



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

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

DAY: TUESDAY
DATE: MAY 16, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [21-23302](#)-A-13 **IN RE: JESUS VALDEZ ALONZO AND ISABEL
ALVAREZ-VALDEZ
[DWE-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-5-2023 [\[33\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
FREEDOM MORTGAGE CORPORATION VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied as moot

Order: Civil minute order

Freedom Mortgage Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

STAY RELIEF

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

The confirmed chapter 13 plan in this case provides for the movant's claim in Class 4. See Chapter 13 Plan, ECF No. 3. Class 4 secured claims are long-term claims that mature after the completion of the plan's term. They are not modified by the plan, and they are not in default as of the filing of the petition. They are paid directly by the debtor or a third party. Section 3.11(a) of the plan provides: Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract"

Because the plan has been confirmed, the automatic stay has already been modified to allow the moving party to exercise its rights against its collateral. No effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists because the stay no longer affects its collateral. The motion will be denied as moot.

SPECIAL NOTICE PARTIES

Were this motion not denied as moot, it would still be denied as the moving party failed to serve parties which filed a request for

special notice in this case. Service to these parties is required under LBR 9014-1(d)(3)(B)(iv).

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.

CIVIL MINUTE ORDER

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

Freedom Mortgage Corporation's motion for relief from the automatic 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.

2. [22-22903](#)-A-13 **IN RE: ISMAEL/SYLIVIA QUIRARTE**
[PSB-2](#)

MOTION TO CONFIRM PLAN
3-28-2023 [\[44\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed March 28, 2023

DEFAULT OF RESPONDENT

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

The debtors seek confirmation of the Second Amended Chapter 13 Plan, ECF No. 46. The plan is supported by Schedules I and J filed November 8, 2022, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 51.

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.

3. [23-20010](#)-A-13 **IN RE: DEVONA WHITE**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-10-2023 [\[24\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DEBTOR DISMISSED: 4/20/23

Final Ruling

This case was dismissed on April 20, 2023. Accordingly, the objection will be removed from the calendar as moot. No appearances are required.

4. [23-20210](#)-A-13 **IN RE: JOSEPH/MELANIE BARRON**
[DPR-2](#)

MOTION TO CONFIRM PLAN
3-31-2023 [\[33\]](#)

DAVID RITZINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed March 31, 2023

DEFAULT OF RESPONDENT

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

The debtors seek confirmation of the First Amended Chapter 13 Plan, ECF No. 35. The plan is supported by Schedules I and J filed January 25, 2023, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 46.

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.

5. [19-23616](#)-A-13 **IN RE: MARK BRASHLEY**
[WW-10](#)

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-30-2022 [[157](#)]

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

The Objection has been resolved by stipulation and order, ECF Nos. 191, 194. Accordingly, the objection is removed from the calendar as moot. No appearances are required.

6. [23-20616](#)-A-13 **IN RE: LINDA CATRON**
[DPC-1](#)

MOTION TO DISMISS CASE
4-18-2023 [[29](#)]

RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: May 2, 2023

Opposition Filed: May 2, 2023 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency, Failure to Attend Meeting of Creditors, Failure to Provide Documents, Use of Incorrect Plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to: 1) make all payments due under the plan; 2) file the correct form plan; 3)

provide required documents to the trustee; 4) attend the meeting of creditors.

The trustee contends that the plan payments are delinquent in the amount of \$200.00, with another payment of \$200.00 due April 25, 2023. Additionally, the trustee contends the debtor failed to attend the meeting of creditors on March 13, 2023, has failed to provide her federal tax returns to the trustee prior to the meeting of creditors as required under 11 U.S.C. § 521(e)(2)(A), and has used the wrong form plan.

The debtor has filed a timely opposition, ECF No. 33. The debtor states that she has been ill, was unable to attend the meeting of creditors, and that she will attempt to retain counsel to assist her in the prosecution of the Chapter 13 case. The opposition does not address the debtor's failure to provide the tax return to the trustee, nor does it indicate when the debtor will file an amended plan.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. Each of the bases asserted by the trustee independently constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). The court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to: make all payments due under the chapter 13 plan in this case;

propose a Chapter 13 plan using the correct form; attend the meeting of creditors; and provide a federal tax return to the trustee. Each of these bases independently constitute cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

7. [22-22522](#)-A-13 **IN RE: JONATHAN KENYON**
[MOH-2](#)

MOTION TO CONFIRM PLAN
3-8-2023 [\[50\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed December 30, 2022

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. 38. The plan is supported by Schedules I and J filed within 6 months of the filing of the motion. The Chapter 13 trustee has filed a non-opposition to the motion, but requests that the order confirming the plan specifically identify the plan, ECF No. 53.

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. The order confirming

the plan shall identify the plan as Amended Chapter 13 Plan, filed December 30, 2022, ECF No. 38.

