

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

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

**DAY: TUESDAY**  
**DATE: MAY 24, 2022**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

**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. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

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

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

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

**ERRORS IN RULINGS**

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

1. [22-21111](#)-A-13     **IN RE: VALERIE RAMIREZ**  
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-9-2022    [\[10\]](#)

PETER MACALUSO/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted

**Order:** Civil minute order

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

The debtor seeks an extension of the automatic stay of 11 U.S.C. § 362(a). The debtor's previous chapter 13 case was dismissed on March 30, 2022. The debtor states in her declaration that the case was allowed to be dismissed because the plan which had been confirmed did not properly provide for real property taxes on her residence and that her previous attorney did not modify the chapter 13 plan to pay the claim which had been filed. See Declaration, ECF No. 13, 1:23-27. The record in the previous case, Case No. 2021-20133, E.D. Cal. Bankr. (2021) does not show a modified plan was ever filed, supporting the debtor's argument.

### **EXTENSION OF THE STAY**

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

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

2. [22-20416](#)-A-13      **IN RE: SANTIAGO RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-2-2022    [\[26\]](#)

**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.

3. [22-20416](#)-A-13      **IN RE: SANTIAGO RAMIREZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
4-26-2022    [\[22\]](#)

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** May 17, 2022

**Opposition Filed:** Unopposed

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

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

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

## **CASE DISMISSAL**

### Plan Delinquency

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$5,000.00.

### Failure to Attend 341 Meeting

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 14, 2022. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. This constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1).

### Section 521(a), (e) & Rule 4002(b) Documents

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); and (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

The debtor has not provided the trustee the tax returns and pay advices for the 60 day period prior to the filing of the case. These documents were not provided at least 7 days prior to the meeting of creditors. This constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1).

### Failure to Set Plan for Confirmation Hearing

The debtor has failed to confirm a plan within a reasonable time. The debtor filed this case on February 24, 2022, yet the plan was not filed until March 25, 2022. Because the plan was filed more than 14 days after the filing of the petition the debtor is required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1). The failure to file a motion to confirm the plan constitutes unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

**11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

**CIVIL MINUTE ORDER**

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

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

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

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

4. [19-24217](#)-A-13     **IN RE: BRETT BAILEY**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-31-2022    [\[66\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Trustee's Motion to Dismiss Case

**Notice:** Continued from May 3, 2022

**Disposition:** Withdrawn by moving party

**Order:** Civil minute order

This hearing on the chapter 13 trustee's motion to dismiss was continued to coincide with the hearing on the debtor's motion to confirm the chapter 13 plan. The motion to confirm the chapter 13 plan (SMJ-3) was granted.

### **TRUSTEE REPLY - Fed. R. Civ. P. 41**

The trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. See ECF No. 82.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Although the debtor has filed an opposition, neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion to dismiss is withdrawn.

5. [19-24217](#)-A-13     **IN RE: BRETT BAILEY**  
[SMJ-3](#)

MOTION TO MODIFY PLAN  
4-19-2022    [\[72\]](#)

SCOTT JOHNSON/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 the trustee

**Disposition:** Granted

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

**Subject:** Third Modified Chapter 13 Plan, filed April 19, 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 approval of his modified chapter 13 plan. The plan is supported by properly filed Supplemental Schedules I and J, filed May 9, 2022, ECF No. 79. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 80.

### **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.

6. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[CRG-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN  
4-18-2022     [\[20\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

Service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party. See Certificate of Service, ECF No. 24.



The motion will be denied without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtor's motion to value collateral 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.

7. [20-21223](#)-A-13     **IN RE: JOYCE BEJOC AND CLARITA CASIPIT?**  
[TLA-1](#)

MOTION TO MODIFY PLAN  
4-18-2022    [\[25\]](#)

THOMAS AMBERG/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:** First Modified Chapter 13 Plan, dated April 18, 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 debtors seek approval of their modified chapter 13 plan. The plan is supported by properly filed Supplemental Schedules I and J, filed April 18, 2022, ECF No. 31. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 32.

