



**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: NOVEMBER 21, 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. [23-21700](#)-A-13 **IN RE: CAROL UNTERSEHER**
[TF-1](#)

MOTION TO CONFIRM PLAN
10-11-2023 [\[26\]](#)

TERRENCE FANTAUZZI/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: 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).

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).

LBR 3015—(d) (1)

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).

In support of this motion to confirm the debtors have filed a Certificate of Service, ECF No. 29. The certificate does not list the Chapter 13 Plan as a document which was served on interested parties. See Section 4, *id.*

LBR 3015-1(d)(1) requires that the debtor serve the plan under consideration with a motion to confirm. The debtors may move to confirm a plan, which was previously denied confirmation. However, when bringing the new motion, the plan must be served again under LBR 3015-1(d)(1). The purpose of the rule requiring service of the

plan with a motion to confirm is to assure adequate notice of the plan terms upon all interested parties. If the plan is not served notice is not properly accomplished.

The court will deny the motion for improper service under LBR 3015-1(d)(1).

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.

2. [18-23408](#)-A-7 **IN RE: SUSAN OLSEN**
[DPC-1](#)

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

LUCAS GARCIA/ATTY. FOR DBT.
CASE CONVERTED: 11/06/23

Final Ruling

On November 6, 2023, this case was converted to Chapter 7. Accordingly, the court will remove the motion to dismiss from the calendar as moot. No appearances are required.

3. [23-21308](#)-A-13 **IN RE: RICHARD/LYNDA BYERS**
[CK-3](#)

MOTION TO CONFIRM PLAN
10-16-2023 [\[52\]](#)

CATHERINE KING/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan
Disposition: Denied without prejudice
Order: Civil minute order

The debtors seek confirmation of their Chapter 13 plan. For the following reasons the motion will be denied without prejudice.

NOTICE

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

LBR 9014-1(f)

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

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

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

. . .

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

The notice of hearing filed and served in this matter states that the motion was filed pursuant to "Local Rule of Practice 9014(f)(2)". See, Notice, 1:18-19, ECF No. 53.

The notice further provides as follows.

PLEASE TAKE NOTICE THAT pursuant to Local Bankruptcy Rule 9014-1(f)(1)(B), written opposition to this motion must be served and filed with the court at least fourteen (14) calendar days preceding the date or continued date of the hearing. Failure to file timely written opposition to this motion may result in the motion being resolved without oral argument and the striking of untimely written opposition.

Id., 2:1-6.

The notice contains conflicting provisions as both LBR 9014-1(f)(1) and (f)(2) are indicated.

The court cannot determine whether the motion is brought under LBR 9014-1(f)(1) or (f)(2). Nor will the court presume the conclusion an opposing party might reach about whether written opposition is necessary. The notice given in this matter does not satisfy the requirements of LBR 9014(d)(3)(B).

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

The court will deny the motion without prejudice.

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.

4. [23-23218](#)-A-13 **IN RE: LISSA VARGAS**
[DPC-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-26-2023 [\[18\]](#)

STANLEY BERMAN/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Exemptions
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Continued to January 3, 2024, at 9:00 a.m.
Order: Civil minute order

The Chapter 13 trustee objects to the debtor's claim of exemptions.

AMENDED SCHEDULE C

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

On October 20, 2023, the debtor filed documents purporting to amend Schedule C, ECF No. 17. However, the debtor failed to sign the proposed amended schedules, as required by Fed. R. Bankr. P. 1008. Thus, the amendment is not valid.

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record and for the hearing to coincide with the trustee's objection to confirmation of the debtor's plan.

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 January 3, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that unless the debtor *correctly files and serves* an amended Schedule C, or the trustee's objection to exemptions is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than December 5, 2023. The response shall specifically address each issue raised in trustee's objection to the claimed exemptions, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor elects to file and serve an amended Schedule C in lieu of filing a response, then a correctly amended Schedule C shall be filed and served not later than December 5, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will

close after December 19, 2023. If the debtor does not timely file an amended Schedule C or a written response, this objection will be sustained on the grounds stated in the objection without further notice or hearing.