8. [22-22723](#)-A-13 **IN RE: RANDY YASSINE**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-10-2023 [\[29\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

No Ruling

9. [22-22723](#)-A-13 **IN RE: RANDY YASSINE**
[MJD-1](#)

MOTION TO MODIFY PLAN
4-4-2023 [\[34\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a “factual determination” as to the plan’s “reasonable likelihood of success.” *First Nat’l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to “be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan.” *Id.* As one court summarized feasibility,

"Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")."*In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that payments under the proposed modified plan are delinquent in the amount of \$642.00. The motion may not be granted if the plan payments are not current.

CIVIL MINUTE ORDER

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

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

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

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

10. [19-22327](#)-A-13 **IN RE: MICHAEL/BARBARA KISH**
[TLA-2](#)

MOTION TO MODIFY PLAN
3-27-2023 [\[45\]](#)

THOMAS AMBERG/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: Granted

Order: Prepared by movant, approved by the trustee

Subject: Modified Chapter 13 Plan, filed March 27, 2023

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on March 27, 2023, ECF No. 50. The Chapter 13 trustee has filed a limited opposition to the motion, ECF No. 52. The trustee disputes the percentage to be paid to the unsecured creditors contending the proposed plan will pay 40% as opposed to the 37% which is proposed. The debtors have filed a reply, ECF No. 55. In their reply the debtors agree to pay unsecured creditors 40% as requested by the trustee.

CHAPTER 13 PLAN MODIFICATION

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards

as required of the initial plan."); see also *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtors have sustained this burden of proof. The court will grant the motion and approve the modification. The order granting the motion shall provide that unsecured creditors will be paid not less than 40%.

11. [18-24931](#)-A-13 **IN RE: CHRISTOPHER/NEVA FULLER**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
3-10-2023 [\[41\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

No Ruling

12. [18-24931](#)-A-13 **IN RE: CHRISTOPHER/NEVA FULLER**
[DWL-1](#)

MOTION TO MODIFY PLAN
4-11-2023 [\[47\]](#)

BRUCE DWIGGINS/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).

Schedules I and J

The debtors have not supported the plan by filing recently amended Schedules I and J. The most recently filed budget schedules were filed at the inception of the case on April 6, 2018, ECF No. 1. Without current income and expense information the court and the chapter 13 trustee are unable to determine whether the plan is feasible or whether the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3), (6).

The court considers current Schedules I and J to be part of the debtors' prima facie case for plan modification. They should be filed concurrently with the motion and not in response to the trustee's opposition.

Because the court has denied the motion for failure to support the plan with current budget schedules the court need not reach the remaining issues raised in the trustee's opposition. The court will deny the motion.

CIVIL MINUTE ORDER

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

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

The debtor's motion to 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.

13. [23-20433](#)-A-13 **IN RE: EDMUNDO/SARINA MARTELL**
[GB-1](#)

AMENDED OBJECTION TO CLAIM OF VICTORIA JUNSAY, CLAIM NUMBER
13
3-24-2023 [\[23\]](#)

GEVA BAUMER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Objection to Claim

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

Disposition: Overruled without prejudice

Order: Civil minute order

The debtor objects to the claim of Victoria Junsay, Claim No. 13. The objection will be overruled without prejudice as follows.

SERVICE AND NOTICE

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

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

In this case Attachment 6B1 purports to be the Clerk's Electronic Service Matrix as stated under penalty of perjury in the Certificate of Service. See Certificate of Service, Section 6B1, ECF No. 25. However, the Attachment is not the Clerk's Electronic Service Matrix. Rather it is a list typed by the moving party in this matter. Counsel is reminded that a matrix which complies with LBR 7005-1, Form 7-005 is easily compiled using the Clerk's application available on the court's website. The court will overrule the objection without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Objection to Claim of Victoria Junsay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

14. [23-20543](#)-A-13 **IN RE: KADEN KOFFLER**

OBJECTION TO CONFIRMATION OF PLAN BY PELORUS FUND REIT, LLC
4-20-2023 [\[28\]](#)

PETER MACALUSO/ATTY. FOR DBT.
MIKE NEUE/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

Pelorus Fund Reit, LLC, objects to confirmation of the debtor's plan.

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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 Provides for Incorrect Amount of Arrears

The objecting creditor has filed a claim. Claim No. 9. The claim provides for mortgage arrears on the petition date in the amount of \$320,701.02, and a fixed annual interest rate of 18%. *Id.* Thus, an additional \$70,701.02 is due over the life of the plan, which, without allowing for trustee compensation or interest, amounts to an increase of at least \$1,178.35 per month.

Conversely, the proposed plan provides for mortgage arrears in the amount of \$250,000 and no interest. The proposed monthly plan payment is \$34,000. Chapter 13 Plan, ECF No. 11. Schedules I and J show that the debtor lacks the ability to increase the proposed plan payment. Schedules I and J, ECF No. 13.

The plan is not feasible under 11 U.S.C. § 1325(a)(6) as it will not pay sufficient funds to cure the mortgage arrears owed on the petition date.

Plan Provides for Incorrect Monthly Payments

The objecting creditor contends that Class 1 of the plan reverses the monthly payments due on the creditor's claim for arrears with the ongoing monthly mortgage payment. As such the plan calculations are incorrect and the plan is not feasible.

The court will sustain the objection to confirmation.

