



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

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

**DAY: TUESDAY**  
**DATE: MAY 2, 2023**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

---

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered.

Parties in interest and members of the public may connect to the ZoomGov video and audio feeds, free of charge, using the connection information provided:

**Video web address:**

<https://www.zoomgov.com/j/1602904773?pwd=T2JDR3ZxWEpmU0RtRTNueHRyYUdWdz09>

**Meeting ID:** 160 290 4773

**Password:** 255200

**ZoomGov Telephone:** (669) 254-5252 (Toll Free)

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

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

Please join at least 10 minutes prior to the start of the calendar. You are required to give the court 24 hours advance notice on the [Court Calendar](#).

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

---

## PRE-HEARING DISPOSITION INSTRUCTIONS

---

### RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

### ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

---

1. [22-22002](#)-A-13     **IN RE: IMELDA DEL ROSARIO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
3-27-2023    [\[74\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** April 18, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency, Failure to File Amended Plan

**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 \$27,805.00 with a further payment of \$6,430.00 due April 25, 2023.

Additionally, the trustee moves for dismissal as the debtor has failed to file an amended plan after the court denied the debtor's motion to confirm a plan on January 4, 2023.

### **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 in this case, and the debtor's failure to file an amended plan. The court hereby dismisses this case.

2. [22-21705](#)-A-13     **IN RE: SHAWNA WILLIAMS**  
[RK-1](#)

MOTION TO MODIFY PLAN  
3-26-2023    [\[26\]](#)

RICHARD KWUN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtor seeks an order modifying the Chapter 13 plan. For the following reasons the motion will be denied without prejudice.

#### **SERVICE AND NOTICE**

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

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

## Matrix

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

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

In this case the debtor filed three certificates of service in support of the motion. See ECF Nos. 31, 32, 33. Each certificate of service suffers from the same defect as the matrixes for Parties Requesting Special Notice and List of Registered ECF Users attached to the certificate of service are each dated March 6, 2023. Service of the motion occurred on March 26, 2023. *Id.* The matrixes are dated more than 7 days prior to the date of service of the motion and therefore do not comply with LBR 7005-1. The court will deny the motion without prejudice.

## **CIVIL MINUTE ORDER**

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

Debtor's Motion to Modify Chapter 13 plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

3. [22-21008](#)-A-13     **IN RE: CYNTHIA PAYSINGER**  
[DPC-2](#)

MOTION TO DISMISS CASE  
4-3-2023    [\[92\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Chapter 13 Case

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

### **SPECIAL NOTICE CREDITORS**

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

The following parties filed a request for special notice: U.S. Bank National Association. See ECF No. 19.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 95. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

### **NOTICE**

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

### Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

sanctions or attorneys' fees and costs, and other lesser sanctions.

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

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

#### **CIVIL MINUTE ORDER**

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

The Chapter 13 trustee's Motion to Dismiss has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

4. [19-21114](#)-A-13     **IN RE: LYNDIA STOVALL**  
[PGM-7](#)

MOTION TO MODIFY PLAN  
3-22-2023    [\[151\]](#)

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

#### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by movant, approved by the trustee

**Subject:** Second Modified Chapter 13 Plan, filed March 22, 2023

#### **DEFAULT OF RESPONDENT**

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

The debtor(s) seeks approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedule J filed on January 18, 2023, ECF No. 142. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 157.



## CHAPTER 13 PLAN MODIFICATION

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. "[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge's discretion and good judgment in reviewing the motion to modify." *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

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

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

5. [22-20528](#)-A-13      **IN RE: AMANDA PAULSEN**  
[MWB-4](#)

MOTION TO CONFIRM PLAN  
3-8-2023    [\[95\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

**Order:** Prepared by the movant, approved by the trustee

**Subject:** Second Amended Chapter 13 Plan, filed March 8, 2023

### DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Second Amended Chapter 13 Plan, ECF No. 98. The Chapter 13 trustee has filed a response to the motion as it is unclear whether the counsel for the debtor intends to apply for compensation under 11 U.S.C. § 329, 330, as a Rights and Responsibilities form was filed on October 27, 2022, ECF No. 67. The debtor filed a reply indicating her intent to request approval of compensation under 11 U.S.C. § 329, 330. See Reply, ECF No. 104.

The court will grant the motion. The order confirming the plan shall provide that compensation will be paid to debtor's counsel only after the court's approval of compensation by noticed motion under 11 U.S.C. § 329, 330.

