



**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: OCTOBER 8, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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

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

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

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

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

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

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

Please also note the following:

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

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

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

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

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

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. [23-23300](#)-A-13 **IN RE: ANDREW/JENNETTE FRAZIER**
[MRL-1](#)

MOTION TO MODIFY PLAN
8-9-2024 [\[23\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

The court will continue the hearing on this motion to allow the Chapter 13 trustee to file a response. The response shall state the trustee's position regarding confirmation of the modified plan. 11 U.S.C. § 1302(b)(2). This motion was filed pursuant to LBR 9014-1(f)(1) and required written response no later than September 24, 2024. No response has been filed.

IT IS HEREBY ORDERED that the hearing on this motion is continued to November 5, 2024, at 9:00 a.m. No later than October 15, 2024, the Chapter 13 trustee shall file and serve a response to the motion which shall include the analysis indicated by the court regarding the proposed plan. The debtor may file and serve any reply no later than October 22, 2024. The court may rule on this matter without further notice or hearing.

2. [24-23006](#)-A-13 **IN RE: STANLEY BERMAN**
[DPC-3](#)

TRUSTEE'S OBJECTION TO DEBTOR'S DISCHARGE UNDER
11 U.S.C. § 1328(F)
9-3-2024 [\[30\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Final Ruling

Motion: Objection to Discharge

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

Disposition: Sustained

Order: Civil minute order

Instant Petition Filed: July 10, 2024

Previous Chapter: 7; *In re Stanley Phillips Berman*, 2023-22017, E.D. Cal. Bankr. (2023)

Previous Petition Filed: June 20, 2023

Previous Discharge: March 12, 2024

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

The chapter 13 trustee has objected to the debtor(s) discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §1328(f).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

11 U.S.C. § 1328(f)(1)) provides:

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge-

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter,
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

The statute has only three elements for the discharge bar to trigger under 1328(f)(1). First, the debtor must have received a prior bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4- year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)((1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this

chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

Because less than 4 years has passed since the filing of debtor(s) previous chapter 7 case on June 20, 2023, the debtor is not eligible for a discharge in this chapter 13 case. The court will sustain the trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. The court shall issue a civil minute order that conforms substantially to the following form:

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

The trustee's Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

3. [24-22629](#)-A-13 **IN RE: RUMMY SANDHU**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-31-2024 [\[21\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from August 27, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

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

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

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 JP Morgan Chase National Corporate Services Inc.'s Class 2 secured claim based on the value of the collateral securing such claim. While the debtor filed a motion (PGM-1) the court denied the motion, finding that the claim, secured by a deed of trust on the debtor's residence, was not wholly unsecured and therefore could not be valued and avoided.

As such the debtor has not obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

As the court has denied the motion on this basis it need not reach the remaining opposition raised by the trustee.

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.

4. [23-24434](#)-A-13 **IN RE: RYAN/ITATI MARTIN**
[TLA-2](#)

MOTION TO MODIFY PLAN
8-30-2024 [\[35\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

The court will continue the hearing on this motion to allow the Chapter 13 trustee to file a response. The response shall state the trustee's position regarding confirmation of the modified plan. 11 U.S.C. § 1302(b)(2). This motion was filed pursuant to LBR 9014-1(f)(1) and required written response no later than September 24, 2024. No response has been filed.

IT IS HEREBY ORDERED that the hearing on this motion is continued to November 5, 2024, at 9:00 a.m. No later than October 15, 2024, the Chapter 13 trustee shall file and serve a response to the motion which shall include the analysis indicated by the court regarding the proposed plan. The debtor may file and serve any reply no later than October 22, 2024. The court may rule on this matter without further notice or hearing.

5. [24-22634](#)-A-13 **IN RE: SUHMER FRYER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-20-2024 [\[67\]](#)

9/24/2024 FINAL INSTALLMENT PAID \$120

Final Ruling

As the fees have been paid in full, the order to show cause is discharged. The case will remain pending.

6. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[MC-11](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DEFENDANT
9-14-2024 [\[156\]](#)

MUOI CHEA/ATTY. FOR DBT.

No Ruling

7. [20-22143](#)-A-13 **IN RE: JODI/ROBERT GALLAGHER**
[MC-12](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DEFENDANT
9-14-2024 [[162](#)]

MUOI CHEA/ATTY. FOR DBT.

No Ruling

8. [24-20344](#)-A-13 **IN RE: RANDY HOWARD**
[PGM-2](#)

MOTION TO SELL AND/OR MOTION TO WAIVE RULE 6004(H)
9-9-2024 [[48](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

9. [24-23048](#)-A-13 **IN RE: NGOC NGUYEN**
[DPC-1](#)

MOTION TO DISMISS CASE
8-29-2024 [[26](#)]

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: September 24, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency incomplete plan;
failure to provide identification information, be examined at
meeting of creditors, or provide tax returns

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$5,700 with one payment(s) of \$5,700 due prior to the hearing on this motion.

The trustee also moves for dismissal as the plan the debtor filed is incomplete in that it fails to provide for a plan length or to list creditors which are to be paid pursuant to the plan. Additionally, the trustee contends the debtor failed to provide tax returns to the trustee and copies of identification and Social Security documents prior to the meeting of creditors. Accordingly, the trustee was unable to examine the debtor as he was unable to confirm the debtor's identity. Each of these bases constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1). The court will grant the motion.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

10. [24-21153](#)-A-13 **IN RE: PATRICIA MELMS**
[DPC-2](#)

MOTION TO DISMISS CASE
9-3-2024 [\[56\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to November 19, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: September 24, 2024

Opposition Filed: September 24, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$4,366.00, with one payment(s) of \$2,733.20 due prior to the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 62, 63. The opposition seeks a continuance of the hearing date so that counsel can meet with the debtor and file an amended Chapter 13 Plan. In this instance the court will continue the hearing. In the future counsel shall show cause why the plan could not be filed by the date opposition to the motion is due as required, including if applicable, the reason(s) the debtor failed to contact counsel. Fed. R. Bankr. P. 9006(b). The court will continue the hearing as set forth below.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the hearing on this objection is continued to November 19, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

IT IS FURTHER ORDERED that no later than October 22, 2024, the debtor(s) shall: (1) file and serve an amended Chapter 13 plan; and (2) file and serve a motion to confirm the amended plan.

IT IS FURTHER ORDERED that if the debtor(s) agree that the trustee's motion is well taken, the debtor(s) shall concede the merits and

file a statement of non-opposition no later than October 22, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect...); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise).

IT IS FURTHER ORDERED that no later than November 5, 2024, the Chapter 13 Trustee shall file and serve a status report regarding his motion to dismiss. The court may continue this hearing to coincide with the date of the motion for plan confirmation.

11. [24-22754](#)-A-13 **IN RE: MY TRAN**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-27-2024 [\[33\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from September 10, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from September 10, 2024, to allow for hearing on the debtor's motion to confirm the Chapter 13 plan. The motion to confirm plan (PGM-1) has been granted.

The trustee has filed a status report, ECF No. 62, indicating that he no longer wishes to pursue his motion to dismiss. Accordingly, the court will deny the motion.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

12. [24-22754](#)-A-13 **IN RE: MY TRAN**
[PGM-1](#)

MOTION TO CONFIRM PLAN
9-3-2024 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed September 3, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 42. The plan is supported by Schedules I and J filed, September 3, 2024, ECF No. 43.

After initially opposing the motion the Chapter 13 trustee has filed a status report, ECF No. 62. The trustee states that the plan payments are current and that he has received all requested information from the debtor. After reviewing the information, the trustee no longer opposes confirmation of the plan. Accordingly, the court will grant the motion.