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. The objecting party has failed to assign a docket control number to this matter. Counsel is reminded that the docket control number allows the court to efficiently and accurately locate documents filed in each matter. Failure to assign a docket control number in the future may result in the denial of relief or the imposition of sanctions. LBR 1001-1(g).

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.

Pelorus Fund Reit, 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.

15. [23-20543](#)-A-13 **IN RE: KADEN KOFFLER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
4-20-2023 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained in part; overruled in part; and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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 \$34,000.00, with another payment of \$34,000.00 due April 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide for Secured Debt in the Plan

The U.S. Small Business Administration filed a secured proof of claim in the amount of \$41,174.89 secured by all the debtor's tangible and intangible personal property. See Claim No. 8. The proposed plan fails to provide for this creditor. The trustee cannot determine how the obligation to the creditor will be paid during the pendency of the plan. Without this information the trustee is unable to determine if the plan, in his estimation, is feasible under 11 U.S.C. § 1325(a)(6).

Inaccurate Expenses Indicated in Schedules

The testimony proffered by the debtor at the meeting of creditors conflicts with the information in Schedules I and J. Specifically, the debtor admitted that expenses concerning real property taxes, and insurance were not properly included in the expenses on Schedule J and that the attachment to Schedule I was inaccurate regarding the debtor's income.

LIQUIDATION

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . . .

11 U.S.C. § 1325(a)(4).

The trustee calculates that the debtor's nonexempt assets are valued at \$2,544,120.00. The total amount that will be paid to unsecured creditors under the proposed plan is only \$3,500.00. Thus, the plan fails the liquidation test.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 72 months to fund as proposed.

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

FAILURE TO FILE TAX RETURNS

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308."

11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

If the debtor has not filed 2021 and 2022 tax returns, as he testified at the meeting of creditors, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

ELIGIBILITY

e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than \$2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that

aggregate less than \$2,750,000 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e).

The Ninth Circuit has “simply and explicitly state[d] the rule for determining Chapter 13 eligibility under § 109(e) to be that eligibility should normally be determined by the debtor’s originally filed schedules, checking only to see if the schedules were made in good faith.” *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001).

However, despite the fact that a claim based on a judgment lien might not have been scheduled as unsecured on Schedule F, the Ninth Circuit in *Scovis* applied a § 506(a) analysis to determine whether the judgment lien debt was secured or unsecured and to ensure that form was not elevated over substance in determining whether a claim was secured or unsecured. The court in *Scovis* stated: “To determine the status of [a judgment lien creditor’s] \$132,026.91 non-priority claim, we must look to 11 U.S.C. § 506(a). Through the inclusion of a § 506(a) analysis to define ‘secured’ and ‘unsecured’ in the § 109(e) context, a vast majority of courts, and all circuit courts that have considered the issue, have held that the unsecured portion of undersecured debt is counted as unsecured for § 109(e) eligibility purposes.” *Id.* at 983 (citing cases). The court further reasoned:

It is true that although § 506(a) speaks in terms of an “allowed claim,” applying § 506(a) to § 109(e) is necessary to prevent “raising form over substance and manipulation of the debt limits” to achieve Chapter 13 eligibility. By merely looking at the value of Debtors’ residence, the first deed trust, and the judgment lien, it is clear that [a] judgment lien is undersecured to a significant extent. The listed value of Debtors’ residence is \$325,000. After considering the \$249,026.91 first deed trust, only \$75,973.09 remains as possible equity to which liens could attach. Since [the] judgment lien is for \$208,000, at least \$132,026.91 of the judgment lien is undersecured. There is no question that this undersecured debt is to be counted as unsecured for eligibility purposes.

Id. at 983 (citation omitted).

The *Scovis* court adopted a “principle of certainty” in the § 109(e) context for determining whether a secured claim is treated as unsecured instead of secured or whether a secured claim should properly include an undersecured portion that counts as unsecured debt. *Id.* at 984 (finding that the “principle of certainty” applied with equal force in the context of deciding a homestead exemption’s effect on the status of a debt as secured or unsecured). Secured debt should be treated as unsecured or undersecured for eligibility purposes only if the trial court has a “sufficient degree of certainty” to treat that debt as unsecured or undersecured. *See id.; accord In re Smith*, 435 B.R. 637, 647 (B.A.P. 9th Cir. 2010) (“In the context before us, the ‘principle of certainty’ applies where the effect of the value of the property on the status of Appellants’ debts as secured or unsecured is readily ascertainable.”).

The trustee contends that according to Schedules D and E/F, the debtor owes a total of \$3,264,213.02 in non-contingent, liquidated debts. The court has reviewed the schedules filed on March 8, 2023, ECF No. 13. The Summary of Your Assets and Liabilities and Certain Statistical Information shows that the total debts owed equals \$2,680,234.02. *Id.*, Part 2. Absent further information the court overrules the eligibility objection raised by the trustee.

The trustee's objection will be sustained in part and overruled in part. The court will deny confirmation of the debtor's plan.

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 in part and overruled in part. The court denies confirmation of the chapter 13 plan.

