

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 4, 2022
Place: Department B - 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, **and all parties will need to appear at the hearing unless otherwise ordered.** The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:00 AM

1. [19-13907](#)-B-13 **IN RE: JAVIER JAIME AND LILIANA LUIS**
[RSW-4](#)

CONTINUED MOTION TO MODIFY PLAN
2-14-2022 [\[116\]](#)

LILIANA LUIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This matter was originally set for hearing on April 6, 2022 and continued. Doc. #126.

Javier Osvaldo Jaime and Liliana Aide Luis ("Debtors") sought an order confirming the Third Modified Chapter 13 Plan filed February 14, 2022 (Doc. #120). Doc. #116. The proposed plan provides that Debtors have paid a total of \$62,024.00 in plan payments through February 2022, and beginning March 2022, the payment will be \$2,600.00 per month for the remainder of the 60-month plan. Doc. #120, § 7.01. The plan contemplates distributing a 0% dividend to allowed, non-priority unsecured claims. *Id.*, ¶ 3.14.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because the debtors will not be able to make all payments under the plan and comply with the plan. Doc. #124. Trustee objected as to feasibility because Debtors' *Amended Schedules I and J* indicated Debtors' net income was \$2,560.54, but the proposed monthly payment was \$2,600.00, so Debtors did not have the disposable income necessary to afford the proposed plan payment. *Id.*, cf. Doc. #122, *Am. Sched. J*, ¶ 23c.

Additionally, Trustee noted that the plan has 31 months remaining as of March 2022 but will take 34.55 months to fund as proposed.

Doc. #124. The plan payment would need to increase to \$2,695.00 beginning March 2022 to fund the plan over the 31 remaining months. *Id.*

Debtors did not reply. Doc. #126. The court continued the hearing and ordered Debtors to file and serve either a written response not later than April 20, 2022, or a modified plan not later than April 27, 2022, or the motion would be denied on the grounds stated in Trustee's opposition without further hearing. Doc. #127. Though Debtors did file amended schedules on April 19, 2022, Debtors filed neither a response nor a confirmable modified plan. Failure to do so warrants sustaining Trustee's objection and denying the motion to modify plan without prejudice.

However, on April 27, 2022, Trustee filed a reply regarding Debtors' amended schedules. Doc. #131. Trustee notes *Amended Schedule J* (Doc. #129) indicates that Debtors have \$2,695.54 in net monthly income. Additionally, Trustee received a \$2,800.00 plan payment on March 23, 2022. *Id.* If, at the time of the hearing on May 4, 2022, Debtors agree that the order confirming plan shall include language increasing the plan payment to \$2,695.00 beginning March 2022, then Trustee says that he will withdraw the opposition to confirmation. *Id.*

This matter will be called and proceed as scheduled. If Trustee withdraws the opposition to plan confirmation, this motion may be GRANTED at the hearing. Any confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

2. [20-11914](#)-B-13 **IN RE: ROSA GODOY**
[RSW-5](#)

MOTION TO MODIFY PLAN
3-29-2022 [[82](#)]

ROSA GODOY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to June 8, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Rosa Elena Huezo Godoy ("Debtor") seeks an order confirming the Third Modified Chapter 13 Plan dated March 29, 2022 (Doc. #86). Doc. #82. The proposed plan provides that Debtor shall pay a total of \$10,008.00 through March 2022, and beginning April 2022, Debtor shall make monthly payments of \$925.00 through the remainder of the 60-month

plan. Doc. #86, § 7.01. The plan contemplates distributing a 0% dividend to allowed, non-priority unsecured claims. *Id.*, ¶ 3.14.

In contrast to the operative First Modified Chapter 13 Plan dated July 12, 2021, the plan term is being reduced from 84 months under the COVID-19 Bankruptcy Relief Extension Act of 2021 to 60 months, with a payment of \$8,508.00 through July 2021, and then monthly payments of \$750.00 through the remainder of the plan with a 0% dividend to allowed, non-priority unsecured claims. Doc. #47.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan and § 1325(a)(3) and (a)(7) because the petition has not been proposed in good faith and/or the action of the Debtor in filing the petition was in bad faith. Doc. #90.

First, Trustee notes that Debtor is seeking to decrease the plan term from 84 months to 60 months while increasing the monthly plan payment. With such reduction, Debtor would have 40 months remaining in the plan. However, the plan as proposed will take 53 months to fund, with 51 months needed to pay off the remaining Class 1 arrears. *Id.*

Second, Trustee does not claim that the plan has been filed in bad faith, but instead questions whether the plan has been filed in good faith. *Id.* Trustee says that Debtor has not made any payments since September 2021. Further, Debtor's declaration (Doc. #84) fails to address why Debtor has not been able to make monthly plan payments. *Id.* Debtor does say that she has not paid arrears because she has been waiting on a tax refund from the IRS. However, such a tax refund is not a guaranteed source of income, only comes one time per year, and is insufficient to fund a chapter 13 plan. Additionally, Debtor indicates that her daughter has been financially assisting Debtor with \$910.00 per month, so Trustee questions why payments have not been made if Debtor's daughter has been continuing to provide financial assistance. *Id.*

This motion will be CONTINUED to June 8, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than May 25, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by June 1, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 1, 2022. If Debtor does not timely file a modified plan or a written response,

this motion will be denied on the grounds stated in the opposition without a further hearing.

3. [22-10323](#)-B-13 **IN RE: DONALD/PAULA ROBINSON**
[KSR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY RANDALL GRIGG AND
ANGENE GRIGG
4-12-2022 [[15](#)]

ANGENE GRIGG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRK RIMMER/ATTY. FOR MV.

NO RULING.

Randall and Angene Grigg ("Creditors") object to the confirmation of Donald Stephen Robinson's and Paula Elaine Robinson's ("Debtors") Chapter 13 Plan dated March 1, 2022 (Doc. #3). Doc. #15. Creditors contend: (1) the plan incorrectly understates the amount owing under the note owned by Creditors in the plan; and (2) the plan impermissibly modifies a note secured only by Debtor's residence in violation of 11 U.S.C. § 1322(b)(2) by reducing the interest rate on the amount owed to Creditors from 8% to 4%. *Id.*

The court intends to determine the proper "formula" discount rate to pay Creditors' claim at a later evidentiary hearing. This matter will proceed as a scheduling conference for that issue only.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Opposition may be presented at the hearing. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Creditors object because the plan understates the amount owed to Creditors and impermissibly decreases the interest rate of its loan solely secured by Debtor's residence in violation of § 1322(b)(2). Doc. #15.

Debtors filed chapter 13 bankruptcy on March 1, 2022. Doc. #1. The proposed plan provides for 60 monthly payments of \$3,261.00 with a 0% dividend to be distributed to allowed, non-priority unsecured claims. Doc. #3. The plan places Creditors in Class 2(A) with a \$160,000.00 claim not reduced based on the value of the collateral and proposes to pay Creditors a monthly dividend of \$2,946.64 with 4.0% interest on the claim. *Id.*, § 3.08. Over 60 months, Creditors would be paid approximately \$176,798.40.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim under § 501, is deemed allowed unless a party in interest objects. Creditors filed Claim 4-1 on March 25, 2022, amended by Claim 4-2 on April 12, 2022, in the fully secured amount of \$193,337.53 with an interest rate of 8.0%. Claim 4-2 further states that the property securing the claim is valued at \$198,600.00. Debtors use the same valuation in the schedules. Doc. #1, *Sched. A/B*. No party has objected to Claim 4.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #3. Creditor's proof of claim is for \$193,337.53. This is classified in Class 2(A) – paid by the chapter 13 trustee, but modified by the plan, or matured or will mature before the plan is completed. Section 3.08(c) states that the amount of a Class 2 claim is determined by non-bankruptcy law, but those claims may be reduced to the value of the collateral securing it by filing, serving, setting for hearing, and prevailing on a motion to determine the value of the collateral. Creditors are in Class 2(A), which is for claims that cannot be reduced based on the value of the collateral.

