



**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 7, 2024**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

**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

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### 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.

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

MOTION TO CONFIRM PLAN  
3-28-2024    [\[24\]](#)

CATHERINE KING/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

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

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

### **DENIAL OF RELIEF 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).

### **SERVICE AND NOTICE**

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

#### B) Notice.

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

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

- (ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.
- (iii) *The notice of hearing shall advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.*
- (iv) When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.

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

The notice of motion in this case fails to comply with LBR 9014-1(B) (iii). The notice fails to advise respondents how they can determine whether the matter has been resolved. Notice of Motion, ECF No. 25.

#### **MOTION NOT SUPPORTED BY DECLARATION OF THE DEBTOR**

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

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

The motion is not supported by a declaration of the debtor as required. Counsel for the debtor has filed a declaration, however, this declaration is insufficient for purposes of confirmation. The debtor must prove that the plan complies with 11 U.S.C. § 1325(a),

(b) and the debtor's testimony is required to make these assertions. Counsel's representations are hearsay and are inadmissible. Fed. R. Evid. 802.

### **CIVIL MINUTE ORDER**

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

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

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

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

2. [24-20114](#)-A-13     **IN RE: DANIEL BRAJKOVICH**  
[CCR-1](#)

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

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

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** Continued from March 12, 2024

**Disposition:** Overruled as moot

**Order:** Civil minute order

The hearing on the creditor's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 debtor has filed a statement indicating that while he disputes the objection, he nonetheless intends to file an amended plan. Response, ECF No. 69. The court has sustained the trustee's

objection. Accordingly, the court will overrule this objection as moot.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the objection is overruled as moot.

3. [24-20114](#)-A-13     **IN RE: DANIEL BRAJKOVICH**  
[CCR-2](#)

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

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

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** Continued from March 12, 2024

**Disposition:** Overruled as moot

**Order:** Civil minute order

The hearing on the creditor's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 debtor has filed a statement indicating that while he disputes the objection, he nonetheless intends to file an amended plan. Response, ECF No. 71. The court has sustained the trustee's objection. Accordingly, the creditor's objection will be overruled as moot.

## **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the objection is overruled as moot.

4. [24-20114](#)-A-13      **IN RE: DANIEL BRAJKOVICH**  
[CCR-5](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
4-8-2024    [\[59\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
CHERYL ROUSE/ATTY. FOR MV.  
WITHDRAWN BY M.P.

### **Final Ruling**

The motion was withdrawn by the moving party on April 17, 2024, ECF No. 73. No opposition to the motion was filed. Accordingly, this matter will be removed from the calendar. No appearances are required.

5. [24-20114](#)-A-13      **IN RE: DANIEL BRAJKOVICH**  
[CCR-6](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
4-8-2024    [\[55\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
CHERYL ROUSE/ATTY. FOR MV.  
WITHDRAWN BY M.P.

### **Final Ruling**

The motion was withdrawn by the moving party on April 17, 2024, ECF No. 75. No opposition to the motion was filed. Accordingly, this matter will be removed from the calendar. No appearances are required.



6. [24-20114](#)-A-13     **IN RE: DANIEL BRAJKOVICH**  
[DPC-1](#)

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

SCOTT JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from March 12, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 Chapter 13 trustee objected to confirmation contending that the plan was overextended. The court will sustain the objection on this basis and need not consider the remaining issues raised by the trustee.

The debtor has filed a statement indicating that he intends to file an amended plan and concedes the trustee's objection regarding overextension of the plan. Response, ECF No. 67. Accordingly, the court will sustain the objection.

### **CIVIL MINUTE ORDER**

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

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

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

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

7. [24-20414](#)-A-13     **IN RE: CLINTON MOUTON**  
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
4-2-2024    [\[16\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Objection to Claim of Exemptions

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

**Disposition:** Sustained

**Order:** Civil minute order

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). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. 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 Chapter 13 trustee objects to the debtor's claim of exemption in multiple bank accounts.

### **EXEMPTIONS**

#### Exemption Law in Bankruptcy

"The bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the date of the filing of the petition." *Ford v. Konnoff (In re Konnoff)*, 356 B.R. 201, 204 (B.A.P. 9th Cir. 2006) (citing 11 U.S.C. § 541(a)(1)). A debtor may exclude exempt property from property of the estate. 11 U.S.C. § 522(b)(1).

Section 522 of Title 11 allows a debtor (1) to exempt property under § 522(d), unless a state does not so authorize, or (2) to exempt property under state or local law and federal law other than § 522(d). *Id.* § 522(b)(2)-(3)(A), (d). California has opted out of the federal exemption scheme. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012) (citations omitted); *accord* 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d); Cal. Civ. Proc. Code §§ 703.010(a), 703.130, 703.140.

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 ("[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition."); *accord In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987). "In California, exemptions are to be construed liberally in favor of the debtor." *In re Rawn*, 199 B.R. 733, 734 (Bankr. E.D.

Cal. 1996); *see also Sun Ltd. v. Casey*, 157 Cal. Rptr. 576, 576 (Cal. Ct. App. 1979).

#### Burden of Proof

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

#### **SOCIAL SECURITY DEPOSITS**

The debtor has claimed an exemption in multiple bank accounts under Cal. Civ. Proc. Code § 704.080 in the following amounts: (1) Bank of America - \$500.00; (2) Bank of America - \$200.00; (3) Orange County Credit Union - \$1,200.00; and (4) Golden One Credit Union - \$1,600.00. Schedule C, ECF No. 1.

(b) A deposit account is exempt without making a claim in the following amount:

. . . .

(2) Three thousand five hundred dollars (\$3,500) where one depositor is the designated payee of *directly deposited social security payments*.

Cal. Civ. Proc. Code § 704.080(b)(2).

The debtor derives income from multiple sources but only \$2,067 is paid in Social Security benefits each month, Schedule I, ECF No. 1. The debtor has failed to file any opposition to the trustee's objection. Accordingly, it is unclear what amounts, if any, are directly deposited into the debtor's banking accounts by the Social Security Administration. It is also unlikely that Social Security benefits are directly deposited into multiple banking accounts.