16. [18-22944](#)-A-13 **IN RE: DARRIN/DEZIRE SUTLIFF**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
3-10-2023 [\[62\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from April 18, 2023

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from April 18, 2023, to coincide with the hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, MET-1, has been granted. Accordingly, the trustee's motion to dismiss 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 trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

17. [18-22944](#)-A-13 **IN RE: DARRIN/DEZIREE SUTLIFF**
[MET-1](#)

MOTION TO MODIFY PLAN
4-2-2023 [\[66\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan - Modified, filed April 2, 2023

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on April 2, 2023, ECF No. 71. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 77.

VIOLATION OF LBR 9014-1(c)

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR

9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous motion by the debtor - a motion to modify plan filed on July 14, 2021, ECF No. 43. Counsel is reminded that future violations of this rule may result in denial of relief or imposition of sanctions. LBR 1001-1(g).

CHAPTER 13 PLAN MODIFICATION

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

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

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

18. [23-20245](#)-A-13 **IN RE: CHERYL ADLER**
[GC-1](#)

MOTION TO CONFIRM PLAN
3-23-2023 [[18](#)]

JULIUS CHERRY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,569.11. The plan cannot be confirmed if the plan payments are not current.

Class 1 Arrears

The plan provides for treatment of Select Portfolio Services in Class 1. Because the debtor failed to make plan payments timely under the terms of the previously confirmed plan, the trustee lacked sufficient funds to pay the post-petition contract installments to Select Portfolio Services in the amount of \$1,938.66 for the month of February 2023. The plan fails to specify a cure of the post-petition arrearage including a specific postpetition arrearage amount, interest rate and monthly dividend. The trustee is therefore unable to fully comply with §3.07(b) of the plan.

Failure to Provide for IRS Secured Claim

The trustee contends that the plan does not comply with 11 U.S.C. § 1322(a)(2) as it does not provide for payment in full of the IRS claim. Opposition, 3:16-18, ECF No. 29. The IRS has filed a claim as follows: 1) \$79,128.61 secured; and 2) \$100.00 priority unsecured. Claim No. 5.

(a) The plan--

. . .

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to *priority* under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

. . .

11 U.S.C. § 1322(a)(2) (emphasis added).

This Panel has previously held that where a debtor failed to provide for an IRS tax lien in a Chapter 13 plan, the tax lien survives the bankruptcy process unaffected. *In re Junes*, 99 B.R. 978, 980 (9th Cir. BAP 1989).

In re Bisch, 159 B.R. 546, 549 (B.A.P. 9th Cir. 1993).

The trustee has objected under § 1322(a)(2) which is inapplicable unless it is the trustee's contention that the plan will not pay \$100.00 on the priority claim.

LIQUIDATION

(a) Except as provided in subsection (b), the court shall confirm a plan if--

. . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . .

11 U.S.C. § 1325(a)(4).

The debtor has proposed a 5% payment to unsecured creditors. The trustee calculates that the debtor's nonexempt assets are valued at \$13,025.00, which represents 23% of the unsecured debt. Thus, the plan fails the liquidation test. The plan must provide that at least 23% shall be paid to unsecured creditors.

DEBTOR REPLY

On May 8, 2023, the debtor filed a reply, ECF No. 32. The debtor contends that plan payments are current.

The court will hear from the trustee regarding: 1) the status of the plan payments; 2) whether he currently holds sufficient funds to bring the Class 1 mortgage payments current; 3) if in the trustee's estimation the liquidation objection may be resolved in the order granting the motion; and 4) if the trustee wishes to amend his opposition regarding the IRS claim.

Should the trustee desire to amend his opposition the court will set a briefing schedule.

Absent the trustee's representation that plan payments are current, that he holds sufficient funds to bring Class 1 payments current, and that the liquidation opposition may be resolved in the order the court will deny the motion and issue the following ruling.

CIVIL MINUTE ORDER

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

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

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

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

19. [23-20846](#)-A-13 **IN RE: VANESSA FRANKLIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-24-2023 [[13](#)]

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.

20. [20-21152](#)-A-13 **IN RE: LINDA WOOLEY**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-8-2023 [\[32\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

The hearing on this matter will be continued to June 13, 2023, at 9:00 a.m. No later than May 30, 2023, the debtor may file further opposition to the motion. No later than June 6, 2023, the trustee shall file a status report. The evidentiary record will close on June 6, 2023. The court may rule on this matter without further hearing.

21. [20-21152](#)-A-13 **IN RE: LINDA WOOLEY**
[EJS-2](#)

MOTION TO MODIFY PLAN
4-4-2023 [\[40\]](#)

ERIC SCHWAB/ATTY. FOR DBT.

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).

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156

(9th Cir. 1971) (approving local rules that authorize disposition without oral argument).

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).

Class 1 Mortgage Arrears

The trustee contends that the plan fails to provide the correct amount to cure Class 1 Mortgage Arrears which have arisen during the pendency of the plan. The trustee indicates that payments to PHH Mortgage Services are delinquent in the amount of \$2,783.50 for the months of February and March 2023. Conversely, the proposed plan provides for \$4,101.95 in post-petition Class 1 arrears. The trustee is unable to reconcile the proposed plan with the payments already made under the plan because the proposed plan does not specify the months for which the Class 1 payments were missed.