As to the plan understating the amount owed on account of the claim, the court intends to **OVERRULE THE OBJECTION IN PART** because the proof of claim controls the amount that will be repaid under the plan, not the amount listed in the plan itself.

Next, § 3.08(c)(3) provides that "[e]xcept as permitted by 11 U.S.C. § 1322(c), Debtor is prohibited from modifying the rights of a holder of a claim secured only by Debtor's principal residence." *Id.* (emphasis added).

Section 1322(b)(2), upon which Creditors' objection is based, is subject to subsections (a) and (c). Subsection (c) provides:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title[.]

Here, the exhibits attached to Claim 4-2 indicate that a foreclosure sale was scheduled for March 2, 2022. Claim 4-2, *Payoff Status Report*, at 4; see also Doc. #18. Further, it appears that the original maturity date for the loan was September 16, 2015. *Id.*, at 6. There is no evidence that Debtors have entered into any loan modification agreements.

So, Creditors' claim is a default with respect to a lien on Debtors' principal residence and this is a case in which the last payment on the original payment schedule for a claim secured by Debtors' residence was due before the date on which the final payment under the plan is due. Accordingly, § 1322(c)(1) and (c)(2) are applicable. Debtors may cure the default under (b)(3) or (b)(5) until the property is sold at a foreclosure sale, and the plan may provide for the payment of the claim as modified pursuant to § 1325(a)(5).

Section 1322(c)(2) "carves out an exception to the anti-modification rule against home mortgages, allowing modification if the last payment on the original payment schedule for the mortgage is due prior to the date on which the final plan payment is due." *Palacios v. Upside Invs. LP (In re Palacios)*, No. CC-12-1502-KiPaTa, 2013 Bankr. LEXIS 3943, at *11 (B.A.P. 9th Cir. Apr. 15, 2013) (emphasis in original), citing *In re Jones*, 188 B.R. 281, 282 (Bankr. D. Or. 1995); accord. *In re Bagne*, 219 B.R. 272, 277 (Bankr. E.D. Cal. 1998) ("Plainly, this language [in § 1322(c)(2)] instructs the court to disregard § 1322(b)(2)."). The provisions of § 1325(a)(5) are therefore applicable.

Under § 1325(a)(5)(B), secured creditors may be treated one of three ways: (1) convince the claimholder to accept the plan [(a)(5)(A)]; (2) provide in the plan that the holder of the secured claim retains its lien and will be paid not less than the present value of the allowed amount of its secured claim [(a)(5)(B)(i) and (ii)]; or (3) surrender the collateral [(a)(5)(C)]. § 1325(a)(5)(B); see also *In re Young*, 199 B.R. 643, 648 (Bankr. E.D. Tenn. 1996). If Debtors choose the second option under § 1325(a)(5)(B)(i) and (ii), the claim could theoretically be reduced based on the value of the collateral in question. Such reduction is inappropriate here because the claim exceeds the value of the collateral – which is likely why the claim is listed in Class 2(A) rather than Class 2(B).

Though the value of the collateral cannot be reduced, the interest paid on the claim may be modified under § 1325(a)(5)(B)(ii). In *Till*, the Supreme Court determined that the appropriate interest rate for a secured claim should be determined by the 'formula approach,' which requires the court to take the national prime interest rate and adjust it to compensate for an increased risk of default. *Till v. SCS Credit Corp.*, 124 U.S. 465, 471 (2004). Such factors include (1) circumstances of the estate, (2) the nature of the security, and (3) duration and feasibility of the reorganization plan. *Id.*, at 476-77.

As of the petition date, March 1, 2022, the national bank prime interest rate was 3.25%.¹ It increased to 3.5% on March 17, 2022, where it remains now.² Creditors argue that the interest rate should be 8%, which is the contractual interest rate. However, the *Till* factors have not been addressed in justifying such an interest rate.

To the extent the plan seeks to modify Creditor's claim by reducing the interest rate, the plan does not impermissibly modify Creditors' claim in violation of § 1322(b)(2) because it satisfies the exception outlined in § 1322(c)(2). Though Creditors certainly are entitled to the "prime-plus" rate based on the state of financial markets, the circumstances of the estate, and the characteristics of the loan, such a rate is open for determination. *Till*, 124 U.S. at 480 (noting that other courts have generally approved adjustments of 1% to 3%) (citing *GMAC v. Valenti (In re Valenti)*, 105 F.3d 55, 64 (2d Cir. 1997); *Assocs. Commer. Corp. v. Rash*, 520 U.S. 953 (1997)).

Accordingly, this matter will be called and proceed as a scheduling conference. The court intends to OVERRULE THE OBJECTION IN PART as to the plan understanding the claim amount because the because the proof of claim, not the plan, determines the amount that will be repaid under the plan. The court will set an evidentiary hearing to determine the appropriate interest rate under the plan.

¹ See *Federal Reserve Selected Interest Rates*, Data Download, Series H15/H15/RIFSPBLP_N.D, historical bank prime loan rates (03/01/2022-05/02-2022), <https://www.federalreserve.gov/releases/H15/default.htm> (visited May 2, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

² *Id.*

4. [18-11141](#)-B-13 **IN RE: ELENA HARPER**
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-2021 [\[102\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party shall
submit a proposed order after hearing.

This matter was originally heard on January 5, 2022 and continued to March 2, 2022. Doc. #117. The court further continued the hearing to May 4, 2022 at 9:00 a.m. so the Debtor could either file a modified plan or a motion to incur additional debt. Doc. #121.

Freedom Mortgage Corporation ("Movant") sought relief from the automatic stay under 11 U.S.C. § 362(d)(1) for cause with respect to real property located at 3017 McCall Avenue, Bakersfield, CA 93304 ("Property"). Doc. #102. Movant claimed that Debtor had a post-petition delinquency of \$5,745.22, consisting of six payments of \$974.84 from June 2021 to November 2021. Doc. #104. Movant also sought waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

Chapter 13 trustee Michael H. Meyer ("Trustee") timely responded, indicating that no payments were made during the April to August 2021 forbearance period, but Trustee resumed making payments November 1, 2021, and has paid a total of \$24,053.25. Doc. #117. Trustee also represented that the delinquency could be cured by filing a modified plan. *Id.*

Elena Janel Harper ("Debtor") timely responded, contending that Debtor will soon file an amended plan to resolve the arrearage balance, or alternatively, will file a motion to incur additional debt to refinance the loan. Doc. #114. Debtor also objected to waiver of the 14-day stay under Rule 4001(a)(3).

At the January 5, 2022 hearing, the court determined that a bona fide dispute existed as to the amount owed for post-petition mortgage payments. Doc. #117. The court continued the motion to March 2, 2022 and, for good cause, ordered the automatic stay continued in effect under 11 U.S.C. § 362(e)(2)(B) pending resolution of the final hearing on this motion. Movant was ordered to file and serve any additional

evidence or briefing by February 16, 2022. Doc. #118. Replies by Trustee and Debtor, if any, were to be filed and served not later than February 23, 2022. No additional briefing was filed.