As the debtor has failed to file any evidence regarding the direct deposits of funds into any of his bank accounts the court cannot determine which if any of the funds on deposit as of the petition date result from the direct deposit of Social Security funds. Accordingly, the court will sustain the trustee's objection and disallow all the exemptions claimed under Cal. Civ. Proc. Code § 704.080.

#### **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 objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor's exemption in all bank accounts claimed under Cal. Civ. Proc. Code § 704.080 are disallowed.

8. [23-24215](#)-A-13     **IN RE: SANDRA LYMOND**  
[DPC-2](#)

MOTION TO DISMISS CASE  
4-3-2024    [\[45\]](#)

MARC VOISENAT/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to May 21, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Motion to Modify Plan Filed:** April 9, 2024 - timely

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

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 21, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 21, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to

dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

9. [24-20722](#)-A-13     **IN RE: WILLIAM QUIRANTE**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
4-10-2024    [\[19\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

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

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

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

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

10. [24-20722](#)-A-13      **IN RE: WILLIAM QUIRANTE**  
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA  
INC.  
4-8-2024    [\[15\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

Creditor, Santander Consumer USA, Inc., objects to confirmation of the debtor(s) plan.

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

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

## CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

11. [24-20025](#)-A-13     **IN RE: MATTHEW MAURICE**  
[DPC-1](#)

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

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from March 12, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 Chapter 13 trustee objected to confirmation contending that the plan payments were delinquent. The trustee has confirmed the plan delinquency in his Status Report, filed April 22, 2024, ECF No. 30. The court will sustain the objection on this basis and need not consider the remaining issues raised by the trustee.

The debtor has filed a statement indicating that he intends to file an amended plan and concedes the trustee's objection regarding plan delinquency. Response, ECF No. 28. Accordingly, the court will sustain the objection.

### **CIVIL MINUTE ORDER**

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

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

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

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



12. [23-20831](#)-A-13     **IN RE: ELIZABETH RODAS BARRIOS**  
[FF-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRALEY AND  
FRALEY, PC DEBTORS ATTORNEY(S)  
3-26-2024    [[62](#)]

GARY FRALEY/ATTY. FOR DBT.  
DEBTOR DISMISSED: 02/27/24  
RESPONSIVE PLEADING

### **Final Ruling**

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

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion for allowance of final compensation will be denied  
without prejudice as follows.

The debtor was not served with the motion as required. Fed. R. Civ.  
P. 2002(a). The certificate of service purports to have served the  
debtor, yet none of the attached matrixes list the debtor.  
Certificate of Service, ECF No. 67.

### **CIVIL MINUTE ORDER**

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

The Motion for Final 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.

13. [23-23232](#)-A-13     **IN RE: MAI TRANG LE AND NHAT TRAN**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-5-2024    [[51](#)]

PETER MACALUSO/ATTY. FOR DBT.

### **No Ruling**

14. [23-23232](#)-A-13     **IN RE: MAI TRANG LE AND NHAT TRAN**  
[PGM-2](#)

MOTION TO CONFIRM PLAN  
3-26-2024    [\[58\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**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). Creditor Ajax Mortgage and the Chapter 13 trustee oppose 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).

### Post-Petition Mortgage Arrears

Both the Chapter 13 trustee and creditor Ajax Mortgage contend that the plan provides for an incorrect amount to Ajax Mortgage for post-petition mortgage arrears. The Trustee calculates the arrears at \$5,988.88, as does the creditor. Creditor Opposition, ECF No. 68. However, the proposed plan provides for post-petition arrears to this creditor in the amount of \$5,206.74. First Amended Chapter 13 Plan, Section 3.07, ECF No. 60.

Additionally, the Chapter 13 trustee contends that the plan incorrectly provides for post-petition mortgage arrears to Specialized Loan Servicing. The trustee has been unable to make any post-petition payments to this creditor, since the petition was filed on September 17, 2023. The creditor is owed \$2,920.20 in post-petition mortgage arrears. The proposed plan calls for post-petition mortgage payments to this creditor but has indicated an incorrect amount and incorrect months in the plan.

With the incorrect amounts provided the plan as proposed is not mathematically feasible.

### Income Insufficient to Fund Plan

The opposing creditor contends that the plan is not feasible. The proposed plan contains "step up" provisions with payments as follows:

Plan payments of \$2,760.00 per month will commence  
April 25, 2024 (sic) for 6 months  
Plan payments of \$4,350.00 per month will commence  
October 25, 2024 (sic) for 48 months

First Amended Chapter 13 Plan, Section 7, ECF No. 60.

The proposed plan is supported by Supplemental Schedules I and J, filed March 26, 2024, ECF No. 64. The debtors also filed a declaration in support of the plan, ECF No. 61. The declaration states:

We have had several changes/problems that have arose  
(sic) which now require us to further amend our  
Chapter 13 Plan. These factors include that my husband  
lost a major client, and is expected to  
close/sell/modify his business and obtain a more  
stable job, which we expect to take about six months  
to accomplish.

Id., 1:23-26, 2:1-2.

The creditor argues that the proposed increase in plan payments, which would occur in October 2024, is speculative. The court agrees. The debtors have failed to provide any evidence indicating whether or how they intend to close, or modify, or sell the business. No evidence has been provided regarding the type of employment the debtor is seeking, if the

debtor is currently seeking employment, or what income the debtor might expect to receive.

The opposing creditor also argues that the debtors' current ability to fund the plan is speculative. The creditor argues:

Debtor's Amended Schedule I, Line 8a filed on March 26, 2024 (sic) reflects Debtors' monthly net income from operating a business is the amount of \$1,500. No statement showing gross receipts, ordinary and necessary business expenses, and the total monthly net income has been filed evidencing the \$1,500 which is necessary to fund Debtors' Plan. Debtors' income from operating a business, which is approximately 30% of Debtors' total monthly income of \$4,935.94, appears speculative. Because Debtors' income from operating a business appears speculative Debtors' Plan does not appear feasible.

Opposition, 4:6-13, ECF No. 68.

The court has reviewed the most recently filed Schedules I and J, ECF No. 64. While \$1,500 per month in self-employment income is disclosed, the debtors have failed to file the Attachments to Schedules I and J which disclose and forecast business income and expenses. This information is part of the debtors' prima facie case for plan modification and must be filed at the outset of the motion and not in response to opposition or the court's rulings. The debtors have failed to prove that their proposed plan is feasible. Accordingly, the court will deny the motion.