CHAPTER 13 PLAN CONFIRMATION

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

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

13. [24-21955](#)-A-13 **IN RE: CHIPIKO MALEKANO**
[TLA-1](#)

CONTINUED MOTION FOR COMPENSATION FOR THOMAS L. AMBERG, JR.,
DEBTORS ATTORNEY(S)
8-12-2024 [\[15\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: Continued from September 10, 2024

Disposition: Approved

Order: Civil minute order

Compensation allowed: \$2,797.50

Reimbursement of expenses: \$45.00

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, Thomas L. Amberg, Jr., has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$2,797.50 and reimbursement of expenses in the amount of \$45.00. Counsel was paid \$1,200.00 for prepetition services.

The hearing on this motion was continued to allow the Chapter 13 trustee to respond to the motion. The Chapter 13 trustee has filed non-opposition to the motion and indicates that the plan is feasible with the compensation amount sought by debtor's counsel. Non-Opposition, ECF No. 23.

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

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$2,797.50 and reimbursement of expenses in the amount of \$45.00. The aggregate allowed amount equals \$2,842.50. As of the date of the application, the applicant held a retainer in the amount of \$0. The amount of \$2,842.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

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

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

14. [24-21356](#)-A-13 **IN RE: RYAN OHLINGER**
[GC-1](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
GLAZER AND CHERRY FOR GERALD GLAZER, DEBTORS ATTORNEY(S)
6-24-2024 [\[20\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

On August 26, 2024, the debtor filed an amended Chapter 13 Plan, ECF No. 63. The hearing to confirm the amended plan is set for October 22, 2024, at 9:00 a.m. As the issues of attorney compensation and confirmation of the plan are related the hearing on this motion for compensation will be continued to coincide with the hearing on plan confirmation. Accordingly, the hearing on this motion is continued to October 22, 2024, at 9:00 a.m.

15. [24-21356](#)-A-13 **IN RE: RYAN OHLINGER**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G
TSANG
5-23-2024 [\[16\]](#)

JULIUS CHERRY/ATTY. FOR DBT.

Final Ruling

Matter: Objection to Confirmation of Chapter 13 Plan

Notice: Continued from July 30, 2024

Disposition: Overruled as moot

Order: Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

16. [24-21760](#)-A-13 **IN RE: NICHOLAS O'CONNELL**
[DPC-1](#)

MOTION TO DISMISS CASE
9-3-2024 [\[28\]](#)

DAVID JOHNSTON/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 24, 2024

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to confirm plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$1,200.00 with one payment(s) of \$600.00 due prior to the hearing on this motion.

The trustee also seeks dismissal as the debtor has failed to file a motion to confirm the Chapter 13 Plan.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan, and failure to file a motion to confirm a plan, in this case. The court hereby dismisses this case.

17. [24-23460](#)-A-13 **IN RE: STEPHANIE MUNERLYN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-16-2024 [\[25\]](#)

RICHARD JARE/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 19, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 19, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 22, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 22, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 5, 2024. The evidentiary record will close after November 5, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 22, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

18. [24-23460](#)-A-13 **IN RE: STEPHANIE MUNERLYN**
[RJ-1](#)

MOTION TO VALUE COLLATERAL OF HYUNDAI CAPITAL AMERICA
9-10-2024 [\[20\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This matter has been resolved by stipulation. On October 2, 2024, the parties submitted a stipulation regarding SKI-1 the creditor's Objection to Confirmation. Counsel for the debtor, the creditor, and the Chapter 13 trustee signed the stipulation. The stipulation provides that the value of the subject vehicle is \$16,500 and interest will be paid at 10%. The court has signed the order approving this stipulation and those terms. The order contains the docket control numbers: (1) SKI-1; and (2) RJ-1. Order, ECF No. 39.

Accordingly, this matter will be removed from the calendar. No appearances are necessary.

19. [24-23460](#)-A-13 **IN RE: STEPHANIE MUNERLYN**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HYUNDAI CAPITAL AMERICA
8-29-2024 [\[14\]](#)

RICHARD JARE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

Final Ruling

This matter has been resolved by stipulation. On October 2, 2024, the parties submitted a stipulation regarding SKI-1 the creditor's Objection to Confirmation. Counsel for the debtor, the creditor, and the Chapter 13 trustee signed the stipulation. The court has signed the order approving this stipulation. The order contains the docket control numbers: (1) SKI-1; and (2) RJ-1. Order, ECF No. 39.