At the March 2, 2022 hearing, the parties agreed to continue the motion to May 4, 2022. Doc. #121. The automatic stay was continued in effect under 11 U.S.C. § 362(e)(2)(B)(i) by agreement of all parties in interest. If the delinquency is satisfied, Movant will withdraw the motion. The court continued the automatic stay since all parties agreed to the continuance.

Since the last hearing, no party has filed any additional opposition, argument, or evidence. This matter will be called as scheduled. It appears there is a post-petition delinquency. The Trustee sent a *Notice of Default and Intent to Dismiss* in March and the record does not include the response to the notice. Doc. #125. Also, no modified plan or motion to authorize refinance as previously represented by the debtor. The court is inclined to GRANT the motion.

5. [19-10245](#)-B-13 **IN RE: RAUL VALDEZ**
[MHM-4](#)

MOTION TO DISMISS CASE
3-11-2022 [[61](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and § 1307(c)(6) for failure to complete the terms of a confirmed plan. Doc. #61. Trustee's attorney, Kelsey A. Seib, declares Debtor is delinquent \$5,355.09 as of March 11, 2022. Doc. #63. Two additional plan payments of \$2,682.36 each will also become due on March 25 and April 25, 2022, for a total sum of \$10,719.81 due before the hearing.

Raul Valdez, Jr. ("Debtor"), responded on April 22, 2022, but it was not timely filed before the April 20, 2022 opposition deadline. Doc. #65. Debtor declares that he has been unable to cure the delinquency because (1) he is in the trucking industry and must wait for payments from certain brokers that are not paying him on time; and

(2) the price of diesel has increased dramatically. Doc. #66. Debtor anticipates that he will be paid "this coming Tuesday," which is April 26, 2022, so Debtor intends to become current on plan payments by the end of April 2022. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for being delinquent in making plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and Debtor has failed to complete the terms of a confirmed plan (11 U.S.C. § 1307(c)(6)). Debtor is delinquent in the amount of \$5,355.09. Doc. #63. Before this hearing, two additional payments of \$2,682.36 will also become due, for a total delinquency of \$10,719.81 due before the hearing.

Trustee has reviewed the schedules and Debtor has opted to use the exemption scheme outlined in Cal. Code Civ. Proc. §§ 704.010, et seq. *Id.* If this case were converted to chapter 7, Trustee has determined that this case has a liquidation value of \$4,407.00, which is comprised of Debtor's non-exempt equity in personal property assets including a freightliner, a possible refund from a law firm, and money in a bank account. If Debtor were to amend the exemptions, there would be a large amount of nonexempt equity that could be realized for the benefit of unsecured claims. But that is speculative. After chapter 7 administrative expenses and payment of the two priority claims that have been filed, it is unclear whether there would be anything but a *de minimis* distribution to unsecured creditors. Therefore, it appears that dismissal may serve the interests of creditors and the estate here.

This matter will be called to confirm whether Debtor has cured the outstanding delinquency. If Debtor has cured the delinquency, the

motion will be DENIED. If not, the motion may be GRANTED, and the case may be converted to chapter 7 or dismissed.

6. [20-12848](#)-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[RSW-6](#)

MOTION TO MODIFY PLAN
3-21-2022 [[130](#)]

MARIBETH TABAJUNDA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to June 8, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Patrick B. Tabajunda and Maribeth E. Tabajunda ("Debtors") seek an order confirming the Third Modified Chapter 13 Plan dated March 21, 2022 (Doc. #132). Doc. #130. The plan proposes that Debtors shall pay a total of \$58,291.50 through February 2022, and beginning March 2022, the monthly plan payment shall be \$4,500.00 for the remainder of the 60-month plan. Doc. #132. The plan proposes distributing a 9% dividend to allowed, non-priority unsecured claims. *Id.*, § 3.14.

In contrast to the operative First Modified Chapter 13 Plan dated March 24, 2021 (Doc. #63), this is a reduction from Debtors paying \$21,791.50 through February 2021 and monthly payments of \$6,700.00 beginning March 2021 through the remainder of the plan with a 50% dividend to allowed, non-priority unsecured claims. *Cf.* Docs. #63; #84.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation under 11 U.S.C. § 1325(a)(3) because the unsecured repayment percentage is reduced significantly from 78.178% to 9% and Debtors have failed to produce evidence that the modification has been proposed in good faith. Doc. #138.

In sum, the Third Modified Plan proposes to (1) reduce the plan payment from \$6,700 to \$4,500 per month; (2) reduce the percentage unsecured creditors will receive from 78.178% to 9%; (3) keep the plan term at 60 months; and (4) forgive approximately \$43,900 in missed plan payments due through February 2022. Per *Amended Schedule J*, Debtors' expenses have increased by \$2,946.79 per month: from \$3,307.00 to \$6,253.79. The unpaid \$43,900 delinquency would result in \$1,070.73 per month if paid over the remaining 40 months of the proposed plan.

Trustee objects because the moving papers are silent as to the reduction in income for joint debtor Maribeth Tabajunda (from \$11,240.00 to \$10,778.70 per month) and devoid of any information as to why Debtors have failed to make payments under the plan between November 2021 and March 2022. *Id.*

Trustee requests Debtors' 2021 tax return and the most current paystubs for each debtor with year-to-date earnings to establish income for the last two years. Trustee also requests the last two months of utility bills, proof of food and housekeeping, medical and dental, and health insurance costs. This information will substantiate statements in the declaration that (i) income has been cut significantly; (ii) Debtor was on disability; and (iii) Debtors' expenses have increased substantially.

This matter will be CONTINUED to June 8, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than May 25, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by June 1, 2022.

The court reminds Debtors of their obligation to cooperate with the Trustee's reasonable requests for information. 11 U.S.C. § 521(a)(3). Under these circumstances, failure to provide the information may be construed as the debtor's not proposing he modified plan in good faith. *See*, 11 U.S.C. § 1325(a)(3).

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 1, 2022. If Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

7. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-11-2022 [\[45\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

This motion was originally set on April 6, 2022 and continued to May 4, 2022. Docs. #60; #62.

Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and § 1307(c)(4) for failure to commence making timely payments due under the plan. Doc. #45. Trustee declared that Debtor has failed to make all required payments due under the plan. Doc. #47. Payments were delinquent in the amount of \$5,000.00 through February 11, 2022, with two additional payments of \$2,500.00 due February 25, and March 25, 2022 before the April 6, 2022 hearing. *Id.* Presumably, an additional payment of \$2,500.00 became due on April 25, 2022, for a total delinquency of \$12,500.00 due before the May 4, 2022 hearing.

Monica Marcella Ramos ("Debtor") timely responded. Doc. #52. Debtor was unable to become current and intended to file a motion to modify plan. On this basis, Debtor asked the court to deny the motion.

Debtor's First Modified Plan dated March 29, 2022 is set for hearing in matter #8 below. RSW-2. Trustee has objected to plan confirmation in that matter. Doc. #64. Consequently, the court intends to continue the motion to confirm plan to June 8, 2022 so that Debtor can file and serve a reply with admissible evidence in support of her position.

This matter will be called and proceed as scheduled to inquire whether Debtor is current under the proposed modified plan. If so, the court intends to CONTINUE this matter to June 8, 2022 to be heard in connection with the motion to modify plan.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the

hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(4) for failing to commence making plan payments.

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors. Debtor is delinquent in the amount of \$5,000.00 with three additional payments due before this continued hearing, for a total of \$12,500.00. Doc. #47.