#### **ATTORNEY COMPENSATION - MONTHLY DIVIDEND**

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

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

The proposed Chapter 13 Plan provides for monthly payments of \$250 in compensation to debtor's counsel. The amount of compensation to be paid through the plan is \$6,500. The trustee contends the amount of the monthly payment contravenes LBR 2016-1(c)(4)(B) which requires that compensation payments be paid in equal monthly installments and amortized over the entire term of the plan. The trustee contends that the correct payment amortized over 60 months is \$108.33 per month.

The court agrees with the trustee, the proposed monthly payment of \$250 contravenes LBR 2016-1(c)(4)(B). The court will sustain the

trustee's objection. Accordingly, the court need not reach the remaining issues raised in the trustee's objection.

#### **DEBTOR REPLY**

On April 30, 2024, the debtor filed a reply offering to adjust the figures in the proposed plan to conform to the Chapter 13 trustee's opposition. However, the reply does not address the remaining feasibility argument raised by Ajax Mortgage and discussed at length by the court in this ruling. The motion will be denied.

#### **CIVIL MINUTE ORDER**

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

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

The debtors' motion to 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.

15. [23-22835](#)-A-13     **IN RE: KUAJI HILL**  
[DPC-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
2-28-2024    [[69](#)]

GORDON BONES/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/10/24

**No Ruling**

16. [23-22835](#)-A-13     **IN RE: KUAJI HILL**  
[DPC-4](#)

MOTION TO DISMISS CASE  
4-17-2024    [\[90\]](#)

GORDON BONES/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/10/24

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

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

**Best Interests of Creditors/Estate:** Dismiss

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the 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 \$1,666.20 with one payment(s) of \$833.10 due prior to the hearing on this motion.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

This case was previously converted from a Chapter 13 on January 12, 2024. The debtor received a Chapter 7 discharge on January 10, 2024, ECF No. 47. Additionally, the court notes that the Chapter 7

trustee, Kimberly Husted, filed a Report of No Distribution on October 29, 2024.

Accordingly, absent opposition which may be presented at the hearing, on the trustee's motion, the court finds that dismissal is in the best interests of the estate and the creditors and will grant the motion.

#### **CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss 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 court hereby dismisses this case.

17. [23-22835](#)-A-13     **IN RE: KUAJI HILL**  
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK  
NATIONAL ASSOCIATION  
2-29-2024    [[73](#)]

GORDON BONES/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/10/24

**No Ruling**

18. [23-24636](#)-A-13      **IN RE: GLORIA MORRISON**

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

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

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** Continued from March 12, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

**Attorneys Caren J. Castle and Mohammad Mokarram are ordered to appear at the hearing on this objection on May 7, 2024, at 9:00 a.m. Appearance may be made by Zoom or telephone.**

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).

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

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

The objecting creditor failed to assign a docket control number to the objection. The failure to comply with LBR 9014-1(c) makes it difficult for the court to accurately locate all pleadings relating to this matter on the court's docket.

### **OBJECTING CREDITOR FAILED TO COMPLY WITH COURT'S ORDER**

The hearing on Cross Country Mortgage, LLC's objection to confirmation of the debtor's plan was continued in part to all the objecting creditor to serve parties who had filed requests for special notice in this case. The court ordered as follows:

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



Order, ECF No. 29.

The objecting creditor has failed to file any further pleadings in this matter, including proof of compliance with the court's order. Counsel for the objecting creditor shall be prepared to address this issue at the hearing on this motion.

#### **MORTGAGE PAYMENTS**

##### 11 U. S. C. § 1325(a)(5)(B)(ii): Improper Classification of Secured Claim

Cross Country Mortgage, LLC objects to confirmation, contending that as residential home mortgage payments were delinquent on the date of the petition that classification of that claim in Class 4 (direct payment) is improper.

Section 1325(a)(5) prescribes the treatment of an allowed secured claim provided for by the plan. This treatment must satisfy one of three alternatives described in paragraph (5) of § 1325(a). In summary, these mandatory alternatives are: (1) the secured claim holder's acceptance of the plan; (2) the plan's providing for both (a) lien retention by the secured claim holder and (b) payment distributions on account of the secured claim having a present value "not less than the allowed amount of such claim"; or (3) the plan's providing for surrender of the collateral to the secured claim holder. See 11 U.S.C. § 1325(a)(5).

In most instances, the validity and amount of a secured debt is determined by state, not federal, law. 11 U.S.C. § 502(b)(1), §1322(e) ("the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law"). Where, as here, the claim arises from a secured claim against the debtor's residence the "allowed amount of the secured claim" will be determined by the underlying note and deed of trust. A creditor expresses that "allowed amount" by filing a Proof of Claim; absent objection, the amount stated in the Proof of Claim, including the amount of the ongoing mortgage payment and any arrearage, is "deemed" allowed. 11 U.S.C. § 502(a).

Here, the plan places the secured creditor's claim in Class 4, yet the claim is in default and includes a pre-petition arrearage in the amount of \$1,105.06. Compare Claim No. 2 (reflecting delinquency) with 11 U.S.C. 502(a) (deemed allowance).

Two principles control this analysis. First, Chapter 13 debtors do not have an absolute right to make payments to unimpaired claims directly to the creditor effected. *In re Giesbrecht*, 429 B.R. 682, 685-86 (B.A.P. 9th Cir. 2010); *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), *aff'd*, and adopted by *Cohen v. Lopez (In re Lopez)*, 550 F.3d 1202 (9th Cir.2008) ("a debtor has no absolute right to make such [direct] payments"). The decision to allow, or to not allow, a Chapter 13 payments directly has always been discretionary. *Giesbrecht*, 429 B.R. at 690.

Thus, bankruptcy courts have been afforded the discretion to make the determination of when direct payments may or may not be appropriate based upon the confirmation requirements of § 1325, policy reasons, and the factors set forth by case law, local rules or guidelines. *Lopez*, 372 B.R. at 46-47 ("Reflecting the discretion granted by the Code, different courts and different circuits have different rules on the permissibility of direct payment, a fact unchanged by or since [*Fulkrod v. Barmettler (In re Fulkrod)*, 126 B.R. 584 (9th Cir. BAP 1991) *aff'd sub. nom.*, *Fulkrod v. Savage (In re Fulkrod)*, 973 F.2d 801 (9th Cir.1992)].")