Accordingly, this matter will be removed from the calendar. No appearances are necessary.

20. [24-20964](#)-A-13 **IN RE: FRANK BELL**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
8-14-2024 [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.

No Ruling

21. [24-20964](#)-A-13 **IN RE: FRANK BELL**
[PGM-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
9-3-2024 [\[83\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

22. [24-20872](#)-A-13 **IN RE: LINDA OLKOWSKI**
[CK-1](#)

MOTION TO MODIFY PLAN
8-22-2024 [\[19\]](#)

CATHERINE KING/ATTY. FOR DBT.

Final Ruling

The court will continue the hearing on this motion for the Chapter 13 trustee to file a response. The response shall state the trustee's position regarding confirmation of the modified plan. 11 U.S.C. § 1302(b)(2). This motion was filed pursuant to LBR 9014-1(f)(1) and required written response no later than September 24, 2024. No response has been filed. The court may rule on this matter without further notice or hearing.

IT IS HEREBY ORDERED that the hearing on this motion is continued to November 5, 2024, at 9:00 a.m. No later than October 15, 2024, the Chapter 13 trustee shall file and serve a response to the motion which shall include the analysis indicated by the court regarding the proposed plan. The debtor may file and serve any reply no later than October 22, 2024. The court may rule on this matter without further notice or hearing.

23. [24-20873](#)-A-13 **IN RE: RICHARD/CYNTHIA SOUTSOS**
[DPC-2](#)

MOTION TO DISMISS CASE
9-10-2024 [\[37\]](#)

CATHERINE KING/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 24, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because the debtor has failed to file an amended plan and motion to confirm plan following the court's order denying confirmation of the previously filed Chapter 13 Plan. The court finds that the failure to file an amended plan constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted because the debtor has failed to file an amended plan and file a motion to confirm a plan. The court hereby dismisses this case.

24. [24-22673](#)-A-13 **IN RE: ANNA ALMONTE**
[EJS-1](#)

MOTION TO CONFIRM PLAN
8-13-2024 [\[22\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Chapter 13 Plan, filed July 18, 2024

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Chapter 13 Plan, ECF No. 21. The plan is supported by Schedules I and J filed July 18, 2024, ECF No. 19. The Chapter 13 trustee has filed a non-opposition to the motion, 29.

CHAPTER 13 PLAN CONFIRMATION

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

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

25. [24-22775](#)-A-13 **IN RE: EVELYN DOMONDON**
[DPC-3](#)

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
9-3-2024 [\[46\]](#)

DEBTOR DISMISSED: 09/16/24

Final Ruling

This case was dismissed on September 16, 2024. Accordingly, this matter will be removed from the calendar as moot. No appearances are required.

26. [24-22577](#)-A-13 **IN RE: MARTHA ESCH SAND**
[BPE-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LOCKE
MANAGEMENT ASSOCIATION
7-31-2024 [\[18\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
SKYLER GRAY/ATTY. FOR MV.

Tentative Ruling

Objection: Creditor's Objection to Confirmation of Plan

Notice: Continued from August 27, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Gabriel Liberman is ordered to personally appear in this matter at 9:00 a.m. on October 8, 2024, in Department A.

The hearing on Locke Management Association's objection to confirmation was continued from August 27, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; or (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

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).

On August 29, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to October 8, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 10, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than September 10, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than September 24, 2024. The evidentiary record will close after September 24, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than September 10, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

Order, ECF No. 23, (emphasis added).

The debtor(s) failed to file: (1) any opposition to the trustee's objection; (2) an amended plan; or (3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by September 10, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

The court notes that this is not the first instance where counsel failed to comply with the court's order under these circumstances. In a previous Chapter 13 case counsel failed to comply with the court's orders in 4 objections to confirmation. See *In re Joshua Williams*, Case No. 24-21361, E.D. Cal. Bankr. (2024).

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor concedes the objection.