In addition to the delinquency described above, Trustee has reviewed the schedules and determined that there are no non-exempt, unencumbered assets that could be liquidated for the benefit of unsecured claims if the case were converted to chapter 7. Doc. #45. Debtor's schedules indicate that Debtor's real property and vehicles are over encumbered, and the remaining assets are exempted entirely. Thus, dismissal, rather than conversion, serves the interests of creditors and the estate.

However, as noted above, Debtor filed a modified plan. Debtor's First Modified Plan dated March 29, 2022 provides that Debtor shall pay a total of \$2,500.00 through March 2022, and beginning April 2022, Debtor shall make monthly payments of \$2,755.00 through the remainder of the 60-month plan. Doc. #58. If confirmed, the plan will cure the delinquency here and Debtor will become current.

This matter will be called to confirm where Debtor has paid the \$2,500.00 through March 2022 and the \$2,755.00 due through April 2022 under the proposed First Modified Plan in matter #8 below. If current, this matter will be CONTINUED to June 8, 2022 at 9:00 a.m. to be heard with the motion to confirm plan. If Debtor is not current under the proposed First Modified Plan, then it is neither feasible nor confirmable and this motion will be GRANTED.

8. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**
[RSW-2](#)

MOTION TO CONFIRM PLAN
3-29-2022 [\[54\]](#)

MONICA RAMOS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied or continued to June 8, 2022 at 9:00 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Monica Marcella Ramos ("Debtor") seeks an order confirming the First Modified Plan dated March 29, 2022 (Doc. #58). Doc. #54. The proposed plan provides that Debtor shall pay \$2,500.00 through March 2022, and beginning April 2022, Debtor shall pay \$2,755.00 per month for the remainder of the 60-month plan. Doc. #58. The plan contemplates distributing a 0% dividend to allowed, non-priority unsecured claims. Doc. #58.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #64. Trustee objects on grounds of feasibility because Debtors' current *Schedules I* and *J* indicate that Debtor's net monthly income is \$2,537.49 per month, which is insufficient to fund the \$2,755.00 plan payment. *Id.*; *cf.* Doc. #1, *Sched. J*, ¶ 23c.

This matter will be called to confirm whether the case will be dismissed in matter #7 above. If the case is not dismissed, the motion will be CONTINUED to June 8, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than May 25, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by June 1, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 1, 2022. If Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

9. [21-12757](#)-B-13 **IN RE: BRYAN REED AND EMMA NIEVA**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-15-2022 [\[22\]](#)

VINCENT GORSKI/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This matter was originally set for hearing on April 6, 2022. Doc. #25.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of Bryan Eugene Reed's and Emma Rose Saldonado Nieva's ("Debtors") Chapter 13 Plan (Doc. #8) dated December 1, 2021 because it fails to provide the same treatment of claims classified within a particular class as required by 11 U.S.C. § 1322(a)(3).³ Doc. #22.

Trustee objected because proposed additional provision 7.01 attempts to create separate classes of Class 7 general unsecured claims that are treated differently from the rest. *Id.* Specifically, Trustee objects to the second class of unsecured creditors that consists of unsecured and non-deeded timeshare creditor Worldmark with a claim of \$39,754.00. Worldmark has a fixed monthly payment of \$581.18 with the last payment due before completion of the plan. However, Worldmark is affiliated with Wyndham Resort Development, Inc. ("Wyndham"), which filed Claim 17 on January 31, 2022 asserting a \$40,421.01 secured claim. Thus, Wyndham/Worldmark will not receive treatment through the plan because it is not an unsecured claim, but it is not treated as a secured claim either. Despite this lack of treatment, Trustee felt compelled to object should Wyndham/Worldmark amend Claim 17 in the future, since it will not receive a specific dividend under section 5.02 of the plan. *Id.*

The court continued the objection. Doc. #26. Debtors were directed to either (1) file and serve a written response not later than April 20, 2022 or (2) file a modified plan in lieu of a response not later than April 27, 2022, or the objection would be sustained without further hearing. *Id.* Debtors neither filed a response nor a modified plan. Accordingly, this objection will be SUSTAINED because the plan fails to provide the same treatment for each claim classified within a particular class as required by 11 U.S.C. § 1322(a)(3).

³ Debtors filed two chapter 13 plans on December 1, 2021. The first was filed at 7:26:53 a.m. Doc. #7. Soon after, a near-identical version adding North

American Savings as a Class 4 creditor was filed 7:50:18 a.m. Doc. #8. Trustee forwarded the second version to the Bankruptcy Noticing Center for service. Doc. #13.

10. [21-12176](#)-B-13 **IN RE: JAIME/MIREYA MURILLO**
[RSW-3](#)

MOTION TO VALUE COLLATERAL OF CONNEXUS CREDIT UNION
3-23-2022 [\[35\]](#)

MIREYA MURILLO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jaime Aceves Murillo and Mireya Ileana Murillo ("Debtors") request an order valuing a water treatment system ("System") at \$500.00 under 11 U.S.C. §§ 506, 1322(b), and Federal Rule of Bankruptcy Procedure ("Rule") 3012. Doc. #35. The System is the collateral securing a debt purportedly owed to Connexus Credit Union ("Creditor").⁴

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Federal Rule of Bankruptcy Procedure ("Rule") 9013 and Local Rule of Practice ("LBR") 9014-1(d)(3)(A). The motion fails to state the factual and legal grounds upon which the requested relief is sought with sufficient particularity. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Additionally, Creditor does not appear to be the holder of the claim secured by the System.

First, Rule 9013 requires a request for an order to 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.*" Rule 9013 (emphasis added).

The particularity requirement is restated in the local rules:

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). Here, the motion states:

- (a) Debtors filed bankruptcy on September 11, 2021 and the meeting of creditors has concluded.
- (b) The System is the collateral of Creditor upon which a \$7,976.00 secured debt is owed.
- (c) The System is worth \$500.00. The plan proposes to pay this amount to Creditor on account of its secured claim. A copy of the plan was served with the motion.
- (d) Therefore, Debtors pray for an order valuing the System at \$500.00.

Doc. #35. This is insufficient. No citations to any statutes, rules, cases, or doctrines were included. The motion is also entirely devoid of any reference to or analysis of 11 U.S.C. §§ 506 or 1325(a)(*).

Further, the motion omits necessary facts, such as when the System was purchased and the Debtors' opinion of replacement value. *Id.* These facts are stated in joint debtor Mireya Murillo's declaration (Doc. #37), but they should have been included in the motion to satisfy the particularity requirement of Rule 9013 and LBR 9014-1(d)(3)(A).

Second, this is Debtors' second attempt to value the System. See RSW-1. The first attempt was denied without prejudice for failing to serve Creditor in accordance with Rule 7004(h) and failing to include the Debtors' opinion on the relevant standard of value. Docs. ##30-31. Since Creditor is a federally insured credit union, Rule 7004(h) service was required.

The court notes that Creditor has not filed a proof of claim. However, Quantum3 Group LLC ("Quantum3"), as agent for Aqua Finance, Inc. ("Aqua Finance"), filed Proof of Claim 8-1 on October 1, 2021 in the amount of \$8,055.35. See Claim 8. Claim 8 is derived from a purchase money security interest for a \$7,450.00 loan to purchase a whole house water treatment system. *Id.* Quantum3 and Aqua Finance value the System at \$8,055.35. *Id.* Unless Debtors have two water treatment systems, Aqua Finance, through its agent Quantum3, is the holder of the claim secured by the System.

