



**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: SEPTEMBER 26, 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. [22-21202](#)-A-13 **IN RE: MARIA ZAMORA**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-6-2023 [\[36\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.
TRANSPORT FUNDING, L.L.C. VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Transport Funding, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

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

The following parties filed a request for special notice: JP Morgan Chase Bank, National Association, ECF No. 8.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. *See Certificate of Service*, p. 2, no. 5, ECF No. 42. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

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

Rules 9013 and 9007

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

time determined under Rule 9006(d). The moving party shall serve the motion on:

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

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

CIVIL MINUTE ORDER

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

Transport Funding, LLC's Motion for Relief from the Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

2. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**

CONTINUED MOTION TO DISMISS CASE
7-21-2023 [\[30\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from August 22, 2023

Disposition: Granted, Case Converted to Chapter 7

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file plan

Best Interests of Creditors/Estate: Convert

The hearing on the creditor's motion to dismiss with prejudice was continued from August 22, 2023, to coincide with the trustee's motion to dismiss.

Creditor Willis A Miles (Miles) moves to dismiss the case contending that the debtor has not adequately prosecuted her Chapter 13 case and that the debtor's 6 previously filed Chapter 13 cases are evidence of the debtor's lack of good faith in repaying her debts. Miles also disputes the debtor's ability to market and sell the real property as discussed below.

Miles holds a note and deed of trust which is secured by the real property located at 9584 Horseless Carriage Lane, Sacramento, California ("property"). Miles has filed a claim which indicates the obligation under the note totals \$176,939.60, Claim No. 6. Miles' note is fully secured, as the debtor values the property at

\$360,000, Schedule A/B, ECF NO. 1. Miles values the property at \$350,000, Claim No. 6.

The debtor opposes the motion, contending that the creditor's claim is fully secured and that the proposed Chapter 13 plan will pay Miles' claim in full by November 1, 2023. The debtor contends that she has been unable to market and sell the property because prior to September 2022, the property was inhabited by a tenant turned squatter. The debtor was unable to evict the squatter from the property until September 2022 under tenant protection rules. The squatter left the property littered with trash and debris that the debtor has had to personally remove from the property. The debris on the property was such that the property was out of code compliance with Sacramento County. The debtor argues that neither she nor a potential buyer would have qualified for conventional financing to pay Miles' note until the property was code compliant. See Opposition, ECF No. 35.

The debtor has also filed a motion to confirm a Chapter 13 plan which is to be heard concurrently with this motion. The court has denied the motion to confirm the proposed Chapter 13 Plan (SMJ-2) concluding that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The court notes that the debtor has filed 6 prior Chapter 13 cases in the Eastern District as follows:

Case Number	Date Filed	Plan Confirmed	Date Dismissed
2014-21672	02-21-2014	No	03-11-2014
2015-21299	02-20-2015	No	03-10-2015
2016-20964	02-19-2016	No	03-08-2016
2017-21117	02-23-2017	No	03-24-2017
2017-22854	04-27-2017	No	05-08-2017
2023-20858	03-21-2023	No	04-10-2023

Each of the debtor's previous cases was dismissed for failure to file documents as required at the inception of the case.

In a related motion by the Chapter 13 trustee to dismiss the case creditors Adria Wilson and Travis Cox have filed a response in support of the trustee's motion, ECF No. 51. The creditors argue that conversion to Chapter 7 is in the best interests of creditors as there is nonexempt equity in the debtor's real property located at 9584 Horseless Carriage Lane, Sacramento, California.

Conversely, the Chapter 13 trustee argues that there are nominal assets available for liquidation in the amount of \$5,000.00 and therefore requests dismissal of the case. The Chapter 13 trustee provides no analysis regarding his conclusion. The trustee shall be prepared to explain his analysis at the hearing on this motion.

11 U.S.C. § 1307(c)(1)

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—*

(1) unreasonable delay by the debtor that is prejudicial to creditors;

...

11 U.S.C. § 1307(c)(1) (emphasis added).

Non-Exempt Assets Available for Liquidation

The court has reviewed the debtor's Schedules A/B, C and D. The real property located at 9584 Horseless Carriage Lane, Sacramento, California, is listed on Schedule A/B with a value of \$360,000. Schedule A/B, ECF No. 1. The note and deed of trust held by Willis A. Miles, is the only obligation secured by the property other than nominal property taxes. Schedule D, *id.* Miles has filed a claim which indicates the obligation under the note totals \$176,939.60, Claim No. 6. Accordingly, there is approximately \$183,060.40 in equity in the Horseless Carriage real property. The debtor has claimed no exemption in the Horseless Carriage real property, Schedule C, ECF No. 1.

Also listed in the debtor's Schedule A/B is a cause of action against Cliff's Marine for an estimated \$150,000. See Schedule A/B, ECF No. 1. The debtor has claimed no exemption in the cause of action.

The court finds that conversion is in the best interests of the creditors and the estate. The court will convert this case to 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 creditor'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 confirm a Chapter 13 plan which constitutes cause to convert this case. 11 U.S.C. § 1307(c)(1). Moreover, the best interests of creditors and the estate are served by conversion to Chapter 7 as there are substantial nonexempt assets available for liquidation. The court hereby converts this case to Chapter 7.

3. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**
[DPC-2](#)

MOTION TO DISMISS CASE
8-15-2023 [\[39\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted, case converted to Chapter 7

Order: Civil minute order

Opposition Due: September 12, 2023

Opposition Filed: unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Failure to file plan

Best Interests of Creditors/Estate: Convert to Chapter 7

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 Chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor failed to file and confirm a Chapter 13 plan after the court denied confirmation of the debtor's most recently filed plan. The debtor has not filed any opposition to the motion, although a motion to confirm the debtor's plan is to be heard concurrently with this motion. The court has denied the motion to confirm the proposed Chapter 13 Plan (SMJ-2) concluding that the plan is not feasible under 11 U.S.C. § 1325(a)(6).