#### **CHAPTER 13 PLAN CONFIRMATION**

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

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

6. [19-23035](#)-A-13     **IN RE: LILA SADAT**  
[DPC-1](#)

MOTION TO DISMISS CASE  
3-27-2023    [\[78\]](#)

BONNIE BAKER/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

#### **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:** April 18, 2023

**Opposition Filed:** April 18, 2023 - timely

**Cause:** 11 U.S.C. § 1307(c)(1), (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)(1) and (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 \$8,642.00, with another payment of \$4,263.00 due April 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 84, 85. The declaration states

that the debtor has made a partial payment to the trustee, and that the debtor requests the motion be continued to the end of May 2023 to allow the debtor to become fully current. See Declaration, ECF No. 85.

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.

The court will not continue the hearing on the motion as requested. However, the court will consider a conditional order requiring the plan payments to be fully current by May 31, 2023.

**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.

7. [23-21035](#)-A-13     **IN RE: GEORGE KOZEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-14-2023     [\[14\]](#)

DEBTOR DISMISSED: 4/18/23

**Final Ruling**

The case was dismissed on April 18, 2023, the order to show cause is discharged as moot.

8. [21-23136](#)-A-13     **IN RE: SONYA ALCARAZ**  
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE  
2-24-2023     [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**No Ruling**

9. [21-23136](#)-A-13     **IN RE: SONYA ALCARAZ**  
[PGM-2](#)

MOTION TO MODIFY PLAN  
3-20-2023     [\[80\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Tentative 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).

The trustee opposes the motion contending the plan is not feasible because the debtor has failed to explain the extent of counseling expenses and because the plan does not provide a treatment for Class 2 creditor Santander Consumer USA, which is consistent with the currently confirmed plan.

#### Counseling Expenses

Given the sensitive nature of the required counseling for the debtor's children the court presumes the need for counseling existed prior to and continued past the date of the meeting of creditors. The court is not persuaded by the trustee's argument regarding the counseling expense.

The court notes that the debtor filed a reply which is supported by the declaration of the debtor, ECF Nos. 95, 96. The reply and declaration explain in sufficient detail the reasons for the previous default in plan payments and the need for counseling beyond what the trustee anticipated at the meeting of creditors.

#### Santander Consumer Credit Obligation

The previously confirmed plan provided for Santander Consumer USA, Inc., in the order confirming the plan as follows:

The lien held by Santander Consumer USA, Inc. on the 2012 Toyota Camry, VIN 4T1BF1FKXCU079658, shall not be released until the entire debt under non-bankruptcy

law has been paid in full due to the non-filing co-debtor on the account.

Order Confirming Plan, ECF No. 51.

The proposed modified plan does not contain the same provisions regarding the release of the Santander lien. The trustee requests clarification of the debtor's intention regarding this debt. The court will entertain the debtor's motion to include the language previously indicated in the order granting the motion.

Absent inclusion of the previously approved terms regarding the Santander Consumer USA obligation the court will deny the motion as the plan is unclear and uncertain regarding the release of Santander Consumer USA's lien.

#### **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.

10. [22-22936](#)-A-13     **IN RE: COURTNEY WILSON**  
[PGM-2](#)

MOTION TO CONFIRM PLAN  
3-20-2023    [[44](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

#### **PLAN FEASIBILITY**

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

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,550.00. The plan cannot be confirmed if the plan payments are not current.

#### Failure to Provide Income Information

The debtor has failed to provide the trustee with required pay advices under 11 U.S.C. § 521(a)(1)(B)(iv). The information is essential to the trustee's review of the proposed plan prior to the meeting of creditors.

Additionally, as the debtor has amended Form 122C the trustee requests the debtor provide pay advices for the 6 month period prior to the filing of the petition. Given the amended statements and schedules filed by the debtor since the trustee's examination of the debtor at the meeting of creditors the court agrees that the requested documents should be provided to support the debtor's new claims of income and expenses.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan. As such, the trustee cannot represent

that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a) (6).

The court will deny the motion, as the debtor has not proven that the proposed plan is feasible.

#### **PROPOSED PLAN DOES NOT REFLECT BEST EFFORTS**

The trustee argues that the proposed plan does not represent the debtor's best efforts under 11 U.S.C. § 1325(b). Specifically, the trustee notes that new information provided on the Amended Form 122C is unsupported by documentary evidence and that some of the information provided is inconsistent with Schedules I and J.

#### Medical Expenses

The trustee argues that the medical expenses which the debtor has indicated in the Amended Form 122C are inconsistent with those which appear in Schedule J. Form 122C projects monthly medical expenses of \$425.00 while Schedule J projects monthly medical expenses of \$62.00. It is unclear to the court which of the documents is correct.