#### **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.

8. [22-20527](#)-A-13      **IN RE: CHARLES LEONARD**  
[RPH-1](#)

MOTION TO VALUE COLLATERAL OF CITIBANK (WEST) FSB  
4-20-2022    [\[18\]](#)

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

**Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**SERVICE**

Rule 7004(h)

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Persons wishing to serve papers by mail on an insured depository institution, with exceptions not applicable, must use "certified mail addressed to an officer of the institution. Fed. R. Bankr. P. 7004(h). See 11 U.S.C. § 101(34) (defining "insured credit union") & (35) (defining "insured depository institution" to include "insured credit union"); Fed. R. Bankr. P. 9001.

Service of the motion was insufficient as follows. The motion purports to value the collateral of Citibank (West) FSB. Citibank (West) FSB is an "insured depository institution" within the meaning of Rule 7004(h). Service of the motion was not made by certified mail or was not *addressed to an officer of the responding party*. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

In serving Citibank (West) FSB an individual named Leigh Wasson has been served by certified mail. However, the proof of service does not indicate Leigh Wasson's relationship to Citibank (West) FSB. See ECF No. 12. Thus, the evidentiary record does not support proper service of the motion to value collateral under Rule 7004(h).

Rule 7004(b)(3)

As a contested matter, a motion to value collateral is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b). Under Rule 7004, service on corporations and other business entities must be made by first class mail addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3).

The court notes that the creditor listed as the holder of the note and deed of trust in Schedule D is Citimortgage. See ECF No. 12. While Citimortgage was served with the motion service was not sufficient under Fed. R. Bankr. P. 7004(b)(3), because the proof of service does not indicate that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

Improper Recipient Served

The motion purports to value the collateral of Citibank (West) FSB. The movant served Jane Fraser, CEO Citigroup Inc. with the moving papers under Rule 7004(h). The evidentiary record does not state the relationship of Jane Fraser, CEO of Citigroup Inc. to the respondent, Citibank (West) FSB. Therefore, the court is unable to determine if the proper party has been served with the motion.

The motion will be denied without prejudice

**CIVIL MINUTE ORDER**

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

The debtor's Motion to Value Collateral of Citibank (West) FSB 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.

9. [22-20246](#)-A-13     **IN RE: GUILLERMO MIRALRIO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
4-26-2022    [\[31\]](#)

W. SHUMWAY/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** May 10, 2022

**Opposition Filed:** Unopposed

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

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

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$2,341.64 with an additional payment of \$2,325.82 due May 25, 2022.

### **11 U.S.C. § 1307(c)**

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

...

11 U.S.C. § 1307(c).

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

## **CIVIL MINUTE ORDER**

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

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

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

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

10. [19-20747](#)-A-13     **IN RE: DANIEL/TERESA STALTER**  
[CK-5](#)

MOTION TO VACATE DISMISSAL OF CASE  
5-9-2022    [\[115\]](#)

CATHERINE KING/ATTY. FOR DBT.  
DEBTORS DISMISSED: 03/30/2022

**No Ruling**

11. [19-21347](#)-A-13     **IN RE: FELICIA HUDSON**  
[PGM-6](#)

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS  
ATTORNEY(S)  
4-25-2022    [\[128\]](#)

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

### **Final Ruling**

**Application:** Allowance of Additional Compensation

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

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$1,500.00

**Additional Cost Reimbursement Requested:** \$0

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Peter Macaluso, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$1,500.00. The application is supported by a declaration of the debtor indicating her support for the payment of additional compensation in an amount not to exceed \$1,500.00, ECF No. 130. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 134.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully modified the chapter 13 plan extending the plan length to 84 months as the debtor was impacted by the COVID-19 pandemic. The complications created by the pandemic

were unanticipated at the time the case was filed and the extension of the plan to 84 months represents substantial work.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$1,500.00.