The court notes that the debtor has filed 6 prior Chapter 13 cases in the Eastern District as follows:

Case Number	Date Filed	Plan Confirmed	Date Dismissed
2014-21672	02-21-2014	No	03-11-2014
2015-21299	02-20-2015	No	03-10-2015
2016-20964	02-19-2016	No	03-08-2016
2017-21117	02-23-2017	No	03-24-2017
2017-22854	04-27-2017	No	05-08-2017
2023-20858	03-21-2023	No	04-10-2023

Each of the debtor's previous cases was dismissed for failure to file documents as required at the inception of the case.

Creditors Adria Wilson and Travis Cox have filed a response in support of the trustee's motion, ECF No. 51. The creditors have

filed Claim No. 9. in the amount of \$144,715.84. The creditors hold a note and deed of trust secured by the debtor's real property located at 16941 Weeds Point Rd, Camptonville, California. It appears that the creditors' claim is under secured.

Creditors argue that conversion to Chapter 7 is in the best interests of creditors as there is nonexempt equity in the debtor's other parcel of real property located at 9584 Horseless Carriage Lane, Sacramento, California. Conversely, the Chapter 13 trustee argues that there are nominal assets available for liquidation in the amount of \$5,000.00 and therefore requests dismissal of the case. The Chapter 13 trustee provides no analysis regarding this conclusion. The trustee shall be prepared to explain his analysis at the hearing on this motion.

11 U.S.C. § 1307(c) (1)

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—*

(1) unreasonable delay by the debtor that is prejudicial to creditors;

...

11 U.S.C. § 1307(c) (1) (emphasis added).

Non-Exempt Assets Available for Liquidation

The court has reviewed the debtor's Schedules A/B, C and D. The real property located at 9584 Horseless Carriage Lane, Sacramento, California, is listed on Schedule A/B with a value of \$360,000. Schedule A/B, ECF No. 1. A note and deed of trust held by Willis A. Miles, is the only obligation secured by the property other than nominal property taxes. Schedule D, *id.* Miles has filed a claim which indicates the obligation under the note totals \$176,939.60, Claim No. 6. Accordingly, there is approximately \$183,060.40 in equity in the Horseless Carriage real property. The debtor has claimed no exemption in the Horseless Carriage real property. Schedule C, ECF No. 1.

Also listed in the debtor's Schedule A/B is a cause of action against Cliff's Marine for an estimated \$150,000. See Schedule A/B, ECF No. 1. The debtor has claimed no exemption in the cause of action.

The court finds that conversion is in the best interests of the creditors and the estate. The court will convert this case to 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 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 confirm a Chapter 13 plan which constitutes cause to convert this case. 11 U.S.C. § 1307(c)(1). Moreover, the best interests of creditors and the estate are served by conversion to Chapter 7 as there are substantial nonexempt assets available for liquidation. The court hereby converts this case to Chapter 7.

4. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**
[NPL-1](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
9-13-2023 [\[58\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
DANIEL GRIFFIN/ATTY. FOR MV.

Final Ruling

Motion: Reject Lease of Executory Contract

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

Disposition: Denied without prejudice

Order: Civil minute order

Cliff's New Marina seeks an order rejecting a lease or executory contract with the debtor. 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 matrix of registered users of the electronic filing system attached to the certificate of service is dated May 8, 2023. See Certificate of Service, ECF No. 61. Service of the motion occurred on September 13, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. The court will deny the motion without prejudice.

DEBTOR NOT SERVED WITH MOTION

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

. . . .

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

(a) Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and *reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.* No response is required under this rule unless the court directs otherwise.

Fed. R. Bankr. P. 9014(a) (emphasis added).

A motion to reject lease or executory contract is a contested matter. Service on the debtor as well as the debtor's attorney is required. The certificate of service filed in this matter does not indicate that the debtor was served with the motion. See Certificate of Service, page 2, Section 5, ECF No. 61. Additionally, there is no matrix attached to the certificate evidencing service upon the debtor.

CIVIL MINUTE ORDER

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

Cliff's New Marina's Motion to Reject Lease or Executory Contract 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.

5. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**
[SMJ-2](#)

MOTION TO CONFIRM PLAN
8-21-2023 [\[43\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee, and creditors Willis Andrew Miles, III, and Cliff's New Marina oppose the motion, objecting to confirmation.

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

PLAN FEASIBILITY

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have

been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder."). *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$945.00, with another payment of \$3,445.00 due on September 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Schedules I and J

The debtor has not supported the plan by properly filing recently updated Schedules I and J. The court discusses below why the submission of the budget schedules in this case are ineffective.

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). Current budget schedules are part of the debtor's prima facie case for plan confirmation and are required to be filed at the outset of such a motion and not in response to the trustee's opposition.

Rule 1008

The debtor has submitted an exhibit containing supplemental schedules I and J, ECF No. 46. The proffered schedules are unsigned. As such the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

In the Eastern District Form EDC 002-015 is required for use in filing both amended and supplemental documents. The form provides the following instructions:

Attach each amended document to this form. If there is a box on the form to indicate that the form is amended or supplemental, check the box. Otherwise, write the word "Amended" or "Supplemental" at the top of the form.

EDC 002-015.

LBR 9004-1(c)

(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

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

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are of no evidentiary value and are not properly before the court.