No Evidence Supporting Increased Family Support

The debtor's Supplemental Schedule I increases monthly family contributions over the most recently filed Schedule I from \$1,355.00 to \$1,530.00. The debtor has failed to support the motion to modify with any declarations from family members evidencing their ability and willingness to tender the increased payment. Accordingly, the debtor has failed to prove that the plan is feasible under 11 U.S.C. § 1325(a)(6).

Received Payments Incorrectly Stated in Plan

The modified plan proposes plan payments of \$69,476.01 paid through April 2023, then \$2,252.00 for the remainder of the plan. The trustee's records reflect that the actual amount paid through April 2023 is \$69,976.01, a \$500 difference. The plan as proposed is incorrect.

Reclassification of 1 800 LoanMart Obligation

The proposed modified plan reclassifies the obligation owed to 1 800 Loan Mart from Class 2 to Class 3. However, the trustee has made disbursements to the creditor pursuant to the previously confirmed plan. The proposed modified plan fails to provide and allow payment for the previous payments to the creditor, and does not indicate whether the debtor intends to retrieve (or the legal basis for retrieval) the payments from the creditor. Accordingly, the trustee is unable to assess the feasibility of the plan.

RULE 9013

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.

Fed. R. Bankr. P. 9013.

The trustee objects to the plan because the motion fails to state the legal authority for plan modification. The court agrees, the motion provides no legal authority.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 66 months to fund as proposed.

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

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

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.

22. [23-20052](#)-A-13 **IN RE: VANESSA TURINCIO-FUENTES**
[BLG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S)
3-17-2023 [\[23\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$3,680.00

Reimbursement of Expenses: \$21.85

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Bankruptcy Law Group, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,680.00 and reimbursement of expenses in the amount of \$21.85.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$3,680.00 and reimbursement of expenses in the amount of \$21.85. The aggregate allowed amount equals \$3,701.85. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$3,159.85 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

23. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-2](#)

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

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

The Objection is continued to August 8, 2023, at 9:00 a.m. as indicated in the Stipulation of the parties and Order, ECF Nos. 117, 119. No appearances are required.

24. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-3](#)

MOTION TO EMPLOY PETER G. MACALUSO AS ATTORNEY(S)
4-22-2023 [\[113\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Motion to Employ

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order authorizing the employment of Peter Macaluso as counsel in an adversary proceeding. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

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

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

In this case the both the Matrix of Creditors Requesting Special Notice (6B3) and the Matrix of Registered Users of the Electronic Filing System (6B1) attached to the certificate of service are dated February 27, 2023. See Certificate of Service, ECF No. 116. Service of the motion occurred on April 22, 2023. *Id.* The matrixes are dated more than 7 days prior to the date of service of the motion and therefore do not comply with LBR 7005-1. The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

The debtor's Motion to Employ 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.

25. [23-20565](#)-A-13 **IN RE: VICKI BURTON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
4-19-2023 [\[12\]](#)

JAMES KEENAN/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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 \$1,700.00. The plan cannot be confirmed if the plan payments are not current.

Failure to Provide Income Information

The debtor has failed to provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan prior to the meeting of creditors.

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

MEETING OF CREDITORS

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting on April 13, 2023. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. The court will sustain the objection. The court will deny confirmation of the debtor's plan.

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.

26. [23-20865](#)-A-13 **IN RE: CHARLES LEOANRD**
[RPH-2](#)

MOTION TO VALUE COLLATERAL OF CITIBANK N.A.
4-4-2023 [\[18\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

The hearing on the debtor's motion to value collateral will be continued to June 13, 2023, at 9:00 a.m. to coincide with the Objection to Confirmation filed by Wilmington Savings Fund Society, FSB, and a review of that creditor's claim. The purpose of the continued hearing is to avoid inconsistent rulings in this case regarding the balance owed to Wilmington Savings Fund Society, FSB.

27. [22-22866](#)-A-13 **IN RE: ANDREA/LELAND SMITH**
[BLG-5](#)

MOTION TO VALUE COLLATERAL OF ZAHAV ASSET MANAGEMENT LLC
4-13-2023 [\[56\]](#)

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

Final Ruling

Motion: Value Collateral - Business Assets

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

Disposition: Granted

Order: Civil minute order

Collateral: Business Property, dba Dr Andrea Joy Smith Family Dentistry, described as Chase Bank Accounts ending in 0661, 0587, 3206, and 9235; Accounts Receivable; Business Equipment and Supplies; and Dental Office Furniture & Files

Gross Value of Collateral: \$172,802.45

Senior Lien: U.S. Small Business Administration - \$155,290.62

Value of Respondent's Collateral: \$17,511.83

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

FACTS

The debtors seek an order valuing the collateral of Zahav Asset Management, LLC, (Respondent) at \$17,511.83 pursuant to 11 U.S.C. § 506(a). The debtors are indebted to the respondent in the amount of \$119,086.25. Claim No. 9.