Per the attached *Retail Installment Contract & Security Agreement* dated November 30, 2017, Debtors financed the purchase of the System through Quality Home Services, and the loan was immediately assigned to Aqua Finance. Claim 8 also includes a UCC Financing Agreement in favor of Aqua Finance that was recorded in Kern County on April 4, 2019. There is no indication that the claim was ever assigned to Creditor.

Though Creditor was adequately served, it does not appear to have any connection to the System, or the loan secured by it. No loan documents or other exhibits were filed in connection with the motion, so it is unclear. However, neither Quantum3 nor Aqua Finance were served. Doc. #38. Quantum3, as agent for Aqua Finance, appears to be the

actual holder of the claim secured by the System. Accordingly, Quantum3 and Aqua Finance should have been served pursuant to Rule 7004(b)(3). They were not.

For the above reasons, the motion will be DENIED WITHOUT PREJUDICE.

⁴ Debtors complied with Rule 7004(h) by serving Boyd Gustke, Creditor's President and CEO, at 1 Corporate Drive, Wasau, WI 54401 via certified mail on March 23, 2022. Doc. #38.

11. [22-10377](#)-B-13 **IN RE: MARCELLA MARQUEZ**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
4-8-2022 [[22](#)]

REVERSE MORTGAGE FUNDING
LLC/MV
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

Reverse Mortgage Funding LLC, its assignees and/or successors, by and through its servicing agent Compu-Link Corporation dba Celink ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1), as well as relief from the co-debtor stay under § 1301(c), with respect to real property located at 724 South Orange Avenue, Rialto, CA 92376-6920 ("Property"). Doc. #22. Additionally, Movant seeks *in rem* stay relief pursuant to § 362(d)(4) that is binding and effective in any other bankruptcy purporting to affect Property for two years after the date of entry of the order. *Id.* The basis for relief under § 362(d)(4) is that Debtor was purportedly transferred an interest in Property by an unauthorized grant deed on February 12, 2007 that recorded on March 10, 2022, which is one day before the petition date.

Marcella Marquez ("Debtor"), *pro se*, filed a responsive declaration on April 27, 2022. Doc. #38. Debtor notes that Property is not listed in the schedules and claims to have no knowledge of the transferors who purportedly transferred an interest in Property to her. Debtor opposes implementation of a two-year bar in any bankruptcy purporting to affect Property under § 362(d)(4). The court notes that Debtor converted the case from chapter 13 to chapter 7 on April 29, 2022.

Doc. #39. Jeffrey M. Vetter has been appointed as interim trustee. Doc. #40. Mr. Vetter and the United States Trustee ("UST") were served by U.S. mail on May 2, 2022.

This matter will be called as scheduled. The court intends to DENY WITHOUT PREJUDICE the motion for failure to comply with Federal Rules of Bankruptcy Procedure ("Rule") 4001, 7004, and 9014.

Chapter 13 trustee Michael H. Meyer ("Trustee") was not properly served. Rule 4001(a)(1) requires a motion for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires a motion in a contested matter to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 13 Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the certificate of service says that the Chapter 13 Trustee was served "by electronic means through the Court's ECF program and pursuant to LBR 7005-1(d)(1) and FRCivP5[.]" Doc. #28. Though Trustee's email address is listed in accordance with LBR 7005-1, Rule 9036 does not permit electronic Rule 7004 service on Trustee.

Additionally, the UST was not initially served. *Id.* The UST may raise, appear, and be heard on any issue in any case under § 307 and should be served or notified. But no relief is being sought against the UST here, so electronic notification under Rule 7005 and LBR 7005-1 is sufficient so long as the certificate of service lists UST's email address as required by LBR 7005-1(d)

As noted above, Debtor converted the case to chapter 7 on April 29, 2022 and Mr. Vetter was appointed as interim chapter 7 trustee on the same date. Docs. ##39-40. The Chapter 13 Trustee filed a *Final Report and Account* on May 2, 2022. Doc. #46.

Movant served Mr. Vetter and the UST by U.S. mail on May 2, 2022, but it is unlikely that they will receive the motion documents by the time of the hearing.

This matter will be called and proceed as scheduled. The court is inclined to DENY WITHOUT PREJUDICE the motion for inadequate service.

12. [18-10681](#)-B-13 **IN RE: RICHARD/MARIA LAUREYS**
[RSW-1](#)

MOTION TO MODIFY PLAN
3-21-2022 [\[81\]](#)

MARIA LAUREYS/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.

NO RULING.

Richard Francis Laureys and Maria Alexandra Laureys ("Debtors"), through their apparent new attorney Robert S. Williams (contrary to the case record), seek confirmation of the Fourth Modified Chapter 13 Plan dated March 21, 2022. Doc. #81. The proposed plan provides that Debtors shall pay a total of \$38,921.86 through March 2022, and beginning April 2022, Debtors shall pay \$615.00 per month for the remainder of the 60-month plan. Doc. #85. In contrast to the operative Third Modified Plan dated August 30, 2018, this is a reduction from payments of \$467.03 in months 1 and 2, and then payments of \$844.00 for the remaining months 3 through 60. Doc. #56.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation under 11 U.S.C. § 1325(a)(6) because Debtors will not be able to make all payments due under the plan and comply with the plan. Doc. #87. Trustee objects because Debtors' current *Amended Schedules I and J* were filed September 4, 2018. Though they indicate that Debtors' net monthly income is \$846.08 per month, such schedules were filed three years and eight months before this scheduled hearing. *Id.*; cf. Doc. #62, *Am. Sched. J*, ¶ 23c. It is impossible to decipher whether a plan is feasible in the absence of supporting evidence, such as updated schedules.

However, the motion fails to comply with the Local Rules of Practice ("LBR") because Mr. Williams is not permitted to appear or file motions on Debtors' behalf. This matter will be called as scheduled.

LBR 2017-1(b)(1) provides that no attorney may participate in any action unless the attorney has appeared as an attorney of record. An exception exists under LBR 2017-1(c) for an attorney that is employed or retained by a law firm, organization, public entity, agency, or department of another person employed or retained by the same law firm, organization, public entity, agency, or department is the attorney of record.

William D. Olcott is the attorney of record in this case. He prepared and filed the petition and executed the *Disclosure of Compensation of*

Attorney for Debtor(s) and the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Docs. #1; #7.

Under LBR 2017(a)(2), an attorney appearing in a bankruptcy case may not withdraw from representation, or decline to act on behalf of the client, without first complying with the withdrawal requirements specified in subpart (e). Subpart (e) states that an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of the court upon noticed motion, and further adds that “[t]he authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder.”

LBR 2017-1(h) allows an attorney who has appeared in an action to substitute another attorney and withdraw from the action. Such substitution is accomplished by submitting a *Substitution of Attorney* that states the full name and address of the new attorney and is signed by the withdrawing attorney, the new attorney, and the client. All substitutions require court approval.

Alternatively, LBR 2017-1(j) provides that an attorney not substituted in as attorney of record under subpart (h) and not authorized to participate must file a *Notice of Association* that is signed by an attorney of record and the associating attorney and is served on all parties.

No such substitution or notice has been filed. The only possible indication of a change in counsel is a docket entry dated October 29, 2020, which provides:

Change of Address Submitted for Attorney William Olcott by e-Filing User Account Maintenance Utility Address changed from: 1401 19th Street, Suite 205, Bakersfield CA 93301 to: 2441 G Street Suite A, Bakersfield CA 93301.