Additionally, while the debtor may submit copies of the schedules as an exhibit the schedules must be filed on the court's docket for future reference and accuracy regarding the debtor's budget. If the schedules are not filed on the court's docket, then neither could the court, the trustee, nor any interested party find the schedules.

Because the debtor has not properly supported her motion to confirm with updated schedules I and J the court will deny the motion. As such the court need not consider the remaining issues raised in the trustee's opposition or the oppositions filed by Willis Andrew Miles, III, and Cliff's New Marina.

Filed Schedules I and J

On September 19, 2023, the debtor filed properly executed Schedules I and J, ECF No. 63. As the court has previously stated, current schedules are part of the debtor's prima facie case for plan confirmation and shall be filed at the inception of a motion to confirm. Even if the court were to consider the schedules filed on September 19, 2023, the remaining issues regarding the feasibility of the plan have not been addressed by the debtor.

Third Party Income

I also have a friend who has offered to voluntarily give me \$1,000.00 per month until the sale or refinance of my property so that I can make my monthly plan payments.

Declaration of Faith Archuleta, 2:13-15, ECF No. 45.

The debtor states that she is receiving \$1,000.00 per month from a third party until the real property is sold. This is a sizeable sum of money, and the debtor has not identified the individual who will make this contribution. Neither has the individual filed a declaration or any other admissible

evidence which details his willingness and ability to tender the monthly payment. There is no evidence before the court supporting the feasibility of the payment to be made by a third party in support of the plan.

Plan Feasibility Depends Upon Timely Sale of Real Property

Additional Payments. *On or before November 1, 2023, Debtor shall sell or refinance real property located at 9584 Horseless Carriage Lane, Sacramento, CA 95829 (the "Property").* Debtor anticipates that after improvements/repair to property the Property will sell/ appraise for approximately \$500,000.00, Debtor estimates that the net proceeds from the sale or refinance will be approximately \$465,000.00 after closing costs, but not including claims secured against the Property.

Chapter 13 Plan, Section 7.01, ECF No. 47(emphasis added).

The feasibility of the debtor's plan depends upon the sale of real property on or before November 1, 2023. The debtor's declaration in support of confirmation contains no information regarding the potential sale of the property. The debtor has not provided the name of the listing agent or the list price. Neither has the debtor filed a motion to employ a real estate broker or a motion to approve the sale of the property. The proposed sale date is only 36 days from the date of the hearing on this motion. As a practical matter the debtor will be unable to close escrow by November 1, 2023.

The court finds that the proposed plan is not feasible. Accordingly, the court need not address the remaining issues raised in the trustee's opposition or those raised in the oppositions filed by creditors Willis Andrew Miles, III, and Cliff's New Marina.

The court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

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

6. [23-21505](#)-A-13 **IN RE: BRIAN FREEMAN**
[MJD-1](#)

MOTION TO CONFIRM PLAN
8-10-2023 [\[24\]](#)

MATTHEW DECAMINADA/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 May 9, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Chapter 13 Plan, ECF No. 3. The plan is supported by Schedules I and J filed, at the inception of the case on May 9, 2023, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 29.

CHAPTER 13 PLAN CONFIRMATION

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

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

7. [21-22706](#)-A-13 **IN RE: TIFFIANY SCHAFER**
[DPC-1](#)

MOTION TO DISMISS CASE
8-16-2023 [\[27\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the moving party

Order: Civil minute order

Opposition Due: September 12, 2023

Opposition Filed: September 5, 2023 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,820.00, two additional plan payments of \$1,410.00 will come due.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 31, 32. The debtor's declaration states that the debtor has made payments totaling \$1,410.00 via TFS and that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 32.

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.

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. 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.

8. [18-23408](#)-A-13 **IN RE: SUSAN OLSEN**
[DPC-1](#)

MOTION TO DISMISS CASE
8-21-2023 [\[53\]](#)

LUCAS GARCIA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to November 21, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: September 12, 2023

Opposition Filed: September 14, 2023, untimely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Overextended

Best Interests of Creditors/Estate: Dismiss

Petition Filed: May 31, 2018

Notice of Filed Claims Filed and Served: December 11, 2018

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the confirmed plan has not completed within the stated term of 60 months. The trustee advises that unsecured claims have been filed in the amount of \$96,104.11 while the confirmed plan calls for a payment of 100% to unsecured creditors. The plan will not satisfy the total amount of timely unsecured claims which were filed.

For the reasons stated in the motion, cause exists under 11 U.S.C. § 1307(c)(6) to dismiss the case. The plan has not completed within 60 months and the debtor failed to file a motion to modify the plan or object to claims. Additionally, the court notes that 64 months have passed since the first plan payment was due under the confirmed plan and a modification of the plan is no longer possible.

DEBTOR OPPOSITION

The debtor filed opposition to the motion on September 14, 2023, ECF No. 57. The opposition is late. However, the debtor is currently

residing in Lahaina, Hawaii, and experienced difficulty in communicating with her attorney because of the disruption caused by the recent fire. Accordingly, the court will allow the late filed opposition.

The opposition contends that overextension of the plan arose because of claims filed for student loans. Claim No. 8 was filed August 22, 2018, in the amount of \$65,586.12, by Navient Solutions, LLC on behalf of the Department of Education. *Id.* The claim is listed in the Notice of Filed Claims filed on December 18, 2018, ECF No. 40. The Notice of Filed Claims was served on the debtor and counsel for the debtor on December 18, 2023, ECF No. 41. A second claim for student loans was filed by Educational Credit Management Corporation in the amount of \$27,000.34, on August 8, 2018, Claim No. 7. This claim was also listed in the NFC.