#### Tax Withholdings

The debtor has projected monthly withholding taxes in the amount of \$5,382.39. This represents approximately 47% of the debtor's projected gross monthly income. Form 122C, ECF No. 53. The trustee argues that this percentage is extraordinary. The court agrees, and the debtor has provided no evidence or analysis supporting the proposed withholding sum.

#### **DEBTOR REPLY**

On April 25, 2023, the debtor filed a reply, ECF No. 64. The reply states that the debtor is delivering pay advices to the trustee. Thus, the trustee has not yet had the opportunity to review the debtor's supporting evidence. Additionally, the reply fails to provide any analysis regarding the tax withholdings which the debtor proposed in Form 122C. Notably, the reply does not address the trustee's opposition regarding plan delinquency.

While the reply makes numerous factual allegations to refute the trustee's opposition it is not supported by any admissible evidence. The reply consists of unsworn assertions by debtor's counsel.

It is the debtor's responsibility to prove a prima facie case for confirmation at the outset of the motion, and not in response to the trustee's opposition.

The court will deny the motion.

#### **CIVIL MINUTE ORDER**

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



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

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

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

11. [22-22244](#)-A-13     **IN RE: LENY HERNANDEZ**  
[MET-1](#)

OBJECTION TO CLAIM OF ANA PATRICIA PELAIZ, CLAIM NUMBER 3  
3-17-2023    [\[31\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Tentative Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Civil minute order

**Claim Filed:** March 16, 2023

**Claims Bar Date:** November 14, 2022

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor objects to the claim of Ana Patricia Pelaiz, Claim No. 3. The unsecured claim was filed on March 16, 2023. The claims bar date in this case was November 14, 2022. See ECF No. 10.

#### **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 debtor’s objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. Claim no. 3 will be disallowed.

12. [23-20257](#)-A-13     **IN RE: AUSTIN MERRITT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-5-2023     [\[19\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
4/6/2023 INSTALLMENT FEE PAID \$79

**Final Ruling**

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

13. [22-22860](#)-A-13     **IN RE: CHRISTOPHER SORENSON**  
[MWB-1](#)

MOTION TO CONFIRM PLAN  
3-9-2023     [\[25\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Continued to May 31, 2023, at 9:00 a.m.

**Order:** Civil minute order

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

**MOTION IS NOT SUPPORTED BY ADMISSIBLE EVIDENCE**

Plan and Supporting Declaration

The proposed plan and the declaration in support of the motion are digitally signed by the debtor. See ECF Nos. 27, 28. Local rules for the Bankruptcy Court for the Eastern District require affidavits and pleadings to be signed. In the pertinent part, local rules provide:

(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).

The Eastern District of California has always required affiants to executed sworn testimony by a *manually-created, wet signature*. LBR 9004-1(c); *In re Mayfield*, 2016 WL 3958982 (Bankr. E.D. Cal. 2016).

In two instances, non-registered users of the court's electronic-filing system may confirm the existence of an extant wet signature on the original of the filed document by a computer-generated signature that is filed with the Clerk of the Court. And when that is authorized, the original wet signature need not be filed with the Clerk of the Court, unless the court requires it to be so filed.

First, for a document signed by a non-registered user of the court's electronic filing system the signatory may use a computer-generated signature, i.e., "/s/ Name" or a "software-generated electronic signature," if and only if an original wet signature is in the possession of the registered user of the electronic filing system at the time the document is filed. LBR 9004-1(c)(1)(B)(iii). The use of the computer-generated signature is a representation to the court that "an original signed copy of the document exists and is in the registered user's possession at the time of filing." LBR 9004-1(c)(1)(C)-(D). The signatures in the declaration or the plan are neither an "/s/ Name" nor a software-generated electronic signature.

Second, an image of an extant wet signature, i.e., facsimile, scanned, or created in portable document format, may be offered to prove the existence of execution of the document.

Signature on Facsimile Documents and on Software-Generated Documents. *For the purposes of this Rule, the image of an original manual signature appearing on a facsimile (fax) copy, or appearing in a software-generated copy such as a document created in the "portable document format" (PDF), filed pursuant to this Rule shall constitute an original signature for all court purposes...*

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

#### Eastern District Case Law Construing LBR 9014-1(c) and Electronic Signatures

This issue has been litigated to conclusion against the debtor. *In re Mayfield*, 2016 WL 3958982 (Bankr. E.D. Cal. 2016) (Bardwil, J.). There, the U.S. Trustee brought a motion for sanctions against an attorney for violating LBR 9014-1(c) because the petition,

schedules, statements, and verifications were "executed" by way of DocuSign, rather than manual wet signatures. Debtor's counsel opposed, contending that the electronic signatures were "original signatures" signatures within the meaning of the rule. In support of his argument, he submitted the manually executed declaration of the debtor:

[c]ounsel has had the debtor sign a declaration in which the debtor testifies he intended and expected the affixation he caused DocuSign to place on the documents by clicking the "Sign Here" button to be adopted and treated as his actual signature... The declaration bears the debtor's signature in cursive handwriting; it is dated a week after the UST requested Counsel produce copies of the debtor's original wet signatures.