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). . D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

The secured creditor objects to its treatment under the proposed plan. The Chapter 13 Plan provides for the objecting creditor in Class 2(b) of the plan. Chapter 13 Plan, ECF No. 3. The plan also states that the debtor will file a motion to value collateral under 11 U.S.C. § 506, *id.* the court notes that no motion to value collateral has been filed.

REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION

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

In this case, the plan proposes to reduce Locke Management Association's Class 2 secured claim based on the value of the collateral securing such claim. But the debtor has not yet obtained a favorable order on a motion to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan. As such the court need not reach the remaining issues raised in the creditor's objection to confirmation.

The court sustains the objection and denies confirmation of the plan.

CIVIL MINUTE ORDER

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

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

The 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.

27. [24-22577](#)-A-13 **IN RE: MARTHA ESCH SAND**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
7-31-2024 [[14](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from August 27, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

Attorney Gabriel Liberman is ordered to personally appear in this matter at 9:00 a.m. on October 8, 2024, in Department A.

The hearing on the Chapter 13 trustee's objection to confirmation was continued from August 27, 2024, to allow the debtor to: (1) file a statement of non-opposition; (2) file opposition to the objection; or (3) file an amended Chapter 13 Plan.

DEBTOR FAILED TO RESPOND AS ORDERED

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).

On August 29, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to October 8, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than September 10, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than September 10, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than September 24, 2024. The evidentiary record will close after September 24, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 8, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

Order, ECF No. 24, (emphasis added).

The debtors failed to file: (1) any opposition to the trustee's objection; (2) an amended plan; or (3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by September 10, 2024. The debtor has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

The court notes that this is not the first instance where counsel failed to comply with the court's order under these circumstances. In a previous Chapter 13 case counsel failed to comply with the court's orders in 4 objections to confirmation. See *In re Joshua Williams*, Case No. 24-21361, E.D. Cal. Bankr. (2024).

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor concedes the objection.

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).

Failure to Provide Business Documents

The trustee contends that the debtor has failed to provide the following documents: (1) 2021 and 2023 tax returns; (2) 6 months of profit and loss statements; (3) 6 months of bank statements; (4) proof of license and insurance or written statements that no such documentation exists for any of the debtor's businesses; and (5) completed Business Questionnaire for Yatch Lettering. 11 U.S.C. §521(e) (2) (A); FRBP 4002(b) (3).

Accordingly, the court will sustain the objection.

CIVIL MINUTE ORDER

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

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

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

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

28. [24-24078](#)-A-13 **IN RE: ANGELA TINSELY**
[PGM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-23-2024 [\[15\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Extend the Automatic Stay

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

Disposition: Granted

Order: Civil minute order

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

The debtor seeks an order extending the automatic stay in this case under 11 U.S.C. § 362(c)(3). The debtor's previously filed Chapter 13 case was filed on May 1, 2024, and was dismissed for delinquent plan payments after confirmation of the plan. *In re Angela Tinsely*, 2023-21428, E.D. Cal. Bankr. (2023).

EXTENSION OF THE STAY

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

Application

During the pendency of the debtor's previous case, she was separated from her spouse and counted on a contribution from him to sustain the monthly plan payment. In this case the parties are maintaining a joint household with net monthly income of \$12,395.84. See Schedule I, ECF No. 12. The proposed monthly plan payment of \$7,200 appears to be feasible.

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

CIVIL MINUTE ORDER

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

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

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

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

29. [24-21779](#)-A-13 **IN RE: LAURA ZAMORA**
[MB-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SACRAMENTO LAW
GROUP LLP DEBTORS ATTORNEY(S)
9-9-2024 [\[48\]](#)

MICHAEL BENAVIDES/ATTY. FOR DBT.
DEBTOR DISMISSED: 05/20/24
RESPONSIVE PLEADING

Final Ruling

Motion: Approve Attorney Compensation

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

Disposition: Denied without prejudice

Order: Civil minute order

Michael Benavides seeks an order approving compensation in this bankruptcy proceeding. Counsel was ordered to file a motion to approve compensation on May 23, 2024. Order, ECF No. 21. This is the attorney's third motion for compensation. The first motion (MB-1) was denied because notice and service were insufficient, and because the hearing date and time was incorrect. Civil Minutes, ECF No. 34. The second motion (MB-2) was denied because the pleadings filed were illegible and interlineated. Civil Minutes, ECF No. 45.