Claim No. 8 has been amended twice: 1) on November 1, 2019; and 2) on August 5, 2023. The debtor contends "the amount of the student loans was both unanticipated and the participation by the student loan creditor was also unexpected." Opposition, 1:22-24, ECF No. 57. This argument is unpersuasive because: 1) both claims were timely filed and reported; 2) while Claim No. 8 was amended the claimed amount did not change, the amended claims only appear to update the name of the creditor and the address for payment; and 3) the debtor scheduled \$89,927.00 in student loan debt at the inception of the case, Schedules E/F, ECF No. 1.

The opposition does not indicate why counsel neglected to modify the plan at any time between 2018 and prior to the completion of the plan term. The court notes that a motion to incur debt was successfully prosecuted by the debtor in 2019. Counsel's failure to modify the plan has caused harm to the debtor. The debtor will not receive a discharge of all debts listed in her schedules regardless of whether a claim was filed.

The opposition proposes the following solutions to the trustee's motion.

First, the dismissal can be denied and the creditors left to pursue their own rights if they believe that somehow their rights were affected to a material level that an objection or motion is needed to protect their interests. Again they are sophisticated and understand the sheer mathematics that the larger claims create a smaller distribution.

Second, some time to perform a stipulated correction of that distribution could be filed.

Third a fully modified plan could be slated although the terms (other than class 7) is fully anticipated to remain the same. 3. If so ordered by the court, a modified Plan is anticipated in order to resolve the issues the debtors cannot resolve by objection to claim. The debtors request the court deny the motion to dismiss or at the least set it for a date

corresponding to the motion to confirm or sometime thereafter.

Opposition, 2:6-18, ECF No. 57.

Creditors to Pursue Remedies

The debtor suggests that if dismissal is denied the creditors would be left to pursue their own remedies. The court does not understand this argument.

First, the debtor has not explained how she is entitled to a discharge in the event the motion to dismiss is denied. The plan has not been completed, and absent payment of all claims in full, cannot be completed. The confirmed plan calls for a 100% distribution to all unsecured creditors. Second Amended Chapter 13 Plan, Section 3.14, ECF No. 34. The claims filed by creditors which caused the discrepancy in the debtor's calculation of unsecured debt when the plan was filed were listed in the Notice of Filed Claims (NFC). The NFC was filed and served on December 11, 2018, ECF Nos. 40, 41. Counsel for the debtor has failed to state why no action was taken to modify the plan after the NFC was filed and served.

Plan Modification/Stipulated Correction to the Plan

The debtor is currently in month 64 of the plan and proposes to bring a motion to modify the plan which would allow completion of the plan. The debtor has not proffered any legal argument indicating how a modification of the plan at this juncture would comply with 11 U.S.C. § 1329(a) which provides:

(a) At any time after confirmation of the plan *but before the completion of payments under such plan*, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to--

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments;
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

...

11 U.S.C. § 1329(a) (emphasis added).

Finally, any stipulation between the creditors and the debtor which resolves the trustee's motion would result in a modification of the plan. The plan may not be modified at this juncture.

The court notes that the circumstances in this case are nearly identical to those in two previous cases filed by debtor's counsel: 1) *In re Jodoin*, Case No. 19-23669 (Bankr. E.D. Cal. 2019) and 2) *In re Jackson*, Case No. 19-22988 (Bankr. E.D. Cal. 2019). The court

dismissed the cases after the debtor failed to modify the overextended plan or object to claims after the filing of the Notice of Filed Claims.

The opposition does not fully resolve the grounds for dismissal. The confirmed plan, ECF No. 34, contains a term of 60 months, which term has since expired. The plan is not completed. The court is unable to deny the motion under these circumstances.

TRUSTEE REPLY

The Chapter 13 trustee filed a timely reply to the debtor's opposition indicating his support of a 60-day continuance to allow the debtor to resolve the plan overextension or to convert the case to Chapter 7, ECF No. 59. Given the difficulty in communicating with the debtor who has relocated to Lahaina, Hawaii, the court will allow the continuance.

For the reasons indicated in this ruling unless the trustee reports that the debtor has paid the \$80,619.14, plus trustee compensation due under the plan, or converted the case to Chapter 7, the court intends to dismiss the case.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to November 21, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no less than 14 days prior to the hearing the Chapter 13 trustee shall file a status report indicating the status of plan payments. The evidentiary record will close on November 7, 2023. The court may rule on this matter without further notice or hearing.

9. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-30-2023 [\[16\]](#)

COLBY LAVELLE/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the trustee, 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.

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).

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion or motion to avoid lien 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 Regional LAC'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. Neither has the debtor filed such a motion. Accordingly, the court must deny confirmation of the plan.

The court notes that a motion to value collateral has not yet been filed. The court will sustain the trustee's objection on this basis and need not reach the remaining issues raised in the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

10. [22-22723](#)-A-13 **IN RE: RANDY YASSINE**
[DPC-2](#)

MOTION TO DISMISS CASE
8-16-2023 [\[56\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: September 12, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - 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 confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,898.00 with two further payments of \$642.00 due prior to the hearing on this motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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 confirmed chapter 13 plan in this case. The court hereby dismisses this case.

11. [23-20427](#)-A-13 **IN RE: NENITA ANTONIO**
[DPC-2](#)

MOTION TO DISMISS CASE
8-23-2023 [\[38\]](#)

TIMOTHY WALSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to October 17, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: September 12, 2023

Opposition Filed: August 30, 2023 - timely

Motion to Modify Plan Filed: August 30, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) contending the debtor has failed to file a motion to confirm an amended plan.