*In re Giesbrecht*, 429 B.R. at 690 (emphasis added).

Second, at least where a residential mortgage is delinquent on the petition date, merely providing in the plan that the debtor will pay the claim directly does not satisfy § 1325(a)(5). As Judge Lundin commented:

A bald statement that a creditor will be dealt with "outside the plan" fails to satisfy any of the statutory ways in which the Chapter 13 plan can provide for an allowed secured claim under 11 U.S.C. § 1325(a)(5)-- unless the creditor "accepts" being "outside" for whatever it might mean. "Outside" does not preserve the lien of the affected creditor and does not guarantee present value of collateral--rights the secured creditor otherwise has at confirmation under § 1325(a)(5). Placing a secured claim "outside the plan" cannot rescue confirmation of a plan that does not satisfy the confirmation tests for treatment of secured claims.

Keith M. Lundin, *Lundin On Chapter 13*, § 74.8, at ¶ 5.

Argument might be interposed to distinguish the classification problem described by Judge Lundin with respect to § 1325(a)(5) where the residential mortgage is not delinquent on the petition date because as a matter of law those mortgages cannot be modified. 11 U.S.C. § 1322(b)(2), (b)(5), (c)(2) (prohibiting a debtor from modifying a deed of trust applicable to their principal residence, except to cure a delinquency or extending the "last original payment schedule" to a date not later than plan completion).

Moreover, the mandatory form plan in the Eastern District of California Bankruptcy Court specifically contemplates and addresses this eventuality. LBR 3015-1(a). It provides:

*Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.*

*(a) Cure of defaults. All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as*

the Arrearage dividend shall pay the arrears in full.

...

(b) Maintaining payments. *Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.*

Chapter 13 Plan § 3.07, EDC 3-080.

In contrast, Class 4 of the plan for the Eastern District of California contemplates a debtor whose mortgage is fully current on the date the case is filed. It provides:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed[,] or the plan is confirmed.

*Id.* at § 3.10.

Here, the treatment of the delinquent mortgage in Class 4 (direct payment by the debtor) does not satisfy § 1325(a)(5). See 11 U.S.C. § 1325(a)(5)(B)(ii); *Lundin On Chapter 13* at § 74.8. The creditor has not expressly accepted this treatment in the plan; this court will not infer acceptance from the creditor's silence. 11 U.S.C. § 1325(a)(5)(A); *In re Pardee*, 218 B.R. 916, 939-40 (B.A.P. 9th Cir. 1998), *aff'd*, 193 F.3d 1083 (9th Cir. 1999) (Klein, J. concurring and dissenting) ("[I]mplied acceptance is a troublesome theory that has been largely discredited in all but one application: the formality of acceptance of a chapter 13 plan by a secured creditor whose claim is not being treated in accord with statutory standards may be implied from silence"). In the alternative, the plan does not provide for payment of the allowed amount of the claim, i.e., ongoing mortgage plus the arrearage. 11 U.S.C. § 1325(a)(5)(B). Finally, the plan does not provide for surrender of the collateral. 11 U.S.C. § 1325(a)(5)(C). Moreover, the classification does not comply with the terms of the mandatory form plan for the Eastern District. Plan § 3.07, EDC 03-080; LBR 3015-1(a).

As a result, the plan does not comply with § 1325(a)(5) and will not be confirmed.

#### **DEBTOR OPPOSITION**

While the hearing on this objection was continued to allow for notice to special notice creditors it was also continued to require additional information from the debtor. The court ordered in part:

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to

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

Order, ECF No. 29 (emphasis added).

On April 3, 2024, the debtor filed a response stating:

The objection claims there was mortgage arrears in the amount of \$1,105.06 for alleged late fees and/or escrow shortage, *even though the \$3,308.00 mortgage payment was current*.

Response, 1:23-25, ECF No. 32 (emphasis added).

The response was not accompanied by any admissible evidence, such as a declaration of the debtor regarding payments to the objecting creditor. Neither has the debtor objected to the objecting creditor's claim, which as the court has previously discussed in this ruling indicates that pre-petition arrears are owed. Accordingly, the court gives no weight to the response filed by the debtor.

Despite the failure of the objecting creditor to comply with the court's order, this court will not confirm a plan which does not comply with the court's form plan, LBR 3015-1(a), and calls for payments to the lender outside the plan despite the existence of pre-petition arrears.

Accordingly, the court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

Cross Country Mortgage, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

19. [23-24537](#)-A-13     **IN RE: GEORGINA TAMPLEN**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-8-2024    [\[40\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **No Ruling**

20. [23-24537](#)-A-13     **IN RE: GEORGINA TAMPLEN**  
[MET-2](#)

MOTION TO CONFIRM PLAN  
3-26-2024    [\[44\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Continued to July 2, 2024, at 9:00 a.m.

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee, and creditor Erika Ceja, oppose 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 \$4,980.00 with one more payment of \$4,985.00 due prior to the hearing on this motion. The plan cannot be confirmed if the plan payments are not current.

#### **CREDITOR OPPOSITION**

Creditor, Erika Ceja, opposes the motion generally stating that the debtor has failed to disclose all her income and assets. Specific assets or income discrepancies are not contained in the opposition. Opposition, ECF No. 59.

The objecting creditor has, however, noted a related bankruptcy case: *In re Daniel Puentes*, 2023-22970, E.D. Cal. Bankr. (2023). It appears that the debtor in the instant case and the *Puentes* case have jointly held assets and liabilities and that there may be combined expenses and/or support payments made between the debtor and Mr. Puentes.

Additionally, the court notes that the payment on a trailer which is jointly held by the debtor and Mr. Puentes appears in the debtor's Supplemental Schedule J but is not provided for in the proposed Amended Chapter 13 Plan, ECF No. 47. The declaration of the debtor does not address this issue or any of the issues raised in the creditor's objection.

The Chapter 13 trustee shall review both the *Puentes* and the instant cases and file a detailed status report regarding his findings. The status report may augment the trustee's objection and shall also apprise the court of the status of payments under the proposed plan.

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

#### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the hearing on this objection will be continued to July 2, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 28, 2024, the objecting creditor, shall file and serve additional argument and evidence in support of her position. Any additional argument shall be supported by admissible evidence.