#### **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.

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$1,500.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

12. [19-23948](#)-A-13     **IN RE: C/SANDRA SMITH**  
[CYB-7](#)

CONTINUED MOTION FOR COMPENSATION FOR CANDACE BROOKS,  
DEBTORS ATTORNEY(S)  
3-26-2022    [\[104\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Application:** Allowance of Additional Compensation

**Notice:** Continued from April 20, 2022

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$6,792.50

**Additional Cost Reimbursement Requested:** \$0

#### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Candace Brooks, attorney for the debtor, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$6,792.50. The motion is supported by a declaration from the

debtor Sandra Smith, ECF No. 118. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 114.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

#### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully: modified the chapter 13 plan after the death of debtor C. Todd Smith; prepared and filed the notice of death of debtor; prepared and filed the motion for further administration of case; amended schedules; prepared and filed a motion for retroactive approval of sale of a trailer; and responded to notices, phone calls, and written correspondence connected with these matters.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$6,792.50.

#### **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.

Candace Brook's application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$6,792.50. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.



13. [22-20152](#)-A-13     **IN RE: BRIDGET ARMSTEAD**  
[MMM-1](#)

MOTION TO CONFIRM PLAN  
4-19-2022    [\[20\]](#)

MOHAMMAD MOKARRAM/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:** Chapter 13 Plan, filed April 19, 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 her chapter 13 plan. The motion is supported by Supplemental Schedules I and J, properly filed on April 19, 2022, ECF No. 24. The chapter 13 trustee has filed a non-opposition to the motion.

### **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.

14. [19-22357](#)-A-13     **IN RE: DARASY/JOHNSY ESIO**  
[PSB-3](#)

CONTINUED MOTION FOR COMPENSATION FOR PAULDEEP BAINS,  
DEBTORS ATTORNEY(S)  
3-16-2022    [\[60\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

### **Final Ruling**

**Application:** Allowance of Additional Compensation

**Notice:** Continued from April 20, 2022

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$2,005.00

**Additional Cost Reimbursement Requested:** \$0

### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Pauldeep Bains, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$2,005.00. The motion is supported by a declaration from the debtor, agreeing to the payment of additional compensation in the amount requested, ECF No. 71. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 67.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully: prepared and obtained a Stipulated Ex Parte Modification of Plan; defended two motions to dismiss the case filed by the chapter 13 trustee; amended schedules; prepared and filed a motion to confirm a second amended plan; and prepared this motion for additional compensation.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$2,005.00.

#### **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.

Pauldeep Bains' application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$2,005.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

15. [21-23868](#)-A-13     **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**  
[CYB-2](#)

MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT  
4-19-2022    [\[55\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The debtors seek an order avoiding the lien of Employment Development Department.

As a contested matter, a motion to avoid lien is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9014(a). Rule 9014 requires Rule 7004 service of motions in contested matters. Fed. R. Bankr. P. 9014(b).

#### **IMPROPER NOTICE**

Rule 7004(b)(6)

(b) Service by first class mail

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j)

F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

. . .

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

. . .

Fed. R. Bankr. P. 7004(b) (6) .

Rule 7004(b) (6) requires notice as appropriate under California law.

CCP § 416.50

(a) A summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.

(b) As used in this section, "public entity" includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state.

Cal. Civ. Proc. Code § 416.50.

In addition to the notice required under state law notice to certain state agencies are governed by LBR 2002-1(b) as follows.

Notice to Other Governmental Agencies. Certain federal and state agencies specify particular addresses to which notice of bankruptcy proceedings shall be directed. The roster of such agencies and their addresses (Form EDC 2-785, *Roster of Governmental Agencies*) shall be available on the Court's website ([www.caeb.uscourts.gov](http://www.caeb.uscourts.gov)) to enable compliance with this Rule and the provisions of Fed. R. Bankr. P. 2002(j). The Clerk shall make paper copies of the roster available upon request. When listing a debt to an agency included on this roster, the debtor and the debtor's attorney shall complete the Master Address List and the schedule of creditors using the address as shown on the agency roster. When listing a debt to an agency not on the roster, the debtor and the

debtor's attorney shall use such address as will effect proper notice to the agency.

LBR 2002-1(b).

Form EDC 2-785 provides two addresses for notices to the Employment Development Department. The debtor has served EDD at the address for bankruptcy notices. See Certificate of Service, ECF No. 62, page 1. Adversary proceedings are required to be served at the following address.

Service of Adversary Proceedings:  
Employment Development Department  
Legal Office 800 Capitol Mall MIC 53  
Sacramento, CA 95618

EDC 2-785.