5. [23-23218](#)-A-13 **IN RE: LISSA VARGAS**
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-26-2023 [\[24\]](#)

STANLEY BERMAN/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 January 3, 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 January 3, 2024, 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 December 5, 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 December 5, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will close after December 19, 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.

6. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[CDL-09](#)

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE
CORPORATION
10-12-2023 [\[23\]](#)

COLBY LAVELLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Value Collateral
Notice: LBR 9014-1(f)(1)
Disposition: Denied without prejudice
Order: Civil minute order

The debtor seeks an order valuing the collateral of Regional Acceptance Corporation. The motion will be denied for the following reasons.

SERVICE

Fed. R. Bankr. P. 7004

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

Service of the motion upon the respondent was insufficient. Two certificates of service were filed regarding this motion. See Certificates of Service, ECF Nos. 29, 30. Neither certificate is correct because neither indicates that the motion was mailed to the attention of an officer, managing or general agent, or other agent authorized to accept service on behalf of the responding party.

Insufficient Notice

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.

LBR 9014-1(d)(3)(i), (ii), (iii) (emphasis added).

The notice of hearing filed with the motion does not comply with LBR 9014-1(d)(3)(i), (ii), or (iii). The notice fails to advise the respondent whether written opposition must be filed, fails to advise the respondent of the consequences of filing written opposition and fails to advise respondent how to determine whether this matter has been resolved without oral argument. Notice of Hearing, ECF No. 24. Accordingly, the court will deny the motion. Counsel is cautioned that failure to comply with local rules may result in denial of relief and/or sanctions, LBR 1001-1(g).

IMPROPER DOCKET CONTROL NUMBER

The Docket Control Number *shall consist of not more than three letters*, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

LBR 9014-1(c)(3) (emphasis added).

The docket control numbers assigned to this motion to value collateral and the accompanying motion to confirm plan do not comply with LBR 9014-1(c)(3) as they exceed three letters. Counsel is

cautioned that failure to comply with local rules may result in denial of relief and/or the imposition of sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

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

The debtor's motion to value collateral has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

7. [23-22421](#)-A-13 **IN RE: MICHELLE POSH**
[CDL-10](#)

MOTION TO CONFIRM PLAN
10-12-2023 [\[26\]](#)

COLBY LAVELLE/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 opposes the motion, objecting to confirmation.

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

For the following reasons the motion will be denied.

SERVICE AND NOTICE

LBR 7005-1

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as

appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

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

Service of the motion did not comply with LBR 7005-1(a). The list of creditors attached to the certificate of service is not the clerk's matrix as required. See Certificate of Service, ECF No. 29. Accordingly, the motion will be denied, and the court need not reach the remaining issue(s) raised in the trustee's opposition to the motion.

Insufficient Notice

Notice

- (iv) *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.*
- (v) *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.*
- (vi) *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.*

LBR 9014-1(d)(3)(i), (ii), (iii) (emphasis added).

The notice of hearing filed with the motion does not comply with LBR 9014-1(d)(3)(i), (ii), or (iii). The notice fails to advise the respondent whether written opposition must be filed, fails to advise the respondent of the consequences of filing written opposition and fails to advise respondent how to determine whether this matter has been resolved without oral argument. Notice of Hearing, ECF No. 27. Accordingly, the court will deny the motion. Counsel is cautioned that failure to comply with local rules may result in denial of relief and/or sanctions, LBR 1001-1(g).

IMPROPER DOCKET CONTROL NUMBER

The Docket Control Number *shall consist of not more than three letters*, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

LBR 9014-1(c)(3) (emphasis added).

The docket control numbers assigned to this motion to confirm plan and the accompanying motion to value collateral do not comply with LBR 9014-1(c)(3) as they exceed three letters. Counsel is cautioned that failure to comply with local rules may result in denial of relief and/or the imposition of sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

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

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

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.

8. [23-22123](#)-A-13 **IN RE: MARTIN/MIMI MOSELEY**
[DPC-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
10-24-2023 [\[47\]](#)

CATHERINE KING/ATTY. FOR DBT.
DEBTORS DISMISSED: 11/03/23

Final Ruling

This case was dismissed on November 3, 2023. This motion is removed from the calendar as moot. No appearances are required.