See docket generally. This appears to be the address of Mr. Williams practicing law with Williams & Williams, Inc.⁵ However, per the State Bar website, Mr. Olcott’s address at the Law Office of William D. Olcott is 1401 19th St., Ste. 205, Bakersfield, CA 93301.⁶ Mr. Olcott’s status was last updated to “Active” on July 23, 2021, which was after the change of address docket entry.

Rather than substituting counsel or filing a *Notice of Association*, the change of address docket entry merely forwarded Mr. Olcott’s mail in this case to the address of Mr. Williams. This is insufficient.

Now, Mr. Williams seeks to confirm this modified plan on behalf of the Debtors. Doc. #81. But Mr. Williams does not appear to be permitted to file this motion or otherwise participate in this proceeding.

Additionally, Trustee objects because the motion fails to provide evidence of feasibility because the current *Schedules I* and *J* are over three years old.

This matter will be called and proceed as scheduled.

⁵ Cal. State Bar, <https://apps.calbar.ca.gov/attorney/Licensee/Detail/73172> (visited Apr. 29, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

⁶ Cal. State Bar, <https://apps.calbar.ca.gov/attorney/Licensee/Detail/134125> (visited Apr. 29, 2022).

13. [19-12886](#)-B-13 **IN RE: RAYMOND/DEBORAH MARTIN**
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
3-25-2022 [\[93\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Raymond Dean Martin and Deborah Lynn Martin ("Debtors") have cured the default with respect to the promissory note dated November 17, 2006 in favor of U.S. Bank National Association as Trustee of the Lodge Series IV Trust c/o SN Servicing Corporation ("Creditor") and secured by a deed of trust on real property located at 21204 Indian Wells Drive, Tehachapi, CA 93561 ("Property"); and (2) all post-petition payments due and owing as of August 2019 through December 2021 have been paid. Doc. #93.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim

Rule 3002.1(g) provides that within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b) (5).

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on January 21, 2022. Doc. ##87. Creditor did not provide Trustee with a Rule 3002.1(g) response. Since no response was filed, Trustee filed this motion. Doc. #93.

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through December 2021. The claim was originally filed by Igloo Series IV Trust Nationstar Mortgage LLC dba Mr. Cooper ("Mr. Cooper") on August 22, 2019. Claim 4-1. During the pendency of this case, the claim was transferred four times:

- (1) November 18, 2019: transferred to SN Servicing Corporation for Igloo Series IV Trust;
- (2) January 6, 2020: transferred to Wilmington Savings Fund Society, FSB, FCI Lending Services, Inc.;
- (3) September 29, 2020: transferred to US Bank National Association as Trustee of the Lodge Series IV Trust c/o SN Servicing Corporation; and
- (4) April 23, 2021: transferred to US Bank National Association as Trustee of the Bungalow Series IV Trust.

Docs. #55; #60; #73; #77. Trustee began payments to Mr. Cooper beginning August 2019 and the mortgage payment changed multiple times throughout the plan. Doc. #95. Trustee indicates that his office has paid a total of \$49,744.80 towards the ongoing mortgage payment,

\$29,481.05 towards the pre-petition arrearage claim, and \$0.00 in late fees. *Id.*; cf. Doc. #87.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtors have cured the default and are current on mortgage payments through December 2021.

14. [19-13088](#)-B-13 **IN RE: ARMANDO VARELA**
[JCW-1](#)

MOTION TO APPROVE LOAN MODIFICATION
3-24-2022 [\[36\]](#)

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

NO RULING.

Wells Fargo Bank, N.A. ("Movant") moves for an order authorizing Armando Jose Varela ("Debtor") to enter into a loan modification agreement with respect to a first deed of trust encumbering real property located at 2519 Renegade Avenue, Bakersfield, CA 93306 ("Property"). Doc. #36. The modification agreement provides for capitalizing \$4,827.12 in arrears into the principal balance. Doc. #38, *Ex. 1*. The modification will reduce monthly payments to \$644.37 (including the \$270.29 monthly escrow payment), extend the maturity date of the loan to November 1, 2051, and lowers the interest rate to 3.1250%. *Id.*

No party in interest timely filed written opposition. However, there is insufficient evidence that all of the requirements of LBR 3015-1(h)(1)(C) have been met. Further, there appears to be a standing issue. This matter will be called to inquire whether Debtor is current and not in default with respect to the operative chapter 13 plan.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the debtor, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

This is the second request for approval of this loan modification agreement. The first request was made by Debtor and denied without prejudice for failure to provide adequate information about the proposed loan or a copy of the loan modification agreement. RSW-1. Movant now seeks approval.

LBR 3015-1(h)(1)(C) allows a debtor, *ex parte* and with court approval, to refinance existing debts encumbering the debtor's residence if the written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is certification to the court that: (i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the refinanced debt; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (v) the only security for the new debt is the debtor's existing residence; (vi) all creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the plan; and (vi) the monthly payment will not exceed the greater of the debtor's current monthly payments on the existing debt, or \$2,500.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection (h)(1)(C), the debtor may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Federal Rule Bankruptcy Procedure ("Rule") 2002 and LBR 9014-1.

As stated, a motion for approval of a loan modification agreement is to be filed by the *debtor* under LBR 3015-1(h)(1)(C) and (E), not a creditor. Movant does not appear to have standing here under the local rules. However, Debtor previously sought approval but was unsuccessful.

The modified loan contains the following terms:

| | <u>Original Loan</u> | <u>Modified Loan</u> |
|-------------------------------|----------------------|----------------------|
| Principal balance: | \$138,400.00 | \$91,994.08 |
| Monthly payment: ⁷ | \$650.81 | \$394.08 |
| Escrow/Other payment: | Unknown | \$270.29 |
| Term: | 30 years | 30 years |
| Interest: | 3.875% | 3.125% |

Doc. #38, *Ex. 1*. As noted above, the modification capitalizes \$4,827.12 in unpaid amounts including unpaid and deferred interest, fees, escrow advances, and other costs, but not unpaid late charges, valuation, property preservation, and other charges not permitted under the modification agreement.

Debtor's declaration and amended schedules were filed more than 30 days ago. LBR 3015-1(h)(1)(C)(iii). Per Debtor's *Amended Schedule J*

filed January 25, 2022, Debtor's monthly net income is \$1,174.00 after paying the modified monthly loan plus the escrow payment. Doc. #31, *Am. Sched. J*. The debt appears to be a single debt incurred only to refinance the existing debt encumbering Debtor's residence and the only security for the new debt will be the Debtor's existing residence. Doc. #38, *Ex. 1*. Additionally, Movant appears to be the only creditor with a lien or security interest encumbering Property. Doc. #1, *Sched. D*; Claim 5-1.

This matter will be called as scheduled to confirm whether all plan payments are current, the plan is not in default, and address the other procedural deficiencies.

If approved, any order confirming the modification shall provide that Debtor is authorized, *but not required*, to enter into a loan modification agreement with Movant.

⁷ The monthly payment consists of principal and interest. Debtor will also be responsible for a \$270.29 monthly escrow payment. Doc. #38, *Ex. 1*.