IT IS FURTHER ORDERED that no later than May 28, 2024, the Chapter 13 trustee shall file and serve a status report consistent with the court's ruling in this matter. The trustee may augment his objection to confirmation.

IT IS FURTHER ORDERED that no later than June 18, 2024, the debtor may file and serve a response containing additional evidence and argument opposing the trustee and creditor positions. The response shall be supported by admissible evidence. The evidentiary record will close after June 18, 2024.

21. [24-20037](#)-A-13     **IN RE: WILLIAM/LYNDA ANRIG**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
2-28-2024    [[28](#)]

MICHAEL HAYS/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from March 26, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 Chapter 13 trustee objected to confirmation contending that the plan was not feasible. The trustee has augmented his feasibility argument indicating that plan payments are delinquent in the amount of \$7,428.00.00. Status Report, ECF No. 37. The court will sustain the objection on this basis and need not consider the remaining issues raised by the trustee.

The debtors have filed a statement indicating that they intend to file an amended plan to account for the mortgage arrears contained in creditor U.S. Bank, Trust National Association's recently filed claim. Response, ECF No. 32. Accordingly, the court finds that the current plan is not feasible and will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

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

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

22. [17-27538](#)-A-13     **IN RE: RENE JARA**  
[RJ-4](#)

MOTION FOR COMPENSATION FOR RICHARD JARE, DEBTORS  
ATTORNEY(S)  
4-17-2024    [\[86\]](#)

RICHARD JARE/ATTY. FOR DBT.

#### **Final Ruling**

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

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

**Disposition:** Continued to June 4, 2024, at 9:00 a.m.

**Order:** Civil minute order

The hearing on Richard Jare's motion to allow additional compensation will be continued to allow counsel to obtain a declaration from the debtor in support of the motion, and to allow the Chapter 13 trustee to file a response.

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the motion is continued to June 4, 2024, at 9:00 a.m. No later than May 21, 2024, Mr. Jare shall file and serve a declaration from the debtor in support of the motion, or evidence indicating why a declaration from the debtor is unavailable.



IT IS FURTHER ORDERED that no later than May 21, 2024, the Chapter 13 trustee shall file and serve a response to the motion for allowance of additional compensation and its impact on the Chapter 13 plan.

23. [24-20540](#)-A-13      **IN RE: JAMES VAN PATTEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-18-2024    [[30](#)]

THOMAS AMBERG/ATTY. FOR DBT.  
4/22/2024 INSTALLMENT FEE PAID \$78

**Final Ruling**

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

24. [24-20344](#)-A-13      **IN RE: RANDY HOWARD**  
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
4-8-2024    [[26](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Objection:** Objection to Claim of Exemptions  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

The Chapter 13 trustee objects to the debtor's claim of exemptions contending that the debtor has claimed exemptions, under both C.C.P. §703.140(b)(10)(E), §703.140(b)(11)(E) as well as various sections under C.C.P. § 704.

**AMENDED SCHEDULE C**

A new 30-day period for objecting to exemptions begins to run when an amendment to Schedule C is filed. Fed. R. Bankr. P. 4003(b)(1).

On April 23, 2024, the debtor filed an Amended Schedule C, ECF No. 39. Accordingly, the court will overrule the instant objection as moot.

## CIVIL MINUTE ORDER

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

The Chapter 13 trustee's Objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled as moot.

25. [24-20345](#)-A-13      **IN RE: JIANGHONG LI**  
[PGM-1](#)

MOTION TO CONFIRM PLAN  
4-2-2024    [\[19\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### Final Ruling

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed April 2, 2024

### DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 23. The plan is supported by Schedules I and J filed, April 2, 2024, ECF No. 24. The Chapter 13 trustee has filed a non-opposition to the motion, 29.

### 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.

26. [24-21045](#)-A-13      **IN RE: DAVID LESSOR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-19-2024    [\[23\]](#)

**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.

27. [24-21045](#)-A-13      **IN RE: DAVID LESSOR**  
[WSS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-19-2024    [\[30\]](#)

W. SHUMWAY/ATTY. FOR MV.  
LIXIA ZHANG VS.

**Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** Leased residential real property located at 7571 Cedar Drive, Citrus Heights, California, and an unlawful detainer action in which lessor has obtained a prepetition judgment for possession of such property against the debtor

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).

**FACTS**

Creditor Lixia Zhang seeks an order to allow her to continue her unlawful detainer lawsuit in Sacramento County Superior court, evict

Debtor and regain possession of the real property located at 7571 Cedar Dr., Citrus Heights, California.

The movant leased the subject property to the debtor and obtained a judgment of unlawful detainer on December 26, 2023. Exhibit C, ECF No. 34. A Writ of Possession was issued March 5, 2024. *Id.*, Exhibit D.

The debtor filed the instant petition on March 14, 2024. The petition incorrectly states that the movant had not obtained an unlawful detainer judgment against the debtor on March 14, 2024. Petition, No. 11, ECF No. 1. The debtor has filed no additional certifications.

#### **THE STAY'S APPLICATION TO UNLAWFUL DETAINER PROCEEDINGS**

Under § 362(b)(22), the filing of a petition does not operate as a stay under § 362(a)(3) "of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor." 11 U.S.C. § 362(b)(22).

The moving party asserts that the subject real property is residential, and that debtor occupies the property under a lease. Before the petition, the moving party obtained a judgment for possession in an unlawful detainer proceeding in state court.

Subsection (b)(22) of § 362 is subject to § 362(1), but the debtor has not opposed on grounds that that subsection (1) should apply to this case or that the debtor served the required certification under such subsection. *See id.* § 362(1).

But even if the debtor had filed with the petition and served upon the lessor the certification described in § 362(1)(1), subsection (b)(22) of § 362 becomes applicable—making the stay inapplicable to the unlawful detainer proceeding—on the date that is 30 days after the petition date unless the debtor files and serves the further certification required by § 362(1)(2). *See id.* § 362(1)(1)–(2). This further certification must be filed with the court and served upon the lessor within the 30-day period after the petition date. *Id.* § 362(1)(2).