This motion suffers from the same deficiencies as the two prior motions.

SERVICE AND NOTICE

"The due process requirements for notice are relatively minimal; they merely require notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 15 (B.A.P. 9th Cir.

2014) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

B) Notice.

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

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

The notice of motion in this case fails to comply with LBR 9014-1(B) (i), (ii), and (iii). The notice fails to state whether written opposition to the motion is required or advise respondents how the motion may be opposed. The notice also fails to advise respondents how they can determine whether the matter has been resolved. Notice of Motion, ECF No. 49.

The court notes that the required notice language is included in the Declaration of Michael Benavides, in support of this application. This is confusing and the court will not presume the conclusion that other parties, including the debtor(s) may have reached regarding the need for and timing of written opposition.

ILLEGIBLE AND INTERLINEATED PLEADINGS

All petitions, pleadings, motions, briefs and other papers submitted for filing shall be typewritten, printed, computer generated, or prepared by some other clearly legible process, with printing on only one side of each page. Unless prior approval of the Court is granted, interlineations shall not be allowed.

LBR 9004-2(a)(3).

The exhibits filed in support of the motion are not legible. Exhibits, ECF No. 51. Accordingly, the motion does not comply with LBR 9004-2(a)(3).

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:

Michael Benavides's motion for approval of compensation has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

30. [24-23479](#)-A-13 **IN RE: EVELYN DOMONDON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-11-2024 [\[32\]](#)

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.

31. [24-23779](#)-A-13 **IN RE: JUDITH DUPONT**
[VR-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2024 [\[19\]](#)

VINCENT RENDA/ATTY. FOR MV.
CONFIDANT BOARD, LLC VS.

No Ruling

32. [24-20980](#)-A-13 **IN RE: FRANK CASTRO**
[DPC-3](#)

MOTION TO DISMISS CASE
9-3-2024 [\[50\]](#)

MARC VOISENAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final 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 24, 2024

Opposition Filed: September 24, 2024 - timely

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to file amended plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$416.00, with one payment(s) of \$416.00 due prior to the hearing on this motion.

The trustee also moves for dismissal because the debtor has failed to file an amended plan following the court's ruling which denied confirmation of the previously proposed plan.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in

opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

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

On September 24, 2024, the debtor filed opposition to the motion, ECF No. 54. The opposition consists of an unsworn statement by debtor's counsel and is not accompanied by any admissible evidence. The opposition contends that the debtor has made a plan payment.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating the amount of the payment or the date it was tendered to the trustee. Neither is there any evidence that the debtor will make additional plan payments. The opposition also acknowledges that amended plan has not yet been filed.

The debtor's 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.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the chapter 13 plan in this case. Delinquency and the failure to file an amended plan constitute cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

33. [24-23482](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[TBG-2](#)

MOTION TO EXTEND AUTOMATIC STAY
9-4-2024 [\[21\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Extend the Automatic Stay

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

Disposition: Denied

Order: Civil minute order

Petition Filed: August 7, 2024

The debtor seeks an order extending the automatic stay under 11 U.S.C. § 362(c)(3). The instant case was filed on August 7, 2024. Unsecured creditors Elena S. Remus and David Allan Remus oppose the motion.

STAY EXTENSION

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B).

Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. 11 U.S.C. § 362(c)(3)(B) (emphasis added). Otherwise, if notice and the hearing are not completed before the end of the 30-day period, "the automatic stay terminates in its entirety 30 days after the petition date for a repeat filer." *In re Reswick*, 446 B.R. 362, 365, 371-73 (B.A.P. 9th Cir. 2011).