9. [23-22523](#)-A-13 **IN RE: SHAWNA KARLBERG**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
9-13-2023 [\[18\]](#)

SETH HANSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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 hearing on the trustee's objection to confirmation was continued to allow the debtor to respond to the objection. As a courtesy to the court the debtor filed a response indicating that she concedes the objection and intends to file an amended plan. Response, ECF No. 25.

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

CIVIL MINUTE ORDER

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

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

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

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

10. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-4](#)

AMENDED OBJECTION TO CLAIM OF NEWREZ, LLC, CLAIM NUMBER 20 .
10-5-2023 [\[75\]](#)

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Claim
Disposition: Overruled without prejudice
Order: Civil minute order

The debtors object to the claim of NewRez, LLC, Claim No. 20. The hearing on the objection to claim was initially set for November 7, 2023. Notice of Objection, ECF No. 71. On October 19, 2023, the debtors filed two separate amended notices of hearing which changed the hearing date to November 21, 2023. Amended Notice of Hearing, ECF Nos. 99, 100.

INSUFFICIENT NOTICE

Initial Notice and Certificate of Service

(b) Amount of Notice.

- 1) Objections Set on 44 Days' Notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2), the objecting party shall file and serve the objection at least *forty-four (44)* days prior to the hearing date.

LBR 3007-1(b)(1) (emphasis added) .

The notice of motion, ECF No. 99, provides that opposition, if any, 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. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The movant has only provided 33 days' notice of the objection. See Certificate of Service, ECF No. 101. The objection will be overruled without prejudice.

Amended Notice and Certificate of Service

The debtors filed a further amended notice of hearing which provided as follows:

NOTICE IS FURTHER GIVEN that *any response must be filed with the Bankruptcy Clerk within 30 days from the date of service or such other time period as may be permitted by Fed.R.Bankr.P. 9006(f)*. Those not required or not permitted to file electronically must deliver any response by U.S. mail, courier, overnight/express mail, or in person at: Clerk of the Court Wayne Blackwelder 501 I Street, Suite 3-200 Sacramento, California 95814

The responding party must ensure delivery of the response to the party filing the objection. If a response is NOT timely filed, the requested relief may be granted without a hearing. If a response is filed, the Court may reschedule the hearing in which event all parties will receive notice of that hearing date.

Amended Notice of Hearing, 2:17-27, 3:1-2, ECF No. 100 (emphasis added).

The amended notice of hearing contravenes the provisions of LBR 3007-1(b)(1) as indicated above in this ruling. The amended notice of hearing also contravenes the notice provision of LBR 3007-1(b)(2) which does not require written opposition.

Neither of the amended notices provided sufficient notice of the hearing and the notices contain conflicting provisions regarding the necessity and timing of written opposition. The court will not presume the conclusion reached by potential responding parties regarding the necessity and timing of filing an opposition to the objection.

The objection will be overruled without prejudice. Should the debtors elect to refile the objection to claim they shall assign a new docket control number to the proceeding pursuant to LBR 9014-1(c).

The court will overrule the objection without prejudice.

CIVIL MINUTES ORDER

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

The debtors' Objection to the Claim of New Rez, LLC, has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

11. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-5](#)

OBJECTION TO CLAIM OF CEFCU, CLAIM NUMBER 9
10-5-2023 [\[77\]](#)

TRACY WOOD/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Claim
Disposition: Overruled without prejudice
Order: Civil minute order

The debtors object to the claim of CEFCU, Claim No. 9. The hearing on the objection to claim was initially set for November 7, 2023. Notice of Hearing, ECF No. 78. On October 19, 2023, the debtors filed two amended notices of hearing which changed the hearing date to November 21, 2023. Amended Notice of Hearing, ECF Nos. 102, 103.

INSUFFICIENT NOTICE

Notice and Certificate of Service

(b) Amount of Notice.

2) Objections Set on 44 Days' Notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2), the objecting party shall file and serve the objection at least *forty-four (44) days prior to the hearing date.*

LBR 3007-1(b)(1) (emphasis added).