In this case, the 30-day period following the petition date has expired. The debtor has not asserted that the debtor ever filed and served the further certification under § 362(1)(2). Therefore, subsection (b)(22) is applicable—making the stay inapplicable—even if the certification under § 362(1) had been filed with the petition under § 362(1)(1).

The motion will be denied as moot as the stay is not applicable to the subject unlawful detainer proceeding in state court to recover possession of real property described above.

## 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 denied as moot. The automatic stay does not apply to the movant-lessor's continuation of any unlawful detainer or eviction action against the debtor involving the leased residential real property described in the motion.

28. [24-20647](#)-A-13      **IN RE: STEVEN SINGH**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
4-10-2024    [\[50\]](#)

## Final Ruling

**Objection:** Trustee's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

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

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

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

## CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

29. [24-20647](#)-A-13      **IN RE: STEVEN SINGH**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ANGEL OAK MORTGAGE FUND  
EU TRUST  
3-14-2024    [\[34\]](#)

SEAN FERRY/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

Creditor, Angel Oak Mortgage Fund EU Trust, objects to confirmation of the debtor(s) plan.

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor has the burden of proving that

the plan complies with all statutory requirements of confirmation. *In re Andrews*, 49 F.3d 1404, 1407-08 (9th Cir. 1995); *In re Barnes*, 32 F.3d 405, 407-08 (9th Cir. 1994).

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

## **SERVICE AND NOTICE**

### Special Notice Creditors

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

The following parties filed a request for special notice: Ally Bank; Americredit Financial Services, Inc.; and Ford Motor Credit Company, LLC.

The certificate of service does not indicate that special notice parties were served with the objection. See Certificate of Service, p. 3, Section No. 5, ECF No. 36. Moreover, there is no attachment which indicates the special notice creditors were served.

### Notice

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

### Rules 9013 and 9007

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

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

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

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom,*

and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

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

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

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

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

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

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

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

The court will continue the hearing on the objection to allow the objecting creditor to serve the objection on the parties which filed a request for special notice.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 14, 2024, the objecting creditor shall file and serve an amended notice of hearing and all moving papers on the creditors which have filed a request for special notice. A certificate of service memorializing service of the amended notice and moving papers shall be filed in compliance with LBR 9014-1(e). The notice shall comply with LBR 9014-1(d)(3)(B).

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



(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

30. [23-24349](#)-A-13      **IN RE: GREGORY BIGLIONE AND DOUGLAS KIGHT**  
[NF-1](#)

MOTION TO CONFIRM PLAN  
4-2-2024    [\[40\]](#)

NIKKI FARRIS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Amended Chapter 13 Plan, filed April 2, 2024

### **DEFAULT OF RESPONDENT**

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

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

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 43. The plan is supported by Schedules I and J filed, December 5, 2024, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, 48.

#### **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.

31. [23-23651](#)-A-13     **IN RE: LESLIE BAKER**  
[MEV-4](#)

MOTION TO CONFIRM PLAN  
3-18-2024    [\[60\]](#)

MARC VOISENAT/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed March 18, 2024

#### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 63. The plan is supported by Schedules I and J filed, December 14, 2023, ECF No. 36. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 67.

## 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.

32. [22-23253](#)-A-13     **IN RE: LINDSAY HARRIS**  
[MET-7](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH RICHARD TEAGUE  
4-2-2024    [\[194\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

### Final Ruling

The hearing on this motion shall be continued to May 21, 2024, at 9:00 a.m. to coincide with the debtor's motion to confirm Chapter 13 plan. No later than May 7, 2024, the Chapter 13 trustee shall file and serve a status report under this docket control number which analyzes the proposed settlement in the context of the proposed Chapter 13 plan.

33. [23-24154](#)-A-13     **IN RE: WANMUENG WADKHIAN**  
[MJD-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
2-22-2024    [\[57\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
DEBTOR DISMISSED: 04/11/24

### Final Ruling

This case was dismissed on April 11, 2024. This motion is removed from the calendar as moot. No appearances are required.

34. [24-20154](#)-A-13     **IN RE: RICHARD/ANGELA PARRISH**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P  
CUSICK  
2-27-2024    [\[39\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from March 26, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 Chapter 13 trustee objected to confirmation contending that the plan was not feasible. The court will sustain the objection on this basis and need not consider the remaining issues raised by the trustee.

The debtors have filed a reply in opposition to the trustee's objection, ECF No. 46. The reply contains factual allegations regarding the debtors' expenses and living arrangements. The reply is unsupported by any admissible evidence such as a declaration by the either of the debtors.

The court's order continuing the hearing on this matter specifically required that any opposition filed by the debtors must be supported by admissible evidence. Order, ECF No. 51. The reply was filed prior to the entry of the court's order yet the debtors have filed no additional evidence as required. Counsel for the debtors is cautioned that failure to comply with the court's orders or LBR 9014-1, may result in the imposition of sanctions, LBR 1001-1(g).

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6) and accordingly, sustains the trustee's objection.

### **CIVIL MINUTE ORDER**

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

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

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

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

35. [24-20754](#)-A-13      **IN RE: SUSAN OLIVER**

OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL FINANCE GROUP,  
INC.  
4-11-2024    [\[36\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
ALAN WHITE/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

Creditor, Global Finance Group, Inc., objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record, and to allow the objecting creditor to serve all required parties with the objection.

### **SERVICE AND NOTICE**

#### Special Notice Creditors

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

The following parties filed a request for special notice: Carrington Mortgage Services, LLC; and Am Trust North America, Inc., ECF No. 15, 26.

The certificate of service does not indicate that special notice parties were served with the objection. See Certificate of Service, p. 2, Section No. 5, ECF No. 37. Moreover, there is no attachment which indicates the special notice creditors were served.

#### Notice

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

#### Rules 9013 and 9007

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

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

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

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

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

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

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

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

*notice and those who are directly affected by the requested relief.*

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

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

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

The court will continue the hearing on the objection to allow the objecting creditor to serve the objection on the parties which filed a request for special notice.

#### **PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT**

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

In this case, the Certificate of Service is attached to the Notice of Hearing, ECF No. 37. The court finds the manner of service to violate Local Bankruptcy Rule 9014-1(e)(3). In the future, failure to following local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

#### **VIOLATION OF LBR 9014-1**

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

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than May 14, 2024, the objecting creditor shall file and serve an amended notice of hearing and all moving papers on the creditors which have filed a request for special notice. A certificate of service memorializing service of

the amended notice and moving papers shall be filed in compliance with LBR 9014-1(e). The notice shall comply with LBR 9014-1(d)(3)(B).