A plan has been timely set for hearing in this case. The scheduled hearing on plan confirmation is October 17, 2023, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the motion is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to October 17, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

12. [23-22827](#)-A-13 **IN RE: WALTER ALBERT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-5-2023 [\[14\]](#)

DEBTOR DISMISSED: 09/08/23

Final Ruling

The case was dismissed on September 8, 2023, the order to show cause is discharged as moot.

13. [23-22832](#)-A-13 **IN RE: JONATHON SULIVEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-5-2023 [\[13\]](#)

DEBTOR DISMISSED: 09/08/23

Final Ruling

The case was dismissed on September 8, 2023, the order to show cause is discharged as moot.

14. [22-22935](#)-A-13 **IN RE: ANTON NEMTYSHKIN**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-16-2023 [\[49\]](#)

MARK SHMORGON/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
HARLEY-DAVIDSON CREDIT CORPORATION VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Prepared by moving party

Creditor Harley-Davidson Credit Corporation seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

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

The following parties filed a request for special notice: Lakeview Loan Servicing, ECF No. 12.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See Certificate of Service, p. 2, no. 5, ECF No. 54. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

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

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

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

CIVIL MINUTE ORDER

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

Harley-Davidson Credit Corporation's Motion for Relief From the Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

15. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[DPC-4](#)

MOTION TO DISMISS CASE
8-16-2023 [[131](#)]

PETER MACALUSO/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: September 12, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - 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 confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$500.00 with two further payments of \$250.00 due prior to the hearing on this matter.

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 confirmed chapter 13 plan in this case. The court hereby dismisses this case.

16. [23-22345](#)-A-13 **IN RE: URIEL PIZANO**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-23-2023 [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to November 7, 2023, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to November 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 17, 2023. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 17, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than October 24, 2023. The evidentiary record will close after October 24, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

17. [23-21749](#)-A-13 **IN RE: VANESSA FRANKLIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-5-2023 [\[38\]](#)

MIKALAH LIVIAKIS/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.

18. [20-20251](#)-A-13 **IN RE: MATTHEW/ROSE MARGOLIS**
[CYB-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BROOKS
CARPENTER FOR CANDACE Y. BROOKS, DEBTORS ATTORNEY(S)
8-22-2023 [\[94\]](#)

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

Final Ruling

Application: Allowance of Additional Compensation

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

Disposition: Approved

Order: Civil minute order

Number of Requests for Additional Compensation: First

Additional Compensation Requested: \$4,150.00

Additional Cost Reimbursement Requested: \$0

COMPENSATION AND EXPENSES

In this chapter 13 case, Candace Y. Brooks, attorney for the debtors, has applied for an allowance of additional compensation. The applicant requests that the court allow compensation in the amount of \$4,150.00. The Chapter 13 trustee has filed a non-opposition to the motion, and indicates that the plan is complete and that he currently holds funds sufficient to pay the compensation as requested, ECF No. 101.

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: 1) successfully prosecuted a motion to sell real property which completed the Chapter 13 Plan; 2) successfully prosecuted a retroactive motion to employ a real estate broker; and 3) responded to all necessary calls and correspondence regarding the matters before the court.

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 \$1,200.00.

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.

Candace Y. Brooks' 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 \$4,150.00. The court authorizes the fees to be paid through the plan by the chapter 13 trustee.

19. [23-20656](#)-A-13 **IN RE: BARRY/CINDY TAYLOR**
[SLH-1](#)

MOTION TO CONFIRM PLAN
8-7-2023 [\[27\]](#)

SETH HANSON/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 March 1, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Chapter 13 Plan, ECF No. 3. The plan is supported by Schedules I and J filed, at the inception of the case on March 1, 2023, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 33.

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.

20. [21-22861](#)-A-13 **IN RE: MEGAN EKOMAYE**
[DPC-1](#)

MOTION TO DISMISS CASE
8-16-2023 [\[49\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
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: September 12, 2023

Opposition Filed: September 11, 2023 - timely

Cause: 11 U.S.C. § 1307(c)(6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$1,386.00, with two payments of \$463.00 due prior to the hearing date.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 53, 54, 55. The debtor's declaration states that the debtor has tendered multiple payments as follows: 1) \$1,900.00 on September 2, 2023; and 2) \$150.00 on September 9, 2023. Additionally, the debtor will bring the remainder of the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 54.

The Chapter 13 trustee shall be prepared to apprise the court regarding the status of the plan payments at the hearing.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(6). The court hereby dismisses this case.

21. [23-22566](#)-A-13 **IN RE: TERESA PALOMINO**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2023 [\[13\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
MECHANICS BANK VS.; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2012 Cadillac SRX

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

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).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 prepetition payment and 1 postpetition payment are past due. The total postpetition delinquency is approximately \$355.68.

Alternatively, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Mechanics Bank's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Cadillac SRX, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

22. [23-21868](#)-A-13 **IN RE: JEREMY NAVA-SALINAS**
[MDM-4](#)

MOTION TO CONFIRM PLAN
8-18-2023 [\[36\]](#)

MATTHEW METZGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Prepared by the movant, approved by the trustee

The debtor moves for confirmation of the Chapter 13 Plan filed August 18, 2023. The motion will be denied without prejudice as follows.

SERVICE

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan

together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(a)(9), which requires twenty-one (21) days of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties in interest shall be served at least thirty-five (35) days prior to the hearing.

LBR 3015-1(d)(1) (emphasis added).

The debtor failed to serve the proposed Chapter 13 Plan as required by LBR 3015-1(d)(1). See Certificate of Service, Section 4, ECF No. 40. The plan is not listed as a document which was served as required.

AMENDED CERTIFICATE OF SERVICE

On September 25, 2023, the debtor's attorney filed an amended certificate of service, ECF No. 46. There are two problems with the amended certificate.