The amended notice of objection, ECF No. 102, provides that opposition, if any, 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. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The movant has only provided 33 days' notice of the objection. See Certificate of Service, ECF No. 104. The objection will be overruled without prejudice.

Amended Notice and Certificate of Service

The debtors filed a further amended notice of hearing which provided:

NOTICE IS FURTHER GIVEN *that any response must be filed with the Bankruptcy Clerk within 30 days from*

the date of service or such other time period as may be permitted by Fed.R.Bankr.P. 9006(f). Those not required or not permitted to file electronically must deliver any response by U.S. mail, courier, overnight/express mail, or in person at: Clerk of the Court Wayne Blackwelder 501 I Street, Suite 3-200 Sacramento, California 95814

The responding party must ensure delivery of the response to the party filing the objection. If a response is NOT timely filed, the requested relief may be granted without a hearing. If a response is filed, the Court may reschedule the hearing in which event all parties will receive notice of that hearing date.

Amended Notice of Hearing, 2:14-26, ECF No. 103 (emphasis added).

The amended notice of hearing contravenes the provisions of LBR 3007-1(b)(1) as indicated above in this ruling. The amended notice of hearing also contravenes the notice provision of LBR 3007-1(b)(2) which does not require written opposition.

Neither amended notice provides sufficient notice of the hearing, and the notices contain conflicting provisions regarding the necessity and timing of written opposition. The court will not presume the conclusion reached by potential responding parties regarding the necessity and timing of filing an opposition to the objection.

The objection will be overruled without prejudice. Should the debtors elect to refile the objection to claim they must assign a new docket control number to the proceeding pursuant to LBR 9014-1(c).

The court will overrule the objection without prejudice.

CIVIL MINUTES ORDER

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

The debtors' Objection to the Claim of CEFCU, has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

12. [23-21724](#)-A-13 **IN RE: MARK/CYRIL SENORES**
[TLW-7](#)

MOTION TO CONFIRM PLAN
10-17-2023 [\[90\]](#)

TRACY WOOD/ATTY. FOR DBT.

Final Ruling

Motion: Confirmation of a Chapter 13 Plan

Disposition: Denied without prejudice

Order: Civil minute order

The debtors seek confirmation of the Chapter 13 plan. For the following reasons the motion will be denied without prejudice.

INSUFFICIENT NOTICE

The movant did not provide a sufficient period of notice of the hearing on the motion, or the time fixed for filing objections.

Required Notice

Federal Rule of Bankruptcy Procedure 2002(a)(9) requires at least 21 days' notice of the time fixed for filing objections to confirmation of a plan. Federal Rule of Bankruptcy Procedure 2002(b) requires no less than 28 days' notice of the hearing to consider confirmation of a chapter 13 plan. To comply with both Federal Rule of Bankruptcy Procedure 2002(a)(9) and (b)(3) and Local Bankruptcy Rule 9014-1(f)(1), creditors and parties in interest must be given at least 35 days' notice of the motion. See LBR 3015-1(d)(1). Creditors and parties in interest received less than 35 days' notice mandated by these rules.

The debtors filed the initial notice of hearing in this matter on October 17, 2023, and set the hearing for November 14, 2023. This did not provide 35 days' notice.

On October 18, 2023, the debtors filed an amended notice of hearing, ECF No. 97. The amended notice of hearing changed the hearing date to November 21, 2023, yet provided only 34 days' notice of the hearing.

Accordingly, the court will deny the motion without prejudice and need not reach the issues raised in the Chapter 13 trustee's opposition to the motion.

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.

13. [23-21431](#)-A-13 **IN RE: STELLA HERNANDEZ**
[MRL-2](#)

MOTION TO CONFIRM PLAN
9-27-2023 [\[49\]](#)

MIKALAH LIVIAKIS/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 September 27, 2023

DEFAULT OF RESPONDENT

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

The debtor seeks confirmation of the Chapter 13 Plan, ECF No. 51. The plan is supported by Schedules I and J filed, September 27, 2023, ECF No. 55. The Chapter 13 trustee has filed a non-opposition to the motion, 57.