15. [20-12990](#)-B-13 **IN RE: SIMPLICIO/SALUD SABERON**
[RSW-3](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
4-6-2022 [[50](#)]

SALUD SABERON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

On August 23, 2021, joint debtor Simplicio A. Saberon ("Decedent") passed away. He is survived by his wife, joint debtor Salud Pablo Saberon ("Debtor"). Doc. #50. Debtor seeks to (1) be substituted as the representative for or successor to Decedent for this joint chapter 13 case; (2) allow for the continued administration of the chapter 13 case after Decedent's death; and (3) waive the § 1328 certification requirements for entry of discharge with respect to Decedent. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon

default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

As a preliminary matter, the motion does not comply with the local rules. LBR 9014-1(d)(1) provides that exhibits shall be filed as a separate document from the document to which it relates. Subparts (d)(2) and (d)(3) require the exhibit document to include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibit does not contain an index or consecutively numbered pages and is attached to the omnibus motion and notice of death rather than filed separately. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. 25(a) (Fed. R. Bankr. P. 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Doc. #50. The court notes that both Debtor and Decedent filed certificates of post-petition debtor education on October 29, 2020 pursuant to 11 U.S.C. § 1328(g). Docs. ##19-20.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Fed. R. Bankr. P. 1016 permits the case to proceed and be concluded in the same manner, so far as possible, as though the death had not occurred if two pre-requisites are met: (1) further administration is possible and (2) administration is in the best

interest of all parties. However, Fed. R. Bankr. P. 1016 also allows the case to be dismissed.

Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007) (permitting further administration because it is both possible and in the best interests of parties); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration permitted if a personal representative is appointed and the confirmed plan is made current and paid through completion); cf. *In re Spider*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999) (further administration deemed not possible because debtors' chapter 13 plan was not confirmed before death).

Here, the debtors filed chapter 13 bankruptcy on September 16, 2020. Doc. #1. Their Chapter 13 Plan dated September 16, 2020, confirmed January 7, 2021, provided for 36 monthly payments of \$100.00. Docs. #2; #32. The plan also provided for paying Class 4 creditor Select Portfolio Servicing, Inc. \$1,268.12 per month in connection with its security interest in the debtors' residence. The 36th month after the petition date is September 2023, so a little over one year and four months remain in the plan.

The schedules indicate that both Debtor and Decedent were retired with a monthly income of \$2,762.00. Doc. #1, *Sched. I*. Decedent contributed \$2,081.20 and Debtor contributed \$680.80. Both amounts were derived from Social Security income. After payment of expenses, the debtors had a monthly net income of \$108.88 per month. *Id.*, *Sched. J*. No amended schedules have been filed.

Reducing the combined net income by Decedent's contribution while assuming that expenses remain unchanged leaves an approximate monthly deficit of \$1,972.32 per month. Though Debtor's gross income is enough to afford plan payments, she does not appear to be able to pay both the plan payments and living expenses based on the current schedules. There is no evidence of the extent of continued Social Security payments the debtor currently receives.

Debtor declares that further administration of the case is possible. Doc. #52. Debtor's income may have increased, and expenses may have decreased since the case was filed, but no evidence of such change in net income has been presented to the court.

This matter will be called as scheduled to inquire how continued administration is possible and why this case should not be dismissed. Debtor should also promptly file amended *Schedules I* and *J* with current income and expenses.

16. [22-10494](#)-B-13 **IN RE: MARTIN RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-8-2022 [[11](#)]

DISMISSED 4/12/22

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Vacated as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on April 12, 2022 for failing to file missing schedules. Doc. #15. Therefore, the Order to Show Cause will be vacated as moot.

10:00 AM

1. [16-12132](#)-B-7 **IN RE: JOSEPH RONCZYK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-6-2022 [\[35\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
\$1.50 FILING FEE PAID 4/11/22

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the copy charge and certification fees were paid on April 11, 2022. Therefore, the Order to Show Cause will be VACATED.

2. [19-11272](#)-B-7 **IN RE: VICTOR VAQUERANO AND ARACELI AGUIRRE**
[PK-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) NA
4-20-2022 [\[30\]](#)

ARACELI AGUIRRE/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Victor Manuel Vaquerano, Jr., and Araceli Aguirre ("Debtors") seek to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$7,617.24 and encumbering residential real property located at 1201 Evadonna Road, Bakersfield, CA 93307 ("Property").⁸ Doc. #30.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the

respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Araceli Aguirre aka Araceli Aguirre Valasquez in favor of Creditor in the sum of \$7,617.24 on December 13, 2018. Doc. #35, *Ex. D*. The abstract of judgment was issued on January 2, 2019 and recorded in Kern County on January 14, 2019. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #1, *Sched. D*; #33.

As of the petition date, Property had an approximate value of \$230,000.00. *Id.*, Doc. #1, *Sched. A/B*. Property is encumbered by a single \$169,755.00 deed of trust in favor of Guild Mortgage Company. *Id.*, *Sched. D*. Debtors claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$60,245.00. *Id.*, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

| | |
|---|----------------|
| Amount of Creditor's judicial lien | \$7,617.24 |
| Total amount of unavoidable liens | + \$169,755.00 |
| Amount of Debtors' claimed exemption in Property | + \$60,245.00 |
| <i>Sum</i> | = \$237,617.24 |
| Debtors' claimed value of interest absent liens | - \$230,000.00 |
| Amount Creditor's lien impairs Debtors' exemption | = \$7,617.24 |

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

| | |
|-------------------------------------|----------------|
| Fair market value of Property | \$230,000.00 |
| Total amount of unavoidable liens | - \$169,755.00 |
| Homestead exemption | - \$60,245.00 |
| Remaining equity for judicial liens | = \$0.00 |
| Creditor's original judicial lien | - \$7,617.24 |
| Extent Debtors' exemption impaired | = (\$7,617.24) |

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

⁸ Debtors complied with Rule 7004(h) by serving Richard D. Fairbank, Creditor's Chair, by certified mail at 1680 Capital One Drive, McLean, VA 22102 and 4851 Cox Road, Glen Allen, VA 23060 on April 20, 2022. Doc. #37. A second certificate of service was filed April 21, 2022 to correct the service to the Capital One Drive address, but the Cox Road address is Creditor's main office address per the FDIC BankFind Suite. Doc. #38; cf. FDIC Cert #33954, <https://banks.data.fdic.gov/bankfind-suite/bankfind> (visited May 2, 2022). Fairbank is also the President, CEO, and Chairman of Capital One Financial Corporation, Creditor's parent company.

3. [18-12985](#)-B-7 **IN RE: LAURA HEISLER**
[RSB-1](#)

MOTION TO AVOID LIEN OF AMERICREDIT FINANCIAL SERVICES, INC.
3-23-2022 [[28](#)]

LAURA HEISLER/MV
R. BELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Laura Ellen Heisler ("Debtor") seeks to avoid a judicial lien in favor of Americredit Financial Services, Inc. ("Creditor") in the sum of \$39,062.37 and encumbering residential real property located at 4726 Pikes Peak Ln., Bakersfield, CA 93311 ("Property"). Doc. #30.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Federal Rules of Bankruptcy Procedure ("Rule") 4003, 7004, 9013,

and 9014, and Local Rule of Practice ("LBR") 9014-1. The motion also fails to state the factual and legal grounds upon which the requested relief is sought with sufficient particularity. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

First, Creditor was not properly served. Rule 4003(d) requires proceedings to avoid a lien under 11 U.S.C. § 522(f) "shall be commenced by motion in the manner provided in Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004.

Creditor is a corporation. Service on corporations is governed by Rule 7004(b)(3) and can be accomplished by mailing a copy of the pleadings to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and if required by statute, by also mailing a copy to the defendant.

The Ninth Circuit interprets Rule 7004 to require service upon a named officer, rather than to just the title of the office. *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); see also *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) (strictly construing the named officer requirement with respect to Rule 7004(b)(3)), citing *Addison v. Gibson Equip. Co. (In re Pittman Mech. Contractors)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995).

