: RASUL SHEVCHENKO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-7-2024 [\[26\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: 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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that:

[i]f a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing 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.

LBR 3015-1(i).

In this case, the sole basis for the trustee's objection is that the plan proposes to reduce Ukrainian Federal Credit Union's Class 2 secured claim based on the value of the collateral securing such claim.

The court has issued an order approving a stipulation between the debtor and the Ukrainian Federal Credit Union regarding the value of the collateral. The court ordered the value of the 2016 Volvo VNL62T780 Sleeper Cab Truck, VIN# 4V4NC9EJ7GN948805 ("Vehicle") for plan confirmation shall be \$12,175.00. Order, ECF No. 34.

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.

12. [22-20436](#)-A-13 **IN RE: JEFFREY WEIDLER**
[DPC-1](#)

MOTION TO DISMISS CASE
2-9-2024 [\[19\]](#)

SCOTT JOHNSON/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: February 27, 2024

Opposition Filed: February 27, 2024 - timely

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

Best Interests of Creditors/Estate: Convert

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 \$2,091, with one payment(s) of \$1,400.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of Counsel, ECF No. 23, 24. The opposition states "Debtor intends to tender an additional payment in order to bring the payments current on or before March 5, 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.

Moreover, the opposition is not properly supported by admissible evidence. Counsel's assertion that the debtor intends to tender an additional payment is hearsay. Fed. R. Evid. 801. The declaration must be made by the debtor not debtor's counsel, to be admissible.

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 Chapter 13 trustee requests dismissal and contends that dismissal is in the best interests of the creditors and the estate. The trustee also reports that "[a]ccording to the Trustee's records, there is \$20,673 in non-exempt equity in the assets listed on Schedules A & B." Motion, ECF No. 19.

The trustee provides no analysis regarding the amount of funds which have been distributed to unsecured creditors during the pendency of the plan. Neither does the trustee describe the assets which are not exempt and provide their values. This is information which henceforth shall be included in the trustee's analysis so that the court may make an informed decision regarding the best interests of the creditors and the estate.

The trustee shall be prepared to support his position regarding dismissal of the case and the best interests of the creditors and the estate.

The court finds that conversion is in the best interests of the creditors and the estate.

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 convert this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby converts this case.

13. [23-24636](#)-A-13 **IN RE: GLORIA MORRISON**

OBJECTION TO CONFIRMATION OF PLAN BY CROSSCOUNTRY MORTGAGE,
LLC
2-9-2024 [\[20\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CAREN CASTLE/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to May 7, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Cross Country mortgage, LLC, objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record. The court will also require the objecting creditor to serve notice of the continued hearing on all parties which have filed a request for special notice.

SERVICE - SPECIAL NOTICE PARTIES

Special Notice Creditors

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

The following parties filed a request for special notice: Cenlar FSB. See ECF No. 10.

The certificate of service does not indicate that special notice parties were served with the objection. See Certificate of Service, p. 2, No. 5, ECF No. 22. Moreover, there is no attachment which indicates the special notice creditors were served.

Notice

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

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

IT IS FURTHER ORDERED that no later than March 26, 2024, the objecting creditor shall file and serve a notice of continued hearing on all parties which have filed a request for special notice in this case. The notice shall correctly identify the date, time, and place of the continued hearing, as well as contain all relevant provisions required by LBR 9014-1.

14. [24-20540](#)-A-13 **IN RE: JAMES VAN PATTEN**
[TLA-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-26-2024 [\[11\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

No Ruling

15. [23-23949](#)-A-13 **IN RE: TANGELA BABBITT**
[LEH-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2024 [\[38\]](#)

MARK SHMORGON/ATTY. FOR DBT.
LYLE HAVENS/ATTY. FOR MV.
MAR-AL, INC. VS.

Final Ruling

Motion: Stay Relief

Notice: Continued from February 13, 2024

Disposition: Denied

Order: Civil minute order

Chapter 13 Plan: Confirmed January 2, 2024

MAR-AL, Inc. seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

The movant leases residential real property to the debtor. Pre-petition arrears on the movant's claim are provided for in the currently confirmed Chapter 13 Plan. Ongoing monthly payments in the amount of \$3,100 are payable directly to the movant.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Cause - 11 U.S.C. § 362(d)(1)

The movant contends that post-petition payments are delinquent for the months of November 2023, December 2023, and January 2024. Movant contends it is owed \$9,300.00 in post-petition monthly payments, and that it has no record of anyone attempting to make payments during the months of November 2023 through January 2024. Declaration of Shaulene Stamper, 2:6-21, ECF No. 48.