The court phrased the issue, "whether the DocuSign affixation is a software-generated electronic signature for the purpose of Rule 9004-1(c)." The court granted the U.S. Trustee's motion and sanctioned debtor's counsel. In doing so, the court made several salient points. DocuSign type signatures are capable of manipulation or forgery and that manipulation is not readily discernable to opposing counsel or to the court.

This brings the court to another important problem with Counsel's arguments: they do not address the ease with which a DocuSign affixation can be manipulated or forged. The UST asks what happens when a debtor denies signing a document and claims his spouse, child, or roommate had access to his computer and could have clicked on the "Sign Here" button. Counsel's response is telling: "[The declaration] alleviates any possibility that the Debtor did not actually sign the document himself. He has signed under penalty of perjury a Declaration stating that it was in fact him that signed the documents." Again, had the debtor simply signed the documents in his own handwriting, the declaration would have been unnecessary. The essential point is that an individual's handwritten signature is less easily forged than any form of software-generated electronic signature, and the presence of forgery is more easily detected and proven.

p. 2 (internal citations omitted).

The court specifically found that the word "manual," LBR 9014-1(d) excludes wholly electronic signatures:

*Counsel relies on the court's use of the term "manual" in Rule 9004-1(d) as demonstrating the court's intent that "the image of an original manual signature" on a fax copy or PDF document includes not just the image of a signature made with a pen but also the image of a DocuSign affixation. Citing three dictionary definitions, Counsel concludes "manual" means "done*

with the use of your own hands [and not] automatically"; he adds that the debtor used his own hand to click on the "Sign Here" button, as the debtor testified in his declaration. Counsel finds it important that DocuSign requires a separate "Sign Here" click for each signature rather than allowing one click to populate the signature lines on all the documents, which he claims would be an "automated process." *This distinction is strained at best, and here again, the argument would apply equally to a name typed on a signature line by the debtor using his own hands, one key at a time, which Counsel does not suggest would comply with the local rule.*

*Id.* (internal citations omitted) (emphasis added).

Finally, the court engaged in a thoughtful dissection of the statutory framework of Rule 9014-1(c).

Counsel's analysis fails for another important reason: *the rule makes a distinction between an "originally signed document" and a "software-generated electronic signature."* Under Rule 9004-1(c)(1)(C), if a registered user files a document with a software-generated electronic signature of someone else, the filer certifies an originally signed document exists and is in the filer's possession. Under the rule, the "software-generated signature" must be something different from the document bearing the "original signature." Otherwise, it would not be separately identified in the local rule, and there would be no reason for the requirement that the filer retain possession of the "original signature" if that same document had already been scanned and electronically filed. If Counsel's position were correct, the rule would make no sense.

p. 3. (emphasis added).

This district has always required the existence of a manual, wet signature. For documents electronically filed, the party may "/s/ Name" or a software-generated electronic signature, provided counsel already has in its possession a manually created wet signature.

The hearing on this matter will be continued to May 31, 2023, at 9:00 a.m. Not later than 4:00 p.m., May 2, 2023, counsel for the debtor shall scan and file as an exhibit to this motion copies of the following documents containing the original manual, wet signature of the debtor: 1) the Chapter 13 Plan; and 2) the Declaration of the Debtor in support of the motion to confirm plan. The exhibit shall contain the appropriate motion control number and otherwise comply with LBR 9004-1(d).

#### **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 is continued to May 31, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than 4:00 p.m., May 2, 2023, counsel for the debtor shall scan and file as an exhibit to this motion copies of the following documents which contain the original manual, wet signature of the debtor: 1) the Chapter 13 Plan; and 2) the Declaration of the Debtor in support of the motion to confirm plan. The exhibit shall contain the appropriate motion control number and otherwise comply with LBR 9004-1(d).

14. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[MWB-7](#)

MOTION FOR COMPENSATION FOR MARK W. BRIDEN, DEBTORS  
ATTORNEY(S)  
3-16-2023    [\[209\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Application:** Allowance of Final Compensation and Expense  
Reimbursement

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **COMPENSATION AND EXPENSES**

In this converted Chapter 13 case, Mark Briden has applied for an allowance of compensation and reimbursement of expenses. The request encompasses compensation and reimbursement of expenses during the period of June 2022, through March 2023. The motion seeks approval of \$25,760.00 in compensation, and reimbursement of expenses of \$547.30, with an aggregate amount of \$26,307.30.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 12 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 Chapter 13 trustee opposes the motion contending: 1) the motion has not been plead with particularity under 11 U.S.C. § 9013 as it cites no authority for the requested relief; 2) the compensation requested is not reasonable; 3) the motion fails to state the

qualifications of the applicant in support of the requested hourly rate; 4) the tasks billed are insufficiently described, and the individual performing the tasks is not indicated; and 5) the costs requested are insufficiently detailed and are not aligned with the tasks performed.

The court will deny the motion without prejudice as it does not comply with 11 U.S.C. § 9013. The motion cites no authority whatsoever for the relief requested. As such the court need not reach the additional opposition raised by the trustee.

#### **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.

Mark Briden's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having considered the application, the opposition filed and good cause appearing,

IT IS ORDERED that the application is denied without prejudice.

15. [22-21669](#)-A-13     **IN RE: LINDSAY/LISA BRAKEL**  
[MWB-8](#)

MOTION TO DISMISS CASE  
3-28-2023    [[225](#)]

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

The hearing on this matter will be continued to May 16, 2023, at 9:00 a.m., to coincide with the trustee's motion to convert case and other related matters. No appearances are required.



16. [19-27775](#)-A-13     **IN RE: RANKIN LYMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-11-2023    [\[75\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
4/11/2023 FILING FEE PAID \$188

**Final Ruling**

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

17. [19-27775](#)-A-13     **IN RE: RANKIN LYMAN**  
[TEC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-28-2023    [\[65\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
TIMOTHY CARY/ATTY. FOR MV.  
CALIFORNIA AUTOMOBILE INSURANCE COMPANY VS.; RESPONSIVE  
PLEADING

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

California Automobile Insurance Company seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

**SPECIAL NOTICE CREDITORS**

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

The following parties filed a request for special notice: Synchrony Bank c/o PRA Receivables Management, LLC. See ECF No. 14.

As indicated in the multiple certificates of service filed by the moving party, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF Nos. 71, 72, 73. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

## NOTICE

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

### Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

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

#### Dismissal of Action for Failure to Comply with Local Rules

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

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

Because the moving party has failed to comply with Local Rules regarding service of the motion the court will deny the motion without prejudice.

#### **CIVIL MINUTE ORDER**

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

California Automobile Insurance Company's Motion for relief from the automatic stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

18. [22-22775](#)-A-13     **IN RE: ORRIN MARKELL**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-10-2023    [\[35\]](#)

STEPHAN BROWN/ATTY. FOR DBT.

#### **No Ruling**

19. [22-22775](#)-A-13     **IN RE: ORRIN MARKELL**  
[TBG-1](#)

MOTION TO CONFIRM PLAN  
3-28-2023    [\[42\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Continued to June 13, 2023, at 9:00 a.m.

**Order:** Civil minute order

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

The hearing on this matter will be continued at the request of the debtor. The trustee opposes the motion primarily because amended schedules were filed by the debtor which omitted assets without explanation, which had previously been scheduled. Consequently, the trustee was unable to determine if the plan in his estimation was proposed in good faith or satisfied the liquidation test. 11 U.S.C. § 1325(a)(3), (4). Subsequently, the debtor filed further amended schedules which the trustee has not yet reviewed. Additionally, the trustee has filed a status report which indicates that the plan payments are now delinquent in the amount of \$2535.78, which represents the April 25, 2023, payment.

## **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 the motion is continued to June 13, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 16, 2023, the debtor may file and serve any additional evidence or argument in support of this motion.

IT IS FURTHER ORDERED that not later than May 30, 2023, the Chapter 13 trustee shall file and serve a status report apprising the court of the status of plan payments and any remaining opposition to the motion.

IT IS FURTHER ORDERED that the evidentiary record will close on May 30, 2023.

20. [22-22775](#)-A-13     **IN RE: ORRIN MARKELL**  
[TBG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE BANKRUPTCY GROUP, P.C. FOR STEPHAN M. BROWN, DEBTORS ATTORNEY(S)  
4-7-2023    [\[50\]](#)

STEPHAN BROWN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Application:** Compensation and Expenses

**Notice:** LBR 9014-1(f)(1)

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The Bankruptcy Law Group P.C. seeks an order approving compensation and reimbursement of expenses.