As the responding party was not served at the addresses required under both state law and LBR 2002-1(b) it did not receive proper notice of the motion to avoid lien under Rule 7004(b)(6). 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 Avoid Judicial Lien of Employment Development Department 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.

16. [21-23868](#)-A-13     **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**  
[CYB-3](#)

MOTION TO CONFIRM PLAN  
4-18-2022    [\[49\]](#)

CANDACE BROOKS/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 \$726.00. The plan cannot be confirmed if the plan payments are not current.

### **REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

LBR 3015-1(i) provides that "[t]he hearing [on a valuation motion] must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Nissan Motor Acceptance Company, LLC's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the 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 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.

17. [21-23868](#)-A-13     **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**  
[CYB-4](#)

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION  
4-19-2022    [\[68\]](#)

CANDACE BROOKS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

**Property:**    2009 Nissan Murano

**Value:**     \$7,000.00

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

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

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2009 Nissan Murano. The debt secured by the vehicle was not incurred within the 910-day period preceding the date of the petition.

The debtor and the respondent have entered into a stipulation valuing the property at \$7,000.00, ECF No. 77. The chapter 13 trustee has filed a response to the motion and indicated his support of the value at \$7,000.00, ECF No. 86.



The court approves the stipulation of the parties and values the vehicle at \$7,000.00.

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2009 Nissan Murano has a value of \$7,000.00. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$7,000.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

18. [21-23868](#)-A-13     **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**  
[CYB-5](#)

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE  
COMPANY, LLC  
4-19-2022    [[63](#)]

CANDACE BROOKS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

19. [22-20670](#)-A-13      **IN RE: ELENA GONZALEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-25-2022    [\[23\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**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. [19-23272](#)-A-13      **IN RE: ALLEN FOWLER**  
[DPC-4](#)

CONTINUED MOTION TO DISMISS CASE  
4-5-2022    [\[153\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from May 3, 2022

**Disposition:** Denied

**Order:** Civil minute order

The hearing on this motion was continued from May 3, 2022, coincide with the hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, SS-10, has been granted

As the motion to modify has been granted the court will deny the motion to dismiss.

**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.

21. [19-23272](#)-A-13     **IN RE: ALLEN FOWLER**  
[SS-10](#)

MOTION TO MODIFY PLAN  
4-7-2022    [\[157\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Modified Chapter 13 Plan, filed April 7, 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 an order approving his modified chapter 13 plan. On April 12, 2022, the debtor properly filed Schedules I and J in support of the plan, ECF No. 163. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 166.

### **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.

22. [21-23274](#)-A-13     **IN RE: JASON/SARAH SMITH**  
[KLG-3](#)

MOTION TO CONFIRM PLAN  
4-5-2022    [[60](#)]

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **No Ruling**

23. [19-23578](#)-A-13     **IN RE: CATHERINE BYRD**  
[PGM-7](#)

CONTINUED MOTION FOR COMPENSATION FOR PETER G. MACALUSO,  
DEBTORS ATTORNEY(S)  
3-13-2022    [[132](#)]

PETER MACALUSO/ATTY. FOR DBT.

#### **Final Ruling**

**Application:** Allowance of Additional Compensation

**Notice:** Continued from April 20, 2022

**Disposition:** Approved

**Order:** Civil minute order

**Number of Requests for Additional Compensation:** First

**Additional Compensation Requested:** \$7,685.00

**Additional Cost Reimbursement Requested:** \$0

#### **COMPENSATION AND EXPENSES**

In this chapter 13 case, Peter Macaluso, attorney for the debtor(s), has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$7,685.00. The motion is supported by a declaration from the debtor, agreeing to payment of the additional compensation in the

amount requested, ECF No. 71. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 137.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

#### **SUBSTANTIAL AND UNANTICIPATED POST-CONFIRMATION WORK**

The applicant filed Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, opting in to the no-look fee approved through plan confirmation. The plan also shows the attorney opted in pursuant to Local Bankruptcy Rule 2016-1(c). The applicant now seeks additional fees, arguing that the no-look fee is insufficient to fairly compensate the applicant. However, in cases in which the fixed, no-look fee has been approved as part of a confirmed plan, an applicant requesting additional compensation must show that substantial and unanticipated post-confirmation work was necessary. See LBR 2016-1(c).