Amended Certificate is Untimely

The moving party may, at least seven (7) days prior to the date of the hearing, serve and file with the Court a written reply to any written opposition filed by a responding party.

LBR 9014-1(f)(1)(C).

A reply must be filed not later than 7 days prior to the hearing on the motion, LBR 9014-1(f)(1)(c). The certificate of service was filed on September 25, 2023, in response to the court's Pre-Hearing Dispositions, which were initially posted on September 20, 2023. The amended certificate is offered as a reply. As the amended certificate was filed after the reply date, it is untimely.

Amended Certificate is Inaccurate

The Amended Certificate of Service lists the documents which were served on August 18, 2023. See Certificate of Service, page 2, Section 4, ECF NO. 46. Previously in this ruling the court indicated that the Chapter 13 Plan had not been served with the motion as required by LBR 3015-1(d)(1).

In an attempt to remedy the service defect identified in the court's ruling the amended certificate lists a document served on August 18, 2023, as: "4) EXHIBIT 1 - DEBTOR'S SECOND AMENDED PLAN FILED ON AUGUST 18, 2023". The court has reviewed the docket in this case and finds no document was filed as an exhibit in support of this motion. Thus, the

amended certificate of service refers to a document which does not exist.

The amended certificate of service is inaccurate.

Accordingly, 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 debtors' motion to confirm plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

23. [23-22270](#)-A-13 **IN RE: GARY GILLIAM AND CARRIE NOAH-GILLIAM**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-30-2023 [\[22\]](#)

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to November 7, 2023, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED THAT the hearing on this objection will be continued to November 7, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than October 17, 2023. The response shall specifically address each issue raised in trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtors elect to file a modified plan in lieu of filing a response, then a modified plan shall be filed, served, and set for hearing not later than October 17, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than October 24, 2023. The evidentiary record will close after October 24, 2023. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

24. [23-22080](#)-A-13 **IN RE: MICHAEL/ANGELIQUE VALERA**
[RDZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA FRANCHISE
TAX BOARD
8-30-2023 [\[26\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
RYAN ZICK/ATTY. FOR MV.

Final Ruling

Motion: Creditor's Objection to Confirmation of Plan

Notice: LBR 9014-1(f)(2)

Disposition: Overruled without prejudice

Order: Civil minute order

Petition Filed: June 26, 2023

Plan Filed: July 14, 2023

California Franchise Tax Board, objects to confirmation of the debtors' Chapter 13 Plan.

The debtors filed this case on June 26, 2023, yet the plan was not filed until July 14, 2023. Because the plan was filed more than 14 days after the filing of the petition the trustee was unable to serve the plan and therefore the debtors are required to file a motion to confirm the plan as required under LBR 3015-1(c)(3), (d)(1), Fed. R. Bankr. P. 2002.

As such this objection is incorrectly filed and is raised prematurely. Instead, it should be filed as opposition once the debtors file a motion to confirm the plan. See LBR 3015-1(d)(1).

The creditor's objection is premature as no motion to confirm has yet been filed by the debtors.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on the objection is overruled without prejudice.

25. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-30-2023 [\[29\]](#)

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to November 21, 2023, at 9:00 a.m.

Order: Civil minute order

Petition Filed: July 27, 2023

The Chapter 13 trustee objects to confirmation of the debtor's plan contending that: 1) the plan is not feasible if the debtor does not successfully avoid the judicial liens of the secured creditors indicated below; and 2) counsel has indicated an incorrect amount to be paid in attorney fees.

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 RELIES ON MOTION TO AVOID JUDICIAL LIENS

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion or motion to avoid lien 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 feasibility of the plan relies upon the debtor's successful avoidance of the liens of Stohlman and Rogers, and Citibank N.A. The hearings on the debtor's motions to avoid these liens have been continued. Accordingly, the court will continue the hearing on the objection to coincide with the hearings on the motions to avoid liens.

The court will also require the parties to file a joint status report regarding the attorney compensation issue raised by the trustee in his objection. The court may rule on this objection without further notice or hearing.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the chapter 13 trustee's objection to confirmation is continued to November 21, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor shall file opposition to the trustee's objection, if any, not later than October 31, 2023.

IT IS FURTHER ORDERED that not later than 14 days prior to the continued hearing date the trustee and debtor's counsel shall file a joint status report apprising the court of their position(s) regarding the attorney compensation issue raised by the trustee in his objection. The court may rule on this objection without further notice or hearing.

26. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[WW-1](#)

MOTION TO AVOID LIEN OF STOHLMAN AND ROGERS, INC
8-29-2023 [\[19\]](#)

MARK WOLFF/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to November 21, 2023, at 9:00 a.m.

Order: Civil minute order

The court will continue the motion to allow the debtor to file an amended notice of hearing and to properly serve the respondent.

A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); *see also In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "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 certificate 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, ECF No. 23.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to avoid judicial lien is continued to November 21, 2023, at 9:00 a.m. No later than October 17, 2023, the debtor shall file and serve a notice of continued hearing, the motion and all supporting documents on the respondent and the Chapter 13 trustee. The notice shall provide that opposition, if any, to the motion shall be filed and served no later than November 7, 2023. The debtor shall file a certificate of service which evidences compliance with this order and Fed. R. Bankr. P. 7004(b)(2).

27. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[WW-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
8-29-2023 [\[24\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Continued to November 21, 2023, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Citibank, N.A. The Chapter 13 trustee opposes the motion.

Another motion to avoid judicial lien on the same subject real property is being continued for a further hearing to resolve a procedural issue. To avoid entering inconsistent orders regarding the subject real property's value or the amounts of liens or exemptions, the court will continue this motion to coincide with the other lien-avoidance motion.