CHAPTER 13 PLAN CONFIRMATION

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

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

14. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[DPC-2](#)

MOTION TO DISMISS CASE
11-3-2023 [\[75\]](#)

MARC VOISENAT/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f) (2); written opposition not required

Disposition: Granted

Order: Civil minute order

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

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 \$6,466.99, with a payment(s) of \$3,522.33 due November 25, 2023, shortly after the hearing on this motion.

Additionally, the court notes that this case was filed September 1, 2022, 14 months ago, and a Chapter 13 plan has not yet been confirmed. Accordingly, should the parties request it, the court will consider a conditional order requiring that plan payments be brought current but also that a plan be confirmed by a date certain.

Absent an agreement regarding a conditional order as indicated the court will grant 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 chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

15. [22-22232](#)-A-13 **IN RE: DUANE OTT**
[MEV-5](#)

MOTION TO CONFIRM PLAN
10-3-2023 [\[71\]](#)

MARC VOISENAT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$ \$6,466.99. The plan cannot be confirmed if the plan payments are not current.

PLAN IMPROPERLY ATTACHED TO NOTICE OF MOTION

Filing of Separate Documents. Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.

LBR 9004-2(C)(1).

The proposed plan was attached to the Notice of Motion, ECF No. 71. This violates LBR 9004-2(C)(1) which requires that the exhibits in support of the motion be filed separately. Failure to comply with the local rules in the future will result in the denial of relief and/or sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

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

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

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.

16. [20-20435](#)-A-13 **IN RE: JOHN EPPS AND NICOLE GAGETTA**
[PGM-3](#)

MOTION TO MODIFY PLAN
10-5-2023 [\[57\]](#)

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

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed October 5, 2023

DEFAULT OF RESPONDENT

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on October 5, 2023, ECF No. 63. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 67. However, the trustee has requested that the plan payment(s) be clarified in the Order Confirming the Plan as follows: "the total paid in through September 2023 (month 44) is \$17,960.00, then \$8,519.74 on or before 10-25-23 (month 45)." With the inclusion of this language in the order confirming the plan the court approves the debtors' motion.

CHAPTER 13 PLAN MODIFICATION

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

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

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

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

The debtor shall submit an order modifying the plan which is consistent with this order, and which has been approved by the Chapter 13 trustee.

17. [23-21248](#)-A-13 **IN RE: CHRISTOPHER SEWARD**
[DPC-2](#)

MOTION TO DISMISS CASE
10-23-2023 [\[27\]](#)

GARY FRALEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

18. [23-21049](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[CK-3](#)

MOTION TO MODIFY PLAN
10-17-2023 [\[63\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Declaration Insufficient

The trustee opposes the motion contending that the declaration in support of the motion is factually insufficient. The trustee states that the motion does not address why a modified plan was necessary or what circumstances have changed such that the debtors can make payments pursuant to the proposed plan.

The court notes that the trustee has indicated that the plan payments are current through October 2023. Status Report, ECF No. 74.

Debtor Reply

On November 14, 2023, the debtors filed a declaration in reply to the trustee's opposition. The reply explains the reason for the plan delinquency as a miscalculation on the debtors' part and confirms the steady source of the debtors' household income. Declaration of Stacie Hyatt, ECF No. 78. The declaration resolves the court's concerns regarding the feasibility of the plan. Going forward counsel should include this information at the outset of a motion as it is part of a debtor's prima facie case for plan modification.

SERVICE OF PROPOSED PLAN

LBR 3015-1(d)(2) requires that the debtors serve the proposed plan with the motion to modify. The trustee contends that the plan was not served. The certificate of service which was filed states the following documents were served: 1) Motion to Confirm Modified Plan; 2) Notice of Hearing on Motion; 3) Declaration in Support of Motion; 4) Exhibit to Motion. Certificate of Service, p. 2, Item 4,

ECF No. 68. The exhibit filed with the motion is the proposed Chapter 13 Plan, ECF No. 66. The court prefers that the proposed plan be listed in the certificate of service as a document which is served. An exhibit is not necessary as the proposed plan may be served without filing an exhibit. However, in this case the proposed plan was served with the moving papers as an exhibit and technically complies with LBR 3015-1(d)(2).