The applicant did not provide a sufficient period of notice of the hearing on this compensation application. The notice provides that the motion was brought pursuant to LBR 9014-1(f)(1) which requires 28 days' notice to responding parties. The certificate of service shows that the motion was served on April 7, 2023, providing only 25 days' notice of the motion. See Certificate of Service, ECF No. 55.

The motion will be denied without prejudice

## **CIVIL MINUTE ORDER**

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

The Bankruptcy Law Group, P.C.'s Motion for Approval of Compensation 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.

21. [23-20376](#)-A-13     **IN RE: MANUEL CHAVES**  
[DPC-2](#)

MOTION TO DISMISS CASE  
3-29-2023    [\[24\]](#)

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** April 18, 2023

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to provide documents

**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**

#### Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$166.66 with a further payment of \$166.66 due April 25, 2023.

The court notes that the plan payment is not sufficient to pay Class 1 creditor PHH Mortgage which has filed a Claim indicating a monthly mortgage payment of \$964.85. The proposed plan payment is insufficient to fund the required Class 1 payment. See Claim No. 2.

### Failure to Provide Documents

The trustee also moves for dismissal as the debtor has failed to provide a copy of his most recently filed federal tax return. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). The return must be provided at least seven days before the date first set for the meeting of creditors, 11 U.S.C. §521(e) (2) (A) (1), which was March 23, 2023.

### **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 and will grant the motion. 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 proposed chapter 13 plan in this case. The court hereby dismisses this case.

22. [23-20777](#)-A-13     **IN RE: TIMOTHY WILLIAMS**  
[PGM-1](#)

CONTINUED MOTION TO IMPOSE AUTOMATIC STAY  
3-17-2023    [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Impose the Automatic Stay  
**Notice:** Continued from April 4, 2023  
**Disposition:** Denied  
**Order:** Civil minute order

The hearing on this motion was continued from April 4, 2023, to allow the debtor and the Chapter 13 trustee to submit additional evidence and/or argument.

The debtor seeks an order imposing the automatic stay. The debtor has filed the following Chapter 13 bankruptcy cases in the Eastern District of California during the last twelve months: 1) 22-23082, filed November 29, 2022, and dismissed March 10, 2023; 2) 22-22743, filed October 25, 2022, and dismissed November 23, 2022; and 3) 22-22381, filed September 21, 2022, and dismissed October 20, 2022.

### **IMPOSITION OF THE STAY**

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

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

### Previous Cases

The debtor states that his first case was dismissed because he failed to timely file documents. Declaration, 2:1-3, ECF No. 12. The debtor states that the second case was dismissed because he did not timely file documents with the court. *Id.*, 2:7-9. During the second case the debtor had applied for a loan modification. The



loan modification was denied, which led to the filing of the third bankruptcy. The third case was dismissed because the debtor had failed to pay the filing fee installment. Order, ECF No. 56, Case No. 22-23082, Cal. E.D. Bankr. (2022). The court notes that the Chapter 13 trustee had also filed a motion to dismiss for plan delinquency, failure to file tax returns and failure to file a motion to confirm the Chapter 13 plan. The trustee's motion was rendered moot by the dismissal of the case pursuant to the court's Order to Show Cause for failure to pay filing fees.

Given the plan delinquency of \$14,400.00 the case would have surely been dismissed on the trustee's motion had it been heard. See *Id.*, Status Report, 1:24, ECF No. 49.

#### **CURRENT CASE**

The declaration in support of this motion should address facts indicating a "substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case" or "any other reason to conclude" that the current case will result in a "confirmed plan that will be fully performed." 11 U.S.C. § 362(c) (4) (D) (i) (III).

The proposed plan calls for payments of \$7,000.00 per month. Chapter 13 Plan, Section 2.01, ECF No. 3.

The debtor has gained new employment since the filing of the most recently dismissed Chapter 13 case. Schedule I shows the debtor has been employed by Paramount Residential Mortgage for one month. The debtor earns \$3,322.94 per month from wages and projects \$7,000.00 per month in commissions. Schedule, ECF No. 1. The initial declaration of the debtor in support of the motion to impose the stay provides scant information regarding the new employment. It states only as follows:

[s]ince my previous case was dismissed, my circumstances have changed as I have obtained employment. With this new employment I will receive a base pay plus commission.

Declaration, 3:4-6, ECF No. 12.

The debtor's income from commission is speculative. The debtor has offered no evidence regarding: 1) the nature of his employment; 2) how commissions are calculated; 3) why the debtor believes he will earn \$7,000.00 per month in commissions; 4) when/how often commissions are paid. No pay advices have been provided showing payment of any commissions since the debtor gained employment. The debtor has provided insufficient evidence substantiating his ability to make a plan payment of \$7,000.00 per month. The plan payment is substantial, represents the entirety of the debtor's projected commissions, and represents 69% of the debtor's projected gross monthly income.