At the hearing on February 13, 2024, the court requested additional evidence from the parties. The motion was continued to allow the debtor to file additional evidence. The movant waived the right to submit further evidence. Civil Minutes, ECF No. 51.

Evidence

On February 27, 2024, the debtor filed additional evidence consisting of: (1) a declaration; and (2) exhibits.

The debtor contends that she attempted to make payment to the movant's agent in person and that the payment was rejected.

The debtor states as follows:

2. On December 7, 2023, I went into my rental office and spoke with the receptionist.
3. I believe her name is Erica and she is about 5'0" ft to 5'2", has dark hair, and 40 to 45 years of age.
4. I went in at 11:40 am right before their noon break.
5. Erica stated there was an ongoing eviction proceeding and she could not accept payments.
6. I have since returned my cashier's checks totaling \$3,100.00 and I did not make a copy of the original (sic) check. I instead have a true and correct copy of the returned funds. See Exhibit A.
7. On or after March 5, 2024, I am able to tender four months of rent totaling \$12,400.00 to end this dispute.

Declaration of Tangela Tonchez Babbitt, 2:1-17, ECF No. 53.

Exhibit A shows copies of refunds issued to the debtor consisting of four cashier's checks totaling \$3,040.00. Including the processing fee of \$15 per check (\$60) the amount refunded to the debtor totals \$3,100.00. This supports the debtor's statement that she attempted to pay \$3,100 to the movant's agent. Exhibit A, ECF No. 54.

The court finds the debtor's evidence credible, and that the debtor has sufficiently refuted the movant's allegations. As the movant waived the right to submit additional evidence 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.

MAR-AL, Inc.'s motion for relief from the automatic stay 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.

16. [23-22451](#)-A-13 **IN RE: MANUEL NIPPS**
[DPC-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
2-9-2024 [[20](#)]

CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Convert Case

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

Disposition: Denied without prejudice

Order: Civil minute order

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

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

SERVICE AND 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)).

B) Notice.

- (i) The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

LBR 9014-1(B).

The notice of motion in this case fails to comply with LBR 9014-1(B)(i). The notice, which is dated February 9, 2024, states that written opposition to the motion is required by *January 10, 2023*, which is an impossibility. Notice of Motion, ECF No. 21. Moreover, the body of the Notice conflicts with the caption. The body of the notice states that the motion will be heard on *January 24, 2023*, and the caption states the hearing date is March 12, 2024.

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.

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 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.

17. [24-20351](#)-A-13 **IN RE: FRED KENDLE**
[MS-1](#)

CONTINUED MOTION TO IMPOSE AUTOMATIC STAY
1-29-2024 [[12](#)]

MARK SHMORGON/ATTY. FOR DBT.
DEBTOR DISMISSED: 02/27/24

Final Ruling

This case was dismissed on February 27, 2024. Accordingly, the motion will be removed from the calendar as moot. No appearances are required.

18. [23-24154](#)-A-13 **IN RE: WANMUENG WADKHIAN**
[DPC-2](#)

MOTION TO DISMISS CASE
2-7-2024 [[44](#)]

MATTHEW DECAMINADA/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: February 27, 2024

Opposition Filed: February 27, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$11,080.00, with one payment(s) of \$5,540 due prior to the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 66, 67. The declaration states that the debtor has paid \$16,620 to the trustee and that the plan payments are fully current. See Declaration, ECF No. 67.

The court will hear from the trustee regarding receipt of the tendered plan payments. Unless the plan payments are fully current the motion will be granted.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

19. [24-20154](#)-A-13 **IN RE: RICHARD/ANGELA PARRISH**
[PGM-3](#)

MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC
2-12-2024 [\[28\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral [Personal Property; Motor Vehicle]

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

Disposition: Granted

Order: Civil minute order

Subject: 2011 BMW 128i

Value: \$10,000.00

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 respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order valuing the collateral of Carmax Business Services, LLC.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of

the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2011 BMW 128i. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$10,000.

CIVIL MINUTE ORDER

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2011 BMW 128i has a value of \$10,000. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$10,000 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

20. [24-20056](#)-A-13 **IN RE: TYLOR/TAMMY VEST**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
2-14-2024 [\[14\]](#)

CATHERINE KING/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to May 7, 2024, at 9:00 a.m.