Respondent perfected its security interest on September 16, 2020, by filing a UCC Financing Statement with the State of California Secretary of State, File # U200019809835. Respondent's interest is secured by the assets of the debtor's dental practice, specifically:

Receivables - All assets now owned or hereafter acquired and wherever located but not limited to, the following subcategories of assets: a. Accounts including but not limited to, credit card receivables; b. Chattel Paper; c. Inventory; d. Equipment; e. Instruments, including but not limited to, Promissory Notes; f. Investment Property; g. Documents; h. Deposit Accounts; i. Letter of Credit Rights; j. General Intangibles; k. Supporting Obligations; and Proceeds and Products of the foregoing.

Motion, 2:6-14, ECF No. 56.

The debtors valued the business assets at \$172,802.45. *Id.*, 2:17-22. The U.S. Small Business Administration has a senior lien on the debtors' business assets which was perfected on May 6, 2020. *Id.*, 2:26. The U.S. Small Business Administration's claim totals \$155,290.62. Claim No. 21.

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2).

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as Business Property, dba Dr Andrea Joy Smith Family Dentistry, described as Chase Bank Accounts ending in 0661, 0587, 3206, and 9235; Accounts Receivable; Business Equipment and Supplies; and Dental Office Furniture & Files. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the respondent's collateral at \$17,511.83.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a Business Property, dba Dr Andrea Joy Smith Family Dentistry, described as Chase Bank Accounts ending in 0661, 0587, 3206, and 9235; Accounts Receivable; Business Equipment and Supplies; and Dental Office Furniture & Files has a gross value of \$172,802.45. The U.S. Small Business Administration has a senior lien in the property in the amount of \$155,290.62. The respondent has a secured claim in the amount of \$17,511.83 equal to the value

of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of its claim.

28. [22-21968](#)-A-13 **IN RE: LYNITA HARRIS**
[BLG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S)
3-21-2023 [\[98\]](#)

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

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$7,828.50

Reimbursement of Expenses: \$88.94

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

COMPENSATION AND EXPENSES

In this Chapter 13 case, Bankruptcy Law Group, P.C. has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$7,828.50 and reimbursement of expenses in the amount of \$88.94.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$7,828.50 and reimbursement of expenses in the amount of \$88.94. The aggregate allowed amount equals \$7,917.44. As of the date of the application, the applicant held a retainer in the amount of \$677.00. The amount of \$7,240.44 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

29. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[DPC-2](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
12-19-2022 [\[134\]](#)

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

No Ruling

30. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[FEC-2](#)

CONTINUED ORDER TO SHOW CAUSE
1-23-2023 [[155](#)]

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

31. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[KMT-4](#)

CONTINUED MOTION TO ABSTAIN
3-6-2023 [[189](#)]

MARK BRIDEN/ATTY. FOR DBT.
GABRIEL HERRERA/ATTY. FOR MV.

Tentative Ruling

Motion: Abstain

Notice: Continued from March 21, 2023

Disposition: Granted

Order: Civil minute order

Creditor Nicholas Loper requests that the court abstain from ruling on the debtor's Objection to Claim of Nicholas Loper (MWB-5) under 28 U.S.C. § 1334(c)(1).

FACTS

Creditor Nicholas Loper (Loper) filed a claim in this case on October 6, 2022, Claim No. 10. The claim was filed in the amount of \$15,000,000 and is for personal injury based upon negligence. The claim appears to be based solely upon a complaint for damages was filed against the debtors in the Circuit Court of the State of Oregon, for the County of Multnomah, Case No. CV39371. *Id.* The automatic stay caused the litigation to cease upon the filing of the bankruptcy case. Loper's claim has not yet been liquidated.

On November 4, 2022, Loper filed a motion for relief from the automatic stay seeking an order allowing the Oregon litigation to proceed. On November 14, 2022, the debtors filed a response to the motion for relief from stay, stating that they did not oppose stay relief and supporting the liquidation of the claim in Oregon state court. Response, ECF No. 121.

The trial in the Oregon state litigation is currently set for July 31, 2023.

PROCEDURAL STATUS

The hearing on this motion was continued from March 21, 2023, to allow for briefing by the parties. On March 23, 2023, the court issued the following order:

IT IS ORDERED that the motion to abstain is continued to May 16, 2023, at 9:00 a.m.
IT IS FURTHER ORDERED that not later than April 18, 2023, the debtors and the Chapter 13 trustee may file and serve opposition, if any, to the motion.
IT IS FURTHER ORDERED that not later than May 2, 2023, the movant may file and serve a reply, if any, to the opposition.

Order, ECF No. 221.

On April 17, 2023, the Chapter 13 trustee filed a non-opposition to the motion. Non-Opposition, ECF No. 235. The debtors have failed to oppose the motion.

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).

ABSTENTION

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

. . .

28 U.S.C. § 1334(c)(1).

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core"

proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Tucson Ests., Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

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.

Nicholas Loper's motion has been presented to the court. Having entered the default of respondents 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.

32. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-5](#)

CONTINUED OBJECTION TO CLAIM OF NICOLAS LOPER, CLAIM NUMBER
10
1-4-2023 [[143](#)]

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

33. [22-21669](#)-A-13 **IN RE: LINDSAY/LISA BRAKEL**
[MWB-8](#)

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

MARK BRIDEN/ATTY. FOR DBT.