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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



36. [24-20754](#)-A-13     **IN RE: SUSAN OLIVER**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK  
4-11-2024    [\[32\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

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

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

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

### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support

of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

37. [24-20056](#)-A-13     **IN RE: TYLOR/TAMMY VEST**  
[DPC-1](#)

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

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from March 12, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 Chapter 13 trustee objected to confirmation on multiple bases including that the plan failed to provide for payment of the priority claim of the IRS in full as required, or to provide a stipulation with the IRS allowing a lesser payment.

The debtors have filed a reply which states:

The Debtors shall file an amended plan addressing the issue with the IRS. The amended plan shall also

correct the amount to be paid monthly on attorney fees and the time share claim shall be listed as a Class 3 surrender.

Declaration, 2:1-3, ECF No. 22.

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

**CIVIL MINUTE ORDER**

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

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

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

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

38. [24-21362](#)-A-13     **IN RE: LESLIE BROWN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-17-2024    [[12](#)]

DEBTOR DISMISSED: 04/22/24

**Final Ruling**

The case was dismissed April 22, 2024, the order to show cause is discharged as moot.

39. [23-23664](#)-A-13     **IN RE: JEFFREY/LAURIE SWENSON**  
[FF-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FRALEY &  
FRALEY, PC FOR GARY RAY FRALEY, DEBTORS ATTORNEY(S)  
3-26-2024    [\[81\]](#)

GARY FRALEY/ATTY. FOR DBT.  
DEBTORS DISMISSED: 02/28/24  
RESPONSIVE PLEADING

### **Final Ruling**

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

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The motion for allowance of final compensation will be denied  
without prejudice as follows.

The debtors were not served with the motion as required. Fed. R.  
Civ. P. 2002(a). Two certificates of service were filed with the  
motion. The first certificate of service purports to serve the  
debtors, yet none of the attached matrixes list the debtors.  
Certificate of Service, ECF No. 85.

The second certificate of service also states that the debtors were  
served with the motion, yet none of the matrixes attached to the  
certificate list the debtors. Certificate of Service, ECF No. 86.

Additionally, the court notes that the debtors have not filed a  
declaration in support of the motion.

### **CIVIL MINUTE ORDER**

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

The Motion for Final 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.

40. [24-20964](#)-A-13     **IN RE: FRANK BELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-16-2024    [\[20\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
4/18/2024 INSTALLMENT FEE PAID \$80

**Final Ruling**

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

41. [24-20169](#)-A-13     **IN RE: JOSE ALBERTO  
[DPC-1](#)**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
2-28-2024    [\[18\]](#)

COLBY LAVELLE/ATTY. FOR DBT.  
DEBTOR NON-OPPOSITION

**Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from March 26, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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 Chapter 13 trustee objected to confirmation on multiple bases including plan delinquency.

The debtors have filed a non-opposition to the objection which states:

The Trustee's objections are well taken and proper. The issues the Trustee has brought up in its objections need to be addressed. They will be by an amended plan followed by a motion for confirmation.

This is the only way to fix the Trustees objections properly.

Non-opposition, 1:21-24, ECF No. 26.

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

#### **CIVIL MINUTE ORDER**

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

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

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

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

42. [24-20169](#)-A-13     **IN RE: JOSE ALBERTO**  
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED  
LOAN SERVICING LLC  
2-13-2024    [\[13\]](#)

COLBY LAVELLE/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DEBTOR NON-OPPOSITION

#### **Final Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

**Notice:** Continued from March 26, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on Specialized Loan Servicing, LLC's objection to confirmation was continued to allow the parties to augment the evidentiary record.

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).

Specialized Loan Servicing, LLC, objected to confirmation on multiple bases including lack of feasibility.

The debtors have filed non-opposition to the objection which states:

The Creditor's objection is well taken and proper. Debtor will file an amended plan followed by a motion for confirmation, which includes arrears due to Creditor as well as an amended schedule J which addresses Creditor's concern of feasibility.

Non-opposition, 1:21-23, ECF No. 27.

Accordingly, the court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

The Specialized Loan Servicing, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

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

43. [23-23471](#)-A-13     **IN RE: MARY SCOTT**  
[HAW-2](#)

MOTION TO MODIFY PLAN  
3-19-2024    [[60](#)]

HELGA WHITE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

#### **PLAN FEASIBILITY**

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

#### Plan Fails to Provide for Previously Paid Class 1 Distributions

The previously confirmed Chapter 13 Plan provided for payment of ongoing mortgage payments and pre-petition arrears to Class 1 creditor Nationstar Mortgage. Chapter 13 Plan, ECF No. 12. Accordingly, the Chapter 13 trustee made payments to this creditor pursuant to the terms of the confirmed plan.

By this motion the debtor seeks to modify the confirmed plan. The obligation to Nationstar Mortgage has been refinanced, authorized by order of this court. The trustee objects to the proposed modified plan because it does not provide for the payments to Nationstar Mortgage which were made under the terms of the previously confirmed plan. Without a provision in this plan which authorizes the previously made payments the trustee would be required to retrieve the paid funds from Nationstar.

The court will deny the motion as the proposed plan does not provide for payments made under the previously confirmed plan. As such, the proposed modified plan is not feasible.



### Plan Relies Upon Refund

The trustee also objects to the proposed plan contending it is not feasible because the payments due under the plan rely in part upon the refund of \$4,400.00 from Rushmore Servicing, regarding the Nationstar Mortgage obligation, Claim No 6. See First Amended Chapter 13 Plan, Section 7.03, ECF No. 59.

The trustee has not received the \$4,400 and the declaration submitted in support of the motion does not contain admissible evidence. The declaration of Helga White, counsel for the debtor describes her conversation with an individual who indicated that the debtor was entitled to a refund of \$4,400 from the lender. The refund due is a result of an overpayment which occurred in the refinance. These statements are hearsay, Fed. R. Evid. 802. Moreover, the declaration, which is dated March 19, 2024, indicates that the debtor would receive the refunded monies within 30 days. More than 30 days has passed since the declaration was filed and the debtor has failed to proffer any admissible evidence that she has since received the funds and forwarded them to the trustee. Accordingly, the court finds the plan is not feasible.