The court will continue the motion to coincide with the motion to avoid the judicial lien of Stohlman & Rogers, Inc., (WW-1) and to allow the debtor to file a reply, and supporting documents, if any, to the trustee's opposition.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion to avoid judicial lien is continued to November 21, 2023, at 9:00 a.m. No later than October 17, 2023, the debtor shall file and serve a reply and supporting documents, if any, to the opposition filed by the Chapter 13 trustee. The evidentiary record will close on October 17, 2023.

28. [19-27883](#)-A-13 **IN RE: MIRANDA CASTRO**
[BHS-5](#)

MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)
8-23-2023 [\[56\]](#)

MARK SHMORGON/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/06/2020
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); non opposition filed by Chapter 13 trustee

Disposition: Approved

Order: Civil minute order

Compensation: \$7,055.00

Reimbursement of Expenses: \$186.76

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, applicant the Law Office of Barry H. Spitzer was the former Chapter 7 trustee's attorney in this case before it was converted to a case under Chapter 13. The applicant has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$7,055.00 and reimbursement of expenses in the amount of \$186.76.

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).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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 Law Office of Barry H. Spitzer's application for allowance of final 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 a final basis. The court allows final compensation in the amount of \$7,055.00 and reimbursement of expenses in the amount of \$186.76.

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

29. [19-27883](#)-A-13 **IN RE: MIRANDA CASTRO**
[BHS-6](#)

MOTION FOR COMPENSATION FOR KIMBERLY J. HUSTED, CHAPTER 7
TRUSTEE(S)
8-23-2023 [\[63\]](#)

MARK SHMORGON/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/06/2020
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation to a Former Chapter 7 Trustee

Notice: LBR 9014-1(f)(1); non opposition filed by the Chapter 13 trustee

Disposition: Approved

Order: Civil Minute Order

Compensation: \$1,420.43

Reimbursement of Expenses: \$1.18

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, applicant Kimberly J. Husted was the former Chapter 7 trustee in this case before it was converted to a case under Chapter 13. The applicant has applied for an allowance of compensation in the amount of \$1,420.43 and reimbursement of expenses in the amount of \$1.18. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 71.

Chapter 7 trustees are entitled to compensation for their work in a case under Chapter 7 that is converted to a case under Chapter 13. *In re Hages*, 252 B.R. 789, 794-95, 797-99 (Bankr. N.D. Cal. 2000). Subject to the statutory cap of § 326(a) of the Bankruptcy Code, *id.* at 795, "a chapter 7 trustee's compensation should be determined independently under § 330," *id.* at 798. Section 330 authorizes "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). Such amount is paid pro rata with other administrative expenses out of each distribution made by the Chapter 13 trustee. *See id.* §§ 503(b)(2), 507(a)(2), 1322(a)(2), 1326(b)(1).

In addition, "it is entirely appropriate to impute the moneys that will be distributed by the chapter 13 trustee to the chapter 7 trustee for purposes of computing the maximum fee the chapter 7 trustee can charge, and allowing interim fees up to that maximum." *In re Hages*, 252 B.R. at 794. The amount of anticipated plan payments, rather than actual plan payments, may be used as the basis for calculating the maximum trustee's fee under § 326(a). *Id.* at 793-94.

The court finds that the compensation and expenses sought are reasonable and within the cap of § 326(a). As a result, the court will approve the compensation and expenses on a final basis.

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.

Kimberly J. Husted's application for allowance of 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 a final basis. The court allows to the trustee compensation in the amount of \$1,420.43 and reimbursement of expenses in the amount of \$1.18.

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 and § 1326(b) (3) of the Bankruptcy Code.

30. [21-24284](#)-A-7 **IN RE: RICHARD/CYNTHIA SPICKLER**
[DPC-2](#)

MOTION TO DISMISS CASE
8-16-2023 [[54](#)]

CHAD JOHNSON/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on September 12, 2023. Accordingly, the motion to dismiss is removed from the calendar as moot. No appearances are required.

31. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[PGM-9](#)

MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
9-11-2023 [[362](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

This case was dismissed on September 19, 2023. Accordingly, the motion will be removed from the calendar. No appearances are required.

32. [22-21488](#)-A-13 **IN RE: CECILIA SMITH**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
6-21-2023 [\[53\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from August 22, 2023

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from August 22, 2023, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (MJD-2) has been granted. Accordingly, the court will deny the trustee's 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.

33. [22-21488](#)-A-13 **IN RE: CECILIA SMITH**
[MJD-2](#)

CONTINUED MOTION TO MODIFY PLAN
7-7-2023 [\[58\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: Continued from August 22, 2023

Disposition: Granted

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).

The hearing on the debtor's motion to modify plan was continued to allow the parties to confer, and for the debtor to file a reply to the trustee's opposition.

On September 5, 2023, the debtor filed a declaration addressing the trustee's opposition, ECF No. 76. On September 8, 2023, the trustee filed an Amended Opposition to the motion and the declaration filed by the debtor, ECF No. 78. Each of the trustee's objections has been resolved and the trustee no longer opposes the modification of the plan. The parties have agreed to clarify the payment of attorney compensation in the order confirming the modified plan.

Accordingly, and absent any further opposition, the court will grant the motion.

CIVIL MINUTE ORDER

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

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

The 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 granted. The debtor shall file a order confirming the modified plan which has been signed by the Chapter 13 trustee.

34. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[EAT-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-19-2023 [\[104\]](#)

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

Tentative Ruling

Motion: Stay Relief
Notice: Continued from August 8, 2023
Disposition: Granted
Order: Civil minute order

Petition Filed: July 7, 2022
Plan Status: Unconfirmed

Subject: 1253 Alderwood Way, Vacaville, California

Cause: Post petition delinquency; \$4,439.11

U.S. Bank Trust National Association seeks an order for relief from the automatic stay of 11 U.S.C. § 361(a) and from the co-debtor stay of 11 U.S.C. § 1301(a). The movant contends that post-petition payments are delinquent in the amount of \$4,439.11. Declaration of Kimberly N. Wright, ECF No. 151.

There is currently no plan pending in this case. The court denied confirmation of the most recently filed plan on August 11, 2023. Order, ECF No. 146. In the most recently filed plan the movant's claim was provided for in Class 4 to be paid directly by the debtor. The movant has filed and amended a claim, Claim No. 12. The amended claim indicates that there were no pre-petition delinquencies.

The debtor opposes the motion, contending that payments pursuant to a grant from the California Mortgage Relief Program had not been properly credited to her account. Declaration of Traci Faye Hamilton, ECF No. 118.

The court continued the hearing to allow the parties to exchange information, meet and confer, consider a stipulation, and apprise the court of the status of payments to the movant.

The debtor has provided no further evidence regarding post-petition payments. The evidence most recently submitted by the movant shows that payments have not been tendered in June, July, or August 2023, Declaration of Kimberly N. Wright and Exhibit 9, ECF No. 151.

The parties filed a joint status report on September 12, 2023, as ordered by the court. The report is not helpful in resolving this motion. It states that the movant has filed a recent accounting and that the debtor has proposed an adequate protection order which is being considered by the movant. Status Report, ECF No. 156.

STAY RELIEF

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as d post-petition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

RELIEF FROM CO-DEBTOR STAY UNDER § 1301(c)(2)

A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c). The second ground for relief under both of these provisions is that "the plan filed by the debtor proposes not to pay such claim." *Id.* §§ 1301(c)(2), 1201(c)(2). Under these provisions, if the plan fails to provide any amount to the creditor on its claim for which the co-debtor is also liable, the creditor is entitled to relief from stay.

When the plan pays only a fraction of the amount owed to the creditor on the claim for which the co-debtor is liable, the creditor is nevertheless entitled to relief from the co-debtor stay. The bankruptcy appellate panel has held that the co-debtor stay should be lifted when the plan provided for only 15% of the creditor's claim. The panel reasoned, "There is no limitation on the creditor's right to sue the co-debtor for the amount not provided for by the plan. There is no requirement that suit be deferred while the debtor pays under the plan during a period of years." *In re Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982).

"It would make little sense to defer such relief when it is known that the creditor will never receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the debtor has in effect stated [in the plan] the respective dimensions of his liability and that of the co-maker. Section 1301(a)(2) provides the creditor with freedom to pursue, to the latter extent, its claim against a co-debtor." *Id.*

In this case, there is no confirmed plan, and there is no plan pending. The debtor has failed to file an amended plan after the court denied confirmation of the debtor's most recently proposed plan on August 11, 2023. As a result, the movant is entitled to relief from the co-debtor stay in this 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.

U.S. Bank Trust National Association's motion for relief from the automatic stay, and co-debtor stay, 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 granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1253 Alderwood Way, Vacaville, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS ORDERED that the motion is granted. The co-debtor stay is vacated as to the co-debtor identified in the motion. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

35. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[RJ-4](#)

MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION
8-29-2023 [\[147\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order valuing the collateral of Credit Acceptance Corporation. The motion will be denied without prejudice for the following reasons.

OUTDATED CERTIFICATE OF SERVICE

The movant has used an outdated form of the new certificate of service. The most recent version of Form EDC 7-005 was posted to the court's website on October 6, 2022. General Order 22-04, indicating the revised Form EDC 7-005 was also posted to the court's website on October 6, 2022.

The Certificate of Service used by the movant is the form in use as of June 2022. See Certificate of Service, ECF No. 150.

SPECIAL NOTICE CREDITORS

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

The following parties filed a request for special notice: 1) U.S. Bank Trust National Association, McCalla Raymer Leibert Pierce LLP; 2) Fite & Company Construction, Inc., Cianchetta and Associates; and 3) U.S. Bank Trust National Association, BARRETT DAFFIN FRAPPIER TREDER & WEISS. See ECF Nos. 16, 44, 76.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 3, no. 5, ECF No. 150. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

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

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

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

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

FAILURE TO SERVE ALL DOCUMENTS

Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.

LBR 9014-1(e) (1)

The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LBR 9014-1(e) (3) .

The Chapter 13 trustee opposes the motion contending that the certificate of service fails to list any documents which were served upon the respondent as required and that service fails to comply with LBR 9014-1(e) (1), (3). Certificate of Service, Section 4, ECF No. 150. The trustee is correct.

FAILURE TO LIST PARTIES SERVED

Debtor uses Section 4 of the Certificate of Service to list the parties that were served. However, the respondent creditor listing is not fully visible, and thus cannot be properly identified.

Additionally, this is not the proper section to list the parties which were served with the motion. The Certificate of Service indicates in Section 6 that a matrix is to be attached to the certificate to identify all parties served. Box 6B2 in the certificate is checked indicating that such a matrix is attached but the debtor did not file any Attachment 6B2. Certificate of Service, Sections 4, 6, ECF No. 150.

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.

36. [23-22596](#)-A-13 **IN RE: CHARNEL JAMES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-8-2023 [\[24\]](#)

***[Since posting its original rulings, the court has changed its intended ruling on this matter].**

Final Ruling

The installment fee has been paid. The Order to Show Cause is discharged, and the case will remain pending. No appearance is required.