No Ruling

34. [23-20470](#)-A-13 **IN RE: LATASHA SAMUEL**
[DPC-1](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
3-29-2023 [\[21\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
DEBTOR DISMISSED: 4/11/23

Final Ruling

This case was dismissed on April 11, 2023. Accordingly, the Objection is removed from the calendar as moot. No appearances are required.

35. [23-20172](#)-A-13 **IN RE: CHAD SMITH**
[MOH-1](#)

MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS
TO DEBTOR
4-24-2023 [\[33\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Tentative Ruling

Motion: Substitution of Representative, Continued Administration, Waiver of Personal Financial Management and Waiver of Certifications
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Benjamin C. Smith prays appointment of a personal representative, substitution of the representative, continued administration, waiver of the post-petition education requirement and the § 1328 certification for his now deceased son Chad Smith.

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a *Notice of Death of the debtor* [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), incorporated by Fed. R. Bankr. P. 7025, 9014(c).

Here, the Notice of Death was filed on April 13, 2023, ECF No. 31.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), incorporated by Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, incorporated by Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

Benjamin C. Smith is appointed as the executor in the deceased debtor's will and is a proper party for appointment.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

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

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

Benjamin C. Smith has made the Chapter 13 Plan payment and ongoing mortgage payment since the debtor's death and has indicated that he intends to do so going forward.

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless . . .
. . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4). The debtor was unable to complete this requirement prior to his death and

accordingly the requirement to complete the post-petition personal financial management course is waived.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CIVIL MINUTE ORDER

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

Benjamin C. Smith's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

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

36. [23-20777](#)-A-13 **IN RE: TIMOTHY WILLIAMS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-18-2023 [\[24\]](#)

PETER MACALUSO/ATTY. FOR DBT.
4/28/23 INSTALLMENT FEE PAID \$79

Final Ruling

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

37. [19-23082](#)-A-13 **IN RE: DUANE ZAMBOANGA**
[AT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-2-2023 [\[31\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
JORDAN O'BRIEN/ATTY. FOR MV.
SUNRIDGE TOWNHOMES OWNERS' ASSOCIATION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Sunridge Townhomes Owners' Association seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice as follows.

SERVICE AND NOTICE

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)).

LBR 9014-1(f)

In the Eastern District of California notice of a motion must comply with the requirement of LBR 9014-1(f) (1), (2). The rule allows a choice of two different notice periods. LBR 9014-1(f) (1) requires 28 days' notice of the motion and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 9014-1(f) (2) requires only 14 days' notice of the motion and does not require the opposing party to file and serve written opposition prior to the hearing on the motion. See, LBR 9014-1(f) (1), (2).

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

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

. . .

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

The notice filed and served in this matter provides as follows.

Pursuant to Local Rule 4001-1, any party wishing to serve and file written opposition to this motion may do so, or they may appear at the above date and time to oppose this motion.

Notice, 2:3-4, ECF No. 32.

The notice contains conflicting provisions, and it is unclear what action the opposing party must take to properly oppose the motion.

The court will not presume the conclusion an opposing party might reach about whether written opposition is necessary. The notice given in this matter does not satisfy the requirements of LBR 9014(d) (3) (B).

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

The court will deny the motion without prejudice.

Service

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

Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

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

Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

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

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

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. 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:

Sunridge Townhomes Owners' Association's motion has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

38. [22-21885](#)-A-13 **IN RE: RODERICK FRAZIER**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-10-2023 [[22](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from April 18, 2023

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from April 18, 2023, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The sole basis for the trustee's motion was plan delinquency. On May 2, 2023, the trustee filed a status report, conceding that plan payments are current. Status Report, 2:4, ECF No. 40. As the plan payments are current the court will deny the motion.

CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.

39. [22-21885](#)-A-13 **IN RE: RODERICK FRAZIER**
[MRL-1](#)

MOTION TO MODIFY PLAN
4-4-2023 [\[28\]](#)

MIKALAH LIVIAKIS/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 trustee

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: Chapter 13 Plan, filed April 4, 2023

DEFAULT OF RESPONDENT

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

ORAL ARGUMENT

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

FACTS

The debtor seeks approval of the proposed modified Chapter 13 Plan, ECF No. 32. The motion is supported by the Declaration of the Debtor, ECF No. 30, as well as current Schedules I and J (signed under penalty of perjury) filed on April 4, 2023, ECF No. 31.

The Chapter 13 trustee opposes the motion contending that the debtor has not provided sufficient evidence in support of the motion.

The motion is brought pursuant to 11 U.S.C. § 1329. Motion, 1:20, ECF No. 28. The debtor has experienced changes to his income and expenses, Schedules I and J, ECF No. 31. Schedule J states that the debtor has experienced increased expenses for food and utilities during the past 6 months. *Id.* The proposed plan calls for payment to unsecured creditors at 100%. The trustee has failed to raise any argument regarding the feasibility of the proposed plan.

While the court agrees that changed expenses often require further explanation, the court finds that in this case, and under these circumstances, that the debtor has plead sufficient facts at the outset of the motion for the court to grant the motion.