Order: Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support

of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 24, 2024. The evidentiary record will close after April 24, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

21. [23-24057](#)-A-13 **IN RE: ALSESTER COLEMAN**
[DPC-2](#)

MOTION TO DISMISS CASE
2-12-2024 [\[58\]](#)

PETER MACALUSO/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: February 27, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, Failure to attend meeting of creditors

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$

\$2,075.00 with one payment(s) of \$2,075.00 due prior to the hearing on this motion.

The trustee also moves to dismiss the case as the debtor failed to appear at the meeting of creditors on December 14, 2023, and the continued meeting on February 1, 2024.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan, and the debtor's failure to attend the meeting of creditors in this case. The court hereby dismisses this case.

22. [23-23663](#)-A-13 **IN RE: VALERIE WILLIAMS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-21-2024 [[33](#)]

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

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

23. [23-22264](#)-A-13 **IN RE: CHARLISA/ARTHUR HUDSON**
[RCW-99](#)

MOTION TO SUBSTITUTE ATTORNEY
2-1-2024 [[64](#)]

RYAN WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

24. [24-20667](#)-A-13 **IN RE: CHRISTOPHER HIGGINBOTHAM**
[DWL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-26-2024 [[10](#)]

PATRICIA WILSON/ATTY. FOR DBT.

No Ruling

25. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[DPC-2](#)

MOTION TO DISMISS CASE
2-9-2024 [\[48\]](#)

THOMAS AMBERG/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: February 27, 2024

Opposition Filed: February 27, 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 \$7,310.00, with one payment(s) of \$2,420 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. 52, 53. The debtor's declaration states that the debtor will bring the plan payment current by February 29, 2024. Declaration, ECF No. 53.

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.

26. [19-27371](#)-A-13 **IN RE: NIXON VANG**
[DPC-2](#)

MOTION TO DISMISS CASE
2-9-2024 [\[38\]](#)

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: February 27, 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 \$6,475.00 with one payment(s) of \$1,295.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

27. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
1-26-2024 [\[55\]](#)

GEOFF WIGGS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case
Notice: Continued by moving party
Disposition: Withdrawn by moving party
Order: Civil minute order

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

The hearing on this motion was continued to allow the debtor to confirm the proposed Chapter 13 Plan.

TRUSTEE STATUS REPORT – Fed. R. Civ. P. 41

On February 29, 2024, the trustee filed a status report requesting to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. Status Report, ECF No. 70.

The report states:

While the Trustee filed opposition to the motion to modify on 2/16/2024, (DCN: GCW-1), the Trustee did not oppose the plan based on any default under the proposed plan. The Trustee believes the opposition will either be cured to the proposed plan or a subsequent plan, and no default will exist under the plan as modified.

Id., 1:21-24.

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.

28. [23-22972](#)-A-13 **IN RE: LISSETTE MUNOZ**
[GW-1](#)

MOTION TO CONFIRM PLAN
2-6-2024 [[59](#)]

GEOFF WIGGS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the trustee, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

ATTORNEY COMPENSATION - MONTHLY DIVIDEND

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 Chapter 13 Plan provides for monthly payments of \$500.00 in compensation to debtor's counsel. The trustee contends the amount of the monthly payment contravenes LBR 2016-1(c)(4)(B) which requires that compensation payments be paid in equal monthly installments, and amortized over the entire term of the plan. The trustee contends that the correct payment amortized over 60 months is \$116.67 per month.

The court agrees with the trustee, the monthly amount of \$500 contravenes LBR 2016-1(c)(4)(B). The motion will be denied.

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 debtor has not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed on at the inception of the case, nearly 7 months ago, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The debtor has attempted to provide income and expense information in support of the motion but has attached the purported schedules to the Motion to Confirm, ECF No. 59. There are several problems with the attached schedules.

Rule 1008

The schedules were filed without the required amendment cover sheet, EDC 002-015 and are thus unsigned by the debtor. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

In the Eastern District Form EDC 002-015 is required for use in filing both amended and supplemental documents. The form provides the following instructions:

Attach each amended document to this form. If there is a box on the form to indicate that the form is amended or supplemental, check the box. Otherwise, write the word "Amended" or "Supplemental" at the top of the form.

EDC 002-015.

LBR 9004-1(c)

Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c) (emphasis added).

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are of no evidentiary value and are not properly before the court.

Second, the schedules must be filed on the court's docket. The court, the trustee and all interested parties must be able to locate the schedules both in the context of the instant motion and for comparative reasons for any future motion.