Here, Debtor attempted to serve Creditor at the following addresses:

1. Americredit Financial, Inc.
Attn: President, Manager and/or CEO
801 Cherry St. Ste. 3600
Fort Worth, TX 76102
By **CERTIFIED MAIL**
2. C T Corporation System, Agent for Service of Process
Americredit Financial, Inc.
251 Little Falls Drive
Wilmington, DE 19808
By **CERTIFIED MAIL**
3. Americredit Financial c/o
Cooksey, Toolen, Gage, Duffy & Woog
535 Anton Boulevard, Tenth Floor
Costa Mesa, CA 92626
4. Steven E. Ernest, Esq., SBN: 183967
Cooksey, Toolen, Gage, Duffy & Woog
535 Anton Boulevard, Tenth Floor
Costa Mesa, CA 92626

5. Steven E. Ernest, Esq., SBN: 183967
Geraci
90 Discovery
Irvine, CA 92618-3105

Doc. #32 (emphasis in original). The first service attempt uses the correct address per the business search website of California Secretary of State.⁹ However, no *named* officer was listed.

The second attempt was intended to be sent to Creditor's registered agent for service of process. However, the wrong registered agent is listed. Corporation Service Company Which Will Do Business In California As CSC-Lawyers Incorporating Service (C1592199) ("CSC-Lawyers Incorporating Service") is Creditor's registered agent for service of process, not C T Corporation System.¹⁰ Notably, Debtor served a correct address in Wilmington, DE for CSC-Lawyers Incorporating Service.¹¹ Further, Debtor includes a copy of the correct business search results for CSC-Lawyers Incorporating Service. Ultimately, the wrong registered agent was served at the correct address.

The third, fourth, and fifth service attempts are to Steven E. Ernest, Creditor's state court attorney in the underlying lawsuit against Debtor from which this judicial lien is derived. However, neither Steven E. Ernest, nor the law firm Cooksey, Toolen, Gage, Duffy & Wong, nor the Geraci Law Firm can be presumed to be authorized to accept Rule 7004 service on behalf of Creditor without evidence of an express or implied agency. "An implied agency to receive service is not established by representing a client in an earlier action." *Villar*, 317 B.R. at 93; *Rubin v. Pringle (In re Focus Media, Inc.)*, 387 F.3d 1077, 1083 (9th Cir. 2004) (finding that former attorney must have express or implied authority from client to accept service under Rule 7004(b)).

As result, none of the three service attempts on Creditor were sufficient under Rule 7004(b)(3). Per the business search website of the California Secretary of State and Creditor's *Statement of Information* filed April 9, 2018, Creditor's director is Daniel E. Berce at 801 Cherry St., Ste. 3600, Fort Worth, TX 76102.¹² The subsequent and most recent *Statement of Information No Change* filed July 2, 2021 indicates that there has been no change since the previous filing.¹³

Second, the motion did not plead legal and factual grounds with sufficient particularity. Rule 9013 requires a request for an order to 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.*" Rule 9013 (emphasis added).

The particularity requirement is restated in the local rules:

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). Here, the motion states:

- (a) Debtor moves for an order avoiding a judicial lien under 11 U.S.C. § 522(f) and Rules 4003(d) and 9014.
- (b) The Debtor's declaration describes the lien, assets, their value, and the exemption claimed.
- (c) Exhibits supporting the motion are the recorded document creating the lien, the relevant schedules showing assets and exemptions, and the original deed of trust.¹⁴
- (d) Therefore, Debtor prays (1) that the court avoid the lien as attached to the exhibits supporting the motion; and (2) for any relief that the court deems just and proper.

Doc. #28. This is insufficient. Though Debtor includes references to statutes, the motion is devoid of any factual grounds for relief and legal analysis. The motion omits necessary facts, including information about the Property, judgment lien, Debtor's exemption, and whether the Property is encumbered by any other non-consensual judgment liens or consensual deeds of trust. These facts are stated in Debtor's declaration (Doc. #30) and the exhibits (Doc. #31), but they should have been included in the motion to satisfy the particularity requirement of Rule 9013 and LBR 9014-1(d) (3) (A).

Third, the notice of hearing did not contain necessary language informing potential respondents of the pre-hearing dispositions that are available on the court's website. Doc. #29. LBR 9014-1(d) (3) (B) (iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Fourth, LBR 9004-2(a) (6), (b) (5), (b) (6), (e) (3), LBR 9014-1(c), and (e) (3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, a *Certificate of Service for a Withdrawal of Reaffirmation Agreement* was filed on November 16, 2018. Doc. #20. The DCN for that certificate was RSB-1. This motion also contains DCN RSB-1. Since the RSB-1 DCN has already been used, the motion should have used a new

DCN. For example, RSB-2 would have been an appropriate DCN because it has not yet been used.

Fifth, the notice of hearing omitted the addresses of the Debtor and the chapter 7 trustee. Doc. #29. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice contains a service list with the following addresses to which opposition must be sent:

CHAPTER 7 TRUSTEE

Address on file with the court.

DEBTORS

At the address listed in the caption.

ATTORNEY FOR DEBTOR:

R. Scott Bell, Esq.
1331 L St.
Bakersfield, CA 93301

Id. (emphasis in original). The notice correctly provides Debtor's attorney's address but directs respondents to look elsewhere for the trustee's and Debtor's addresses. This is insufficient. These addresses should have also been listed in the notice of hearing.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

⁹ See Cal. Business Search, <https://bizfileonline.sos.ca.gov/search/business> (visited May 2, 2022).

¹⁰ *Id.*, *Stmt. of Info.* (Apr. 9, 2018) for Creditor, Filing No. 18-031899. See also *Stmt. of Info. No Change* (July 2, 2021), Filing No. GU54286.

¹¹ *Id.*, *Stmt. of Info.* (Jan. 6, 2022) for CSC-Lawyers Incorporating Service, Filing No. A0872205. CSC-Lawyers Incorporating Service's California address is 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

¹² *Id.*, *Stmt. of Info.* (Apr. 9, 2018) for Creditor, Filing No. 18-031899.

¹³ *Id.*, *Stmt. of Info. No Change* (July 2, 2021) for Creditor, Filing No. GU54286.

¹⁴ Though not by itself fatal, the motion claims that the bankruptcy schedules are included in the exhibits. Doc. #28. They are not. Doc. #31.

4. [22-10393](#)-B-7 **IN RE: MANINDER SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-28-2022 [[20](#)]

INDERRAJ SINGH/ATTY. FOR DBT.
\$3.00 FILING FEE PAID 4/8/22

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the remainder of the filing fee of \$3.00 was paid on April 8, 2022. Therefore, the Order to Show Cause will be VACATED.

11:30 AM

1. [22-10103](#)-B-7 **IN RE: JOSE/LIDIA RIOS**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP,
LLC
4-4-2022 [\[13\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: The court will issue an order.

A reaffirmation agreement between ONEMAIN FINANCIAL GROUP, LLC and Debtors, Jose and Lidia Rios, was filed on April 4, 2022 in regard to a 2010 Acura. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), “if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor’s attorney’ attesting to the referenced items before the agreement will have legal effect.” *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original).

In this case, the debtors’ attorney affirmatively represented that the agreement established a presumption of undue hardship and that in his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The reaffirmation agreement between ONEMAIN FINANCIAL GROUP, LLC and Jose and Lidia Rios will be DENIED.