## DEBTOR SUPPLEMENTAL EVIDENCE

### Request for Late Opposition

The court ordered the debtor to file additional evidence and argument not later than April 18, 2023, ECF No. 23.

(b) Extending Time.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

. . .

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Fed. R. Civ. P. 6(b)(1)(B).

On April 23, 2023, the debtor filed a request to file late evidence and argument because the attorney's litigation schedule did not allow for a timely reply. The court will allow the late filed documents.

### Debtor's Supplemental Evidence

Of particular concern to the court is the feasibility of the proposed plan under 11 U.S.C. § 1325(a)(6). The debtor contends that his financial circumstances have changed sufficiently to tender a monthly plan payment of \$7,000.00, derived primarily from commissions at his new employment. In support of his ability to fund the proposed plan the debtor has filed a Supplemental Declaration ECF No. 27. The declaration states:

I have the ability to make the payments proposed. As I have explained my motivation, I do also have the ability to pay this Plan, and the class 2 claims in full over the life of the proposed plan. As proof of this, I will have made the first payment of \$7,000.00, as proposed.

*Id.*, 3:19-24.

The debtor explains that he has three primary sources of income: 1) employment and commissions at PRMG; 2) operation of Clear Point Capital, LLC, and 3) Gig income from various sources. *Id.*, 4:8-26, 5:1-7.

The debtor also states that it is his intention to file an amended plan prior to the hearing on this motion. The court notes that no amended plan has yet been filed, thus, the court cannot assess the debtor's ability to perform such a plan. Moreover, as discussed below in this ruling the Chapter 13 trustee reports that the debtor has not yet tendered the payment of \$7,000.00 due under the current plan as required on April 25, 2023.

The exhibits filed by the debtor in support of the motion, do not show any evidence of past income from any of the sources identified by the debtor. Exhibits, ECF No. 28.

The debtor states that he has commissions which are payable in May 2023 to him in the amount of \$40,000.00 from his employment. The debtor does not provide sufficient detail regarding the transaction which proves that the income is not purely speculative. For example, the debtor has not identified the status of the sale of the property, identified if it is in escrow, provided the anticipated closing date, or any other information which would allow the court to assess the reliability of the debtor's statement.

I currently have an active pipeline of commission income of \$1,200,000, which is set to close in the month of May. From this commission I will have \$40,000.00 to pay into the plan.

Supplemental Declaration, 4:12-14, ECF No. 27.

The court notes that this case was filed March 14, 2023. On that date no anticipated commissions from employment or open escrow were listed in the debtor's Schedules A/B. Schedule A/B, ECF No. 1.

The debtor states that he will have additional income from the operation of Clear Point Capital, LLC as follows:

I also operate Clear Point Capital, LLC., which has allowed me to supplement my commissions in addition to the commissions from PRMG. Based on the First Amended Plan which I am filing before this hearing, I am requesting that a disbursement of \$39,000,00 (sic) which is a result of the commissions that are now in the pipeline. My my (sic) 2022 tax returns (sic) which reflects that in 2022 Clear Point Capital, LLC grossed \$250,000 and can support such payments as proposed.

*Id.*, 4:16-23.

The debtor's Schedule I does not show projected income from Clear Point. No income from this source is indicated at all in the Schedule. Schedule I, Line 13 merely states, "I am in a restructure of my hauling company in 2023 to increase our income." Schedule I, ECF No. 1.

While the Statement of Financial Affairs identifies business income from an unnamed source from 2020-2022, it does not list any income for 2023. Moreover, Schedule A/B lists the value of the debtor's interest in Clear Point Capital, LLC, at only \$1.00. Schedule A/B, ECF No. 1. Therefore the court is unable to conclude that funds in the amount of \$39,000.00 are available to the debtor.

The court concludes that the debtor has not provided sufficient evidence showing his ability to fund the plan as proposed.

## **TRUSTEE STATUS REPORT**

On April 25, 2023, the trustee filed a status report, ECF No. 32. In his report the trustee states that no plan payments have been tendered by the debtor, nor does the trustee show a payment is pending through TFS. Because this case was filed March 14, 2023, the first plan payment of \$7,000.00 was due April 25, 2023. The debtor is delinquent \$7,000.00 under the currently proposed Chapter 13 plan.

The court finds that the debtor has failed to provide sufficient evidence of changed circumstances such that the current plan will be feasible. Moreover, the debtor has failed to perform pursuant to the terms of the currently proposed Chapter 13 Plan.