Third, exhibits may not be attached to the motion. All exhibits must be filed as a document separate from the moving papers.

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/...]."

LBR 9004-2(d)(1).

The exhibits contravene LBR 9004-2(d)(1).

The court will deny the motion and need not consider the remaining arguments raised by the Chapter 13 trustee in opposition to 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.

29. [23-23672](#)-A-13 **IN RE: NAWAL BSHARAH**

MOTION TO CONFIRM PLAN
1-31-2024 [[59](#)]

CLAY PRESLEY/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied as moot

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.

The motion will be denied as moot as the debtor subsequently filed another motion to confirm a Chapter 13 plan, CEP-2.

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 as moot. The court denies confirmation of the chapter 13 plan.

30. [23-23672](#)-A-13 **IN RE: NAWAL BSHARAH**
[CEP-2](#)

MOTION TO CONFIRM PLAN
2-12-2024 [[61](#)]

CLAY PRESLEY/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).

ATTORNEY COMPENSATION

Retainer May Not Exceed 25% of Total Compensation

Attorneys who claim fees under subdivision (c) shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7). Absent compliance with California Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney's trust account.

LBR 2016-1(c)(3).

The trustee opposes confirmation contending that the compensation received by debtor's counsel contravenes LBR 2016-1(c)(3).

The disclosure statement reveals that debtor's counsel has agreed to accept a reduced amount of attorney compensation under LBR 2016-1(c)(3) which authorizes a flat fee of no more than \$8,500.00 in non-business cases. Disclosure Statement, ECF No. 31. The attorney has agreed to accept \$5,000.00 in compensation. Moreover, the disclosure statement indicates that counsel received \$5,000.00 prior to the filing of the case.

Under LBR 2016-1(c)(3) counsel is limited in the amount of retainer he may accept. Counsel may not take a retainer greater than 25% of the lesser agreed upon amount. Thus, in this case the attorney may not accept a retainer exceeding \$1,250.00. The received compensation in the amount of \$5,000 contravenes LBR 2016-1(c)(3).

The Chapter 13 Plan is inconsistent with the Disclosure Statement. The Disclosure Statement indicates that all compensation has been paid to counsel, yet the proposed plan indicates that payments of \$712.00 per month will be paid in attorney fees to counsel. Second Amended Chapter 13 Plan, Section 3.06, ECF No. 60

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)).

B) Notice.

- (i) The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it,

and the names and addresses of the persons who must be served with any opposition.

(ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

(iii) *The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.*

(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(B) (emphasis added).

The notice of motion in this case fails to comply with LBR 9014-1(B) (i), (iii). The notice fails to advise respondents how they can determine whether the matter has been resolved. Notice of Motion, ECF No. 62.

The court will deny the motion and need not address the remaining issues raised in the Chapter 13 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 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.

31. [23-23672](#)-A-13 **IN RE: NAWAL BSHARAH**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
1-24-2024 [\[55\]](#)

CLAY PRESLEY/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

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

The hearing on the motion was continued to coincide with the debtor's motion to confirm the Chapter 13 Plan. The trustee has filed a status report indicating that payments are current under the most recently filed plan. As such the trustee requests that he be allowed to withdraw his motion. Status Report, ECF No. 71.

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.

32. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[RJ-6](#)

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

RICHARD JARE/ATTY. FOR DBT.

Final Ruling

The court will continue this matter until March 26, 2024, at 9:00 a.m. All previously ordered deadlines for the filing of pleadings in this case remain in effect.

33. [23-23797](#)-A-13 **IN RE: MICHAEL/AMY WHITING**
[TLA-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF AMBERG HARVEY
FOR THOMAS L. AMBERG, JR., DEBTORS ATTORNEY(S)
1-29-2024 [[28](#)]

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

Final Ruling

Application: Allowance of Interim Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Allowed: \$3,802.50

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f) (1) (B). None

has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Law Office of Amberg Harvey, Thomas Amberg, Jr., has applied for an allowance of interim compensation. The application requests that the court allow compensation in the amount of \$3,802.50.

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

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

The Law Office of Amberg Harvey, Thomas Amberg, Jr.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,802.50. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$3,802.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

34. [24-20647](#)-A-13 **IN RE: STEVEN SINGH**
[SS-2](#)

MOTION TO EXTEND AUTOMATIC STAY O.S.T.
3-7-2024 [[20](#)]

STEVEN SINGH/ATTY. FOR MV.

No Ruling