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 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.

44. [24-20973](#)-A-13     **IN RE: PROSPERO DITO**  
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-29-2024    [\[10\]](#)

STACIE POWER/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.  
NDETAIL CAPITAL LLC VS.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Stay Relief

**Disposition:** Denied as moot

**Order:** Civil minute order

**Petition Filed:** March 12, 2024

NDETAIL CAPITAL, LLC seeks relief from the automatic stay. This case, however, is subject to the Bankruptcy Code provisions that terminate or negate the stay in cases involving repeat individual bankruptcy filers. See 11 U.S.C. § 362(c)(3)-(4).

The debtor filed a previous bankruptcy petition on February 6, 2024. See, *In re Prospero Dito*, 2024-20467, E.D. Cal. (2024). The previous case was dismissed on February 26, 2024, because the debtor failed to file all necessary documents.

### **AUTOMATIC STAY**

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). In such a case, the automatic stay may be extended only if both notice and the hearing on such motion are "completed before the expiration of" the 30-day period after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

The debtor has had a previous case pending within the one-year period prior to the filing of this case and such case was dismissed. The petition in this case was filed on March 12, 2024. But no motion to extend the stay has been filed, and the hearing on a motion to extend the stay has not been completed before the expiration of the 30-day period after the petition date. Accordingly, the automatic stay terminated 30 days after the petition date. See 11 U.S.C. § 363(c)(3)(A). The motion will be denied as moot.

## CIVIL MINUTE ORDER

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

NDETAIL CAPITAL LLC's Motion for Relief From Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot.

45. [24-20883](#)-A-13      **IN RE: DARON/CHANTEL YOUNG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-9-2024    [\[23\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.

### Final Ruling

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

46. [24-20684](#)-A-13      **IN RE: SAMUEL THOMPSON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
4-10-2024    [\[15\]](#)

MARK WOLFF/ATTY. FOR DBT.

### Final Ruling

**Objection:** Trustee's Objection to Confirmation of Plan

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

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

**Order:** Civil minute order

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

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

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

#### **CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to June 18, 2024, at 9:00 a.m.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than May 21, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than May 21, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than June 4, 2024. The evidentiary record will close after June 4, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than May 21, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

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

47. [23-24487](#)-A-13     **IN RE: JEFFREY/ANNETTE LIENEMANN**  
[MJD-1](#)

MOTION TO CONFIRM PLAN  
3-25-2024    [\[23\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Amended Chapter 13 Plan, filed March 25, 2024

### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 24. The plan is supported by Schedules I and J filed, at the inception of the case on December 23, 2023, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 32.

### **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.

48. [23-24291](#)-A-13     **IN RE: ISRAEL GABRIEL AND LAUREN**  
EVANSON-GABRIEL  
[SKI-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ  
FINANCIAL SERVICES USA LLC  
1-4-2024    [\[13\]](#)

MARY TERRANELLA/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
WITHDRAWN BY M.P.

#### **Final Ruling**

The motion was withdrawn by the moving party on April 23, 2024, ECF No. 32. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

49. [21-21198](#)-A-13     **IN RE: ANDREW NILSEN**  
[DPC-2](#)

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7  
4-8-2024    [\[105\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

#### **Final Ruling**

**Objection:** Trustee's Motion to Re -Convert

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The Chapter 13 trustee seeks an order reconverting this case to Chapter 7.

#### **SERVICE OF MOTION**

##### (e) Service and Proof of Service.

- 2) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 3) *A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*
- 4) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof

of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LR 9014-1(e) (emphasis added).

A certificate of service has not been filed as required by LBR 9014-1. Thus, the court cannot determine if the proper parties have been served under Fed. R. Bankr. P. 9014.

Because service was insufficient, the motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtor's motion to re-convert to Chapter 7 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.

50. [23-21999](#)-A-13     **IN RE: ROBERT BROWN**  
[JLL-2](#)

MOTION TO CONFIRM PLAN  
3-25-2024    [\[56\]](#)

LEO SPANOS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Amended Chapter 13 Plan, filed March 25, 2024

#### **DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 58. The plan is supported by Schedules I and J filed, January 18, 2024, ECF No. 47. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 63.

#### **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.

51. [24-21615](#)-A-13      **IN RE: MILTON PEREZ**  
[MET-1](#)

MOTION TO SHORTEN TIME O.S.T.  
4-25-2024    [\[11\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

#### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

**Notice:** LBR 9014-1(f)(3); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

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

The debtor seeks an order extending the automatic stay of 11 U.S.C. § 362(a).

#### **EXTENSION OF THE STAY**

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



## **PREVIOUS BANKRUPTCY CASE**

A review of the debtor's previous cases shows that the debtor had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case ("First Chapter 13 Case"). The First Chapter 13 Case was filed on August 11, 2020. *In re Milton Raul Perez*, 20-23896, E.D. Cal. Bankr. (2020).

On April 16, 2024, after the court denied the debtor's motion to refinance real property, the debtor filed an application to dismiss the First Chapter 13 Case, *id.*, ECF No. 161. An order dismissing the case has not yet been issued, thus the case is still pending. The instant case, however, was filed on April 19, 2024.

The debtor argues that the extension of the stay is necessary because PHH Mortgage Services set a sale of the debtor's residence. No evidence of the sale date has been provided and it is unclear when PHH Mortgage Services took such action. No order for stay relief was entered in the still pending First Chapter 13 Case.

### Multiple Pending Cases

Once a bankruptcy case is filed, a second case which affects the same debt cannot be maintained. *In re Jackson*, 108 B.R. 251, 252 (Bankr. E.D. Cal. 1989). There is no rule that allows debtors to have two cases pending at the same time. *Id.* (citing *In re Smith*, 85 B.R. 872, 874 (Bankr. W.D. Okla. 1988)). To have two cases pending at the same time, it would allow for abuse of the bankruptcy system if one case does not go to a debtor's liking. *Id.*

The Motion to Extend the Automatic Stay was filed prior to the dismissal of the First Chapter 13 Case, which is still pending.

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in not in good faith as to the creditors to be stayed. The motion will be denied.

## **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is denied.