## **CREDITOR OPPOSITIONS**

The debtor's motion is opposed by two creditors, Guido Kaelin and Foothill Mortgage Fund of Olympia. Each of the creditors argue the issues discussed in the court's ruling.

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.

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

IT IS ORDERED that the motion is denied.

23. [22-23380](#)-A-13      **IN RE: HOLLY CRANSHAW**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-4-2023    [\[40\]](#)

## **Tentative Ruling**

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

24. [22-23380](#)-A-13      **IN RE: HOLLY CRANSHAW**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-6-2023    [\[30\]](#)

**Tentative Ruling**

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

25. [22-23380](#)-A-13      **IN RE: HOLLY CRANSHAW**  
[DPC-2](#)

MOTION TO DISMISS CASE  
4-4-2023    [\[41\]](#)

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** April 18, 2023

**Opposition Filed:** Unopposed

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

**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**

Plan Delinquency

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 \$1,440.00 with a further payment of \$480.00 due April 25, 2023.

### Failure to Provide Documents

The trustee further moves to dismiss the case as the debtor failed to provide the trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3).

### Failure to File Amended Plan

The Trustee objected to confirmation of the debtor's initial plan and the objection was sustained on March 10, 2023. The debtor has failed to file an amended plan since that time.

The court finds that each of the trustee's arguments constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c) (1). Accordingly, the court will grant the 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 chapter 13 plan in this case; the debtor's failure to provide required tax returns to the trustee; and the debtor's failure to file an amended plan. The court hereby dismisses this case.

26. [21-22486](#)-A-13     **IN RE: ANNA MURPHY**  
[WSS-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-22-2023    [[277](#)]

PETER MACALUSO/ATTY. FOR DBT.  
W. SHUMWAY/ATTY. FOR MV.  
CHARLEY SMITH VS.; RESPONSIVE PLEADING

**No Ruling**

27. [22-21388](#)-A-13     **IN RE: KATHY ADAMS-BERRY**  
[DPC-5](#)

MOTION TO DISMISS CASE  
4-3-2023    [[72](#)]

PETER CIANCHETTA/ATTY. FOR DBT.

**No Ruling**

28. [23-20295](#)-A-13     **IN RE: WARREN/AMBER COOK**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
3-9-2023    [[22](#)]

PAULDEEP BAINS/ATTY. FOR DBT.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from April 4, 2023

**Disposition:** Overruled

**Order:** Civil minute order

The hearing on this matter was continued from April 4, 2023, to allow the court to rule on the debtors' Motion to Avoid Lien of Asset Acceptance, LLC, (PSB-2) and the debtors' Motion to Value Collateral of Onemain Financial Group, LLC, (PSB-1).

The sole basis of the trustee's objection to confirmation was that the feasibility of the proposed plan relied upon the granting of the debtors' two motions.

On April 18, 2023, the court granted both the motion to avoid lien and motion to value collateral. See ECF Nos. 41, 42. As such the court will overrule the trustee's objection to confirmation. The

debtors shall submit an order confirming the plan which is approved and signed by the Chapter 13 trustee.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the trustee's objection to confirmation is overruled. The debtors shall submit an order confirming the plan which is approved and signed by the Chapter 13 trustee.

29. [22-23296](#)-A-13     **IN RE: PAVEL BARDOSH**  
[MS-3](#)

MOTION TO SELL  
4-11-2023    [\[54\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**No Ruling**

30. [22-23296](#)-A-13     **IN RE: PAVEL BARDOSH**  
[MS-4](#)

MOTION TO EMPLOY HOMESMART ICARE REALTY AS BROKER(S) AND/OR  
MOTION TO EMPLOY VADIM RYABOV AS REALTOR(S)  
4-11-2023    [\[62\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**No Ruling**



31. [22-23198](#)-A-13     **IN RE: TRACY THIBODEAU**  
[JBA-1](#)

OBJECTION TO CLAIM OF CHERYL THIBODEAU, CLAIM NUMBER 9  
3-8-2023    [\[27\]](#)

JOSEPH ANGELO/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Tentative Ruling**

**Objection:** Objection to Claim

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

**Disposition:** Sustained

**Order:** Civil minute order

**Claim Filed:** February 24, 2023

**Claims Bar Date:** February 17, 2022

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor objects to the claim of Cheryl Thibodeau, Claim No. 9. The unsecured claim was filed on February 24, 2023. The claims bar date in this case was February 17, 2023. See ECF No. 10.

### **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 debtor's objection to claim has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. Claim No. 3 will be disallowed.