CHAPTER 13 PLAN MODIFICATION

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

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

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

40. [23-20287](#)-A-13 **IN RE: GREGORY JACKSON**
[DPC-2](#)

MOTION TO DISMISS CASE
4-17-2023 [\[26\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the plan, failed to provide information to the trustee, and has failed to file tax returns. Motion to Dismiss, 1:20-23, ECF No. 26. A Chapter 13 Plan has never been confirmed in this case.

COMPLIANCE WITH RULE 9013

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request.

11 U.S.C. § 1307(c)(6)

(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—

. . . .

(6) material default by the debtor with respect to a term of a *confirmed plan*;

. . . .

11 U.S.C. § 1307(c)(6) (emphasis added).

Because a plan has never been confirmed in this case the motion is not properly brought under 11 U.S.C. § 1307(c)(6). The motion will be denied without prejudice.

The motion will be denied without prejudice as follows.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied without prejudice.

41. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-12-2023 [\[91\]](#)

RICHARD JARE/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.
U.S. BANK TRUST NATIONAL ASSOCIATION VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

U.S. Bank Trust, National Association seeks an order granting relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

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

The following party filed a request for special notice: Fite & Company Construction, Inc., Cianchetta and Associates. Request for Notice, ECF No. 44.

The Certificate of Service states that special notice parties were served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 96. However, there is no attachment which includes the special notice parties, nor is the special notice creditor otherwise listed in the list of parties served, *id.* Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

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

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

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

CIVIL MINUTE ORDER

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

U.S. Bank Trust, National Association's motion has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

42. [20-24698](#)-A-13 **IN RE: JOHN/VERLYNDA KAZE**
[BB-1](#)

MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS
TO DEBTOR NOTICE OF DEATH OF A DEBTOR
4-17-2023 [\[36\]](#)

BONNIE BAKER/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Substitution of Representative, Continued Administration,
and Waiver of Certifications

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

Disposition: Granted

Order: Civil minute order

Debtor, Verlynda Kaze, prays appointment of a personal
representative, substitution of the representative, continued
administration, waiver of the § 1328 certification for her now
deceased spouse John Alan Kaze (decedent).

DEFAULT

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).

DISCUSSION

Suggestion of Death

When a chapter 13 debtor dies, counsel for the debtor shall file a
Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been
closed, a *Notice of Death of the debtor* [Fed. R. Civ. P.
25(a), Fed. R. Bankr. P. 7025] shall be filed within
sixty (60) days of the death of a debtor by the counsel
for the deceased debtor or the person who intends to be
appointed as the representative for or successor to a
deceased debtor. The Notice of Death shall be served on
the trustee, U.S. Trustee, and all other parties in
interest. A copy of the death certificate (redacted as
appropriate) shall be filed as an exhibit to the Notice
of Death.

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a),
incorporated by Fed. R. Bank. P. 7025, 9014(c).

Here, the notice of death has been filed concurrently with the request for additional relief. The notice indicates the death of debtor John Kaze on March 17, 2023, and is accompanied by the required certificate of death.

Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

The motion requests appointment of the decedent's spouse and co-debtor, Verlynda Kaze as the personal representative.

Continued Administration

Continued administration on behalf of a deceased chapter 13 debtor is discretionary.

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

proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

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

The motion requests that the decedent's spouse and co-debtor, Verlynda Kaze be allowed continued administration of the Chapter 13 proceeding.

Waiver of Post-Petition Education Requirement

In most cases, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless . . .
. after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to a *debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.* For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "*disability*" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4). In this case an order regarding the post-petition education requirement is not necessary as the decedent has completed the requirement, ECF No. 26.

WAIVER OF § 1328 CERTIFICATIONS

The motion requests a waiver of the requirement to complete and file § 1328 certifications, including certifications concerning domestic support obligations, prior bankruptcy discharges, exemptions exceeding the amount stated in § 522(q)(1) and pending criminal or civil proceedings described in § 522(q)(1)(A) and (B). These certifications are generally required for debtors by § 1328(a) and Local Bankruptcy Rule 5009-1(b) and (c). The court will waive the requirement that the deceased debtor file certifications concerning compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

CIVIL MINUTE ORDER

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

Verlynda Kaze's motion has been presented to the court. Having entered the default of the respondents and 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 the motion is granted; and

IT IS FURTHER ORDERED that (1) Verlynda Kaze is the representative of John Alan Kaze and is substituted in his place and stead; (2) continued administration is appropriate; and (3) as John Alan Kaze the certifications required by 11 U.S.C. § 1328 are waived.

43. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MET-1](#)

MOTION TO RECONSIDER
5-9-2023 [\[120\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

44. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[MBN-2](#)

MOTION TO RECONSIDER
5-9-2023 [\[120\]](#)

MARY TERRANELLA/ATTY. FOR DBT.

No Ruling

45. [22-23253](#)-A-13 **IN RE: LINDSAY HARRIS**
[23-2028](#)

STIPULATION TO STAY COMPLAINT
5-9-2023 [\[9\]](#)

TEAGUE V. HARRIS
PETER MACALUSO/ATTY. FOR PL.

No Ruling