Hearing Not Concluded Within Statutorily Prescribed Period

The debtor has had a previous case pending within the one-year period prior to the filing of this case. Although the motion to extend the stay and notice of hearing on such motion were filed and served before the expiration of the 30-day period after the petition date, the hearing on this matter has not been completed before such deadline. The petition was filed on August 7, 2024, and the motion was filed on September 4, 2024. The hearing was not set until October 8, 2024.

Accordingly, the automatic stay has already terminated, and the court has no authority to grant the relief requested. The motion will be denied.

CIVIL MINUTE ORDER

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

The debtor's Motion to Extend the Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

34. [24-21588](#)-A-13 **IN RE: ANGELA/KEITH THORNTON**
[MOH-2](#)

AMENDED MOTION TO CONFIRM PLAN
8-13-2024 [\[36\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Amended Chapter 13 Plan, filed August 21, 2024

DEFAULT OF RESPONDENT

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

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks confirmation of the Amended Chapter 13 Plan, ECF No. 38. The plan is supported by Schedules I and J filed, at the inception of the case, ECF No. 1.

Trustee Response

The Chapter 13 trustee has filed a response to the motion under docket control Number MOH-1, ECF No. 41. In his response the trustee indicates that he believes the instant motion filed with docket control number MOH-2 can be granted. The trustee has filed no further opposition to the instant motion with the MOH-2 docket control number.

Going forward, the Chapter 13 trustee shall timely file responses under the appropriate docket control number, even if he has already stated his position regarding a proposed plan under a previous docket control number.

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.

35. [24-23393](#)-A-13 **IN RE: MERIDO HUEZO CAMPOS AND CAROLINA**
HUEZO
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-11-2024 [\[16\]](#)

CARL GUSTAFSON/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 19, 2024, at 9:00 a.m.

Order: Civil minute order

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

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

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

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing on this objection will be continued to November 19, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 22, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than October 22, 2024; the response shall specifically address each issue raised in

the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than November 5, 2024. The evidentiary record will close after November 5, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than October 22, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that if the parties resolve the trustee's objection, and there are no additional objections to confirmation pending, then the debtor(s) may submit an order confirming the plan which has been signed by the Chapter 13 trustee. The trustee's signature on the order confirming plan represents to the court that no further objections to confirmation of the proposed plan are pending.

36. [24-23495](#)-A-13 **IN RE: ANDY DANG**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
9-18-2024 [\[18\]](#)

JASMIN NGUYEN/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

Final Ruling

Objection: Creditor's Objection to Confirmation of Plan

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

Disposition: Continued to November 19, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Lakeview Loan Servicing, LLC, 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 19, 2024, at 9:00 a.m. The court may rule in this matter without further hearing.

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

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than October 22, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than October 22, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than November 5, 2024. The evidentiary record will close after November 5, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than October 22, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that any stipulation between the parties resolving this matter must be approved and signed by the Chapter 13 trustee prior to filing with the court. The trustee's signature on the stipulation warrants that the terms of the proposed stipulation do not impact the plan's compliance with 11 U.S.C. § 1325(a).

37. [23-24399](#)-A-13 **IN RE: CARALEE MANN**
[MMM-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
8-25-2024 [\[23\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Subject: 1970 3rd Avenue, Sutter, California

Judicial Lien Avoided: \$9,528.49 - Portfolio Recovery Associates, LLC

All Other Liens:

- First Deed of Trust \$158,173.00; Nationstar Mortgage, LLC

Exemption: \$400,000

Value of Property: \$442,000

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

The debtor seeks an order avoiding the judicial lien of Portfolio Recovery Associates, LLC, under 11 U.S.C. § 522(f).

While the Chapter 13 trustee filed an opposition, the basis of the trustee's opposition is the thrust of the opposition is that Portfolio Recovery Associates, LLC, is not listed in the debtor's plan. While plan classification might be a sufficient basis for objecting to confirmation it is not a sufficient basis to oppose the instant motion where the debtor has supported the motion with evidence of the judicial lien. Exhibit, ECF No. 26.

LIEN AVOIDANCE

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security

interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.