In this case the applicant successfully: prepared and filed a motion to approve sale of real property; advised debtor regarding the move to Louisiana; prepared and filed amended schedules; defended objection to claim; prepared and filed motion to disburse funds; responded to additional correspondence regarding all matters.

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis and allow additional compensation of \$7,685.00.

#### **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.

Peter Macaluso's application for allowance of additional compensation under LBR 2016-1(c) 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. The court allows the additional compensation in the amount of \$7,685.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

24. [22-21078](#)-A-13      **IN RE: JOSE CARDONA AND VANESSA PADILLA**  
[PSB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-10-2022    [\[9\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Extend the Automatic Stay

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

**Disposition:** Granted

**Order:** Civil minute order

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

Debtors seek an extension of the automatic stay of 11 U.S.C. § 362(a).

### **EXTENSION OF THE STAY**

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

The debtors' declaration in support of the motion, ECF No. 12, cites the following reasons for the lack of success in their prior chapter 13 case: loss of employment; unanticipated orthodontic expenses; loss of childcare. Schedules I and J show that Vanessa Padilla has new employment, and the proposed plan no longer includes Class 1 mortgage payments as the debtors have obtained a loan modification.

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted.

### **CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted, and the automatic stay of § 362(a) is extended in this case. The automatic stay shall remain in effect to the extent provided by the Bankruptcy Code.

25. [21-24284](#)-A-13     **IN RE: RICHARD/CYNTHIA SPICKLER**  
[BLG-2](#)

CONTINUED MOTION FOR COMPENSATION FOR CHAD M. JOHNSON,  
DEBTORS ATTORNEY(S)  
4-1-2022     [\[34\]](#)

CHAD JOHNSON/ATTY. FOR DBT.

### **Final Ruling**

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

**Notice:** Continued from May 3, 2022

**Disposition:** Approved

**Order:** Civil minute order

**Request:** First Interim

**Compensation:** \$5,284.00

**Reimbursement of Expenses:** \$60.59

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

### **COMPENSATION AND EXPENSES**

In this Chapter 13 case, Chad Johnson has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,284.00 and reimbursement of expenses in the amount of \$60.59. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 41. The debtors have filed a declaration in support of the fee application, agreeing to payment of the compensation requested. ECF No. 45.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's

attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

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

#### **CIVIL MINUTE ORDER**

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

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

Chad Johnson'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 \$5,284.00 and reimbursement of expenses in the amount of \$60.59. The aggregate allowed amount equals \$5,344.59. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$4,802.59 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.



26. [21-22486](#)-A-13     **IN RE: ANNA MURPHY**  
[PGM-5](#)

MOTION TO SELL  
4-25-2022    [[152](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

27. [22-20196](#)-A-13     **IN RE: MARY FALCONER**  
[BLG-1](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF  
BANKRUPTCY LAW GROUP, PC FOR CHAD M JOHNSON, DEBTORS  
ATTORNEY(S)  
4-1-2022    [[15](#)]

CHAD JOHNSON/ATTY. FOR DBT.

**Final Ruling**

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

**Notice:** Continued from May 3, 2022

**Disposition:** Approved

**Order:** Civil minute order

**Request:** First Interim

**Compensation:** \$ 3,057.00

**Reimbursement of Expenses:** \$ 32.37

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

**COMPENSATION AND EXPENSES**

In this Chapter 13 case, Chad Johnson has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$3,057.00 and reimbursement of expenses in the amount of \$ 32.37. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 20. The debtor has filed a declaration in support of the fee application in the amount requested, ECF No. 24.

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

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

#### **CIVIL MINUTE ORDER**

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

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

Chad Johnson'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 \$ 3,057.00 and reimbursement of expenses in the amount of \$32.37. The aggregate allowed amount equals \$3,089.37. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$2,547.37 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.

28. [22-21139](#)-A-13     **IN RE: DYLAN BOGGS**  
[BLG-2](#)

MOTION TO EXTEND AUTOMATIC STAY O.S.T.  
5-20-2022    [[16](#)]

CHAD JOHNSON/ATTY. FOR DBT.

**No Ruling**