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 debtors shall submit an appropriate order signed by the Chapter 13 trustee.

19. [23-21049](#)-A-13 **IN RE: CARLETON/STACIE HYATT**
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE
9-25-2023 [\[59\]](#)

CATHERINE KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

Notice: Continued from November 11, 2023

Disposition: Denied

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

The hearing on the trustee's motion to dismiss was continued to coincide with the debtors' motion to confirm the Amended Chapter 13 plan.

The chapter 13 trustee initially moved to dismiss this case, asserting that cause existed under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contended that the plan payments are delinquent in the amount of \$7,450.00. Motion to Dismiss, ECF No. 59.

The trustee filed a status report on November 7, 2023. Status Report, ECF No. 74. The report states that the plan payments are now current.

While the court has denied confirmation of the proposed plan on other bases, the cause for dismissal plead by the trustee has been resolved. Accordingly, the court will deny the motion to dismiss.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is denied.

20. [23-23565](#)-A-13 **IN RE: JENNIFER FREDERICK-LATHEM**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-24-2023 [[15](#)]

Final Ruling

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

21. [23-22270](#)-A-13 **IN RE: GARY GILLIAM AND CARRIE NOAH-GILLIAM**
[DPC-2](#)

MOTION TO DISMISS CASE
10-24-2023 [[35](#)]

No Ruling

22. [18-21272](#)-A-13 **IN RE: STEPHEN/LESLEY SAWYER**
[NSV-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FIRE VICTIM TRUST
10-12-2023 [\[137\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.
DEBTORS DISCHARGED: 11/03/23; TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

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

Disposition: Approved

Order: Prepared by moving party

Parties to Compromise: Debtors; Fire Victim Trust

Dispute Compromised: Fire Victim Trust Settlement

Summary of Material Terms: As set forth in Exhibit, ECF No. 141

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 court notes that debtor Stephen Sawyer is deceased. The Chapter 13 Plan in this case was performed and completed after his death. The court also notes that debtor Lesley Sawyer failed to file the required notice of death or an application for continued administration of the plan. See Fed. R. Civ. P. 25(a), (b), Fed. R. Bankr. P. 1004.1, 1016, 7025, LBR 1016-1. Given the plan completion the court will approve the compromise.

Debtor Lesley Sawyer moves for an order approving settlement of a claim made to the Fire Victim Trust Settlement. The claim arises out of the debtor's property damage and/or personal injuries caused by the November 2018 wildfire. This occurred after the filing of the instant bankruptcy petition.

A Fire Victim Trust was established to provide an efficient process to fairly compensate the holders of timely filed claims for damages sustained because of the fire.

The Fire Victim Trust determined that the appropriate compensation for the debtors' claim is \$256,050.12. The allocation to the debtor's claim was predicated on real and personal property loss/damage, emotional distress for annoyance and discomfort, and emotional distress-zone of danger.

The motion requests that: 1) the settlement payments to be paid into the client trust account of Debtor's attorneys in that action, Levin Law, to be apportioned pursuant to the terms of Debtor's retainer agreement with said firm; and 2) all remaining settlement funds to be paid to the Debtor Lesley Annette Sawyer for property damage,

past, present and future emotional distress and pain and suffering, and costs incurred for the filing of this motion.

The Chapter 13 trustee has filed a non-opposition to the motion indicating that the Chapter 13 plan has been completed, and that the completed plan paid 100% to all allowed unsecured claimants. Non-Opposition, ECF No. 149.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the Fire Victim Trust Settlement Offer, submitted with the motion as a Support Document, ECF No. 141. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

The moving party shall submit a proposed order consistent with this court's ruling.

23. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[SS-11](#)

MOTION FOR COMPENSATION FOR SCOTT SHUMAKER, DEBTORS
ATTORNEY(S)
10-16-2023 [[177](#)]

SCOTT SHUMAKER/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Allowance of Compensation

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

Disposition: Continued to December 19, 2023, at 9:00 a.m.

Order: Civil minute order

Attorney Scott Shumaker seeks an order allowing additional compensation in this Chapter 13 proceeding. The court will continue the hearing to allow the applicant to obtain, file and serve a declaration of the debtor in support of the application for additional compensation.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the hearing is continued to December 19, 2023, at 9:00 a.m. No later than December 5, 2023, the applicant shall file and serve the debtor's declaration in support of the application or a declaration of the applicant describing his efforts to obtain such a declaration.

24. [23-22977](#)-A-13 **IN RE: JEFFREY VAN DEN OEVER**
[CLB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
10-26-2023 [\[18\]](#)

CHAD BUTLER/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 January 3, 2024, at 9:00 a.m.

Order: Civil minute order

Creditor, Lakeview Loan Servicing, Inc., objects to confirmation of
the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the
parties to augment the evidentiary record, and to allow the
objecting creditor to serve the objection and a notice of continued
hearing on all creditors which have requested special notice.

SERVICE AND NOTICE

Special Notice Creditors

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

The following parties filed a request for special notice: LoanCare,
LLC; and AIS Portfolio Services, Inc. See ECF Nos. 9, 10.

The certificate of service does not indicate that special notice
parties were served with the objection. See Certificate of Service,
p. 2, No. 5, ECF No. 21. Additionally, the special notice creditor
was not listed in the attachment containing the list of parties
which were served.

Notice

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

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

Rules 9013 and 9007

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

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

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

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

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

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

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

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

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

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

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to

serve its motion on creditors who have filed requests for special notice.

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).

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 January 3, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that unless this case is voluntarily converted to chapter 7, dismissed, or the creditor's objection to confirmation is withdrawn, the debtor(s) shall file and serve a written response to the objection not later than December 5, 2023. The response shall specifically address each issue raised in 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 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 December 5, 2023.

IT IS FURTHER ORDERED that the creditor shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will close after December 19, 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.

IT IS FURTHER ORDERED that no later than December 5, 2023, the objecting creditor shall file and serve the notice of continued hearing and objection on all parties which have filed a request for special notice.

25. [23-22977](#)-A-13 **IN RE: JEFFREY VAN DEN OEVER**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-31-2023 [\[22\]](#)

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 January 3, 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 January 3, 2024, 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 December 5, 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 December 5, 2023.

IT IS FURTHER ORDERED that the trustee shall file and serve a reply, if any, no later than December 19, 2023. The evidentiary record will close after December 19, 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.

26. [18-23578](#)-A-13 **IN RE: CYNTHIA TRUSTY**
[DPC-1](#)

MOTION TO DISMISS CASE
10-19-2023 [[62](#)]

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
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: November 7, 2023

Opposition Filed: November 6, 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 \$8,593.00.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 66, 67. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 67.

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)(1), (6). The court hereby dismisses this case.

27. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[DPC-1](#)

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

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from September 26, 2023

Disposition: Sustained and confirmation denied

Order: Civil minute order

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 hearing on the trustee's objection to confirmation was continued to allow for hearing on the debtor's motions to avoid liens of Citibank, N.A., and Stohlman & Rogers, Inc. (WW-1, WW-2).

The Chapter 13 trustee objects to confirmation contending the plan is not feasible absent the entry of orders avoiding the judicial liens of creditors Citibank, N.A. and Stohlman & Rogers, Inc.

While the court has granted both motions to avoid judicial liens it must deny confirmation of the plan.

Additional provisions are attached to the proposed Chapter 13 plan. Chapter 13 Plan, ECF No. 4. The provisions indicate that the judicial liens of *Capital One Bank* and *Stohlman & Rogers* will be avoided. This appears to be an error in the drafting of the plan, as it is the judicial lien of *Citibank*, not *Capital One Bank*, which has been avoided. *Citibank* has not been properly noticed of the proposed treatment of its claim in the plan. Accordingly, *Citibank* would not be bound by the terms of the proposed plan. An amended plan is required to cure this defect. 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. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[WW-1](#)

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

MARK WOLFF/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: Continued from September 26, 2023

Disposition: Granted

Order: Prepared by moving party

Subject: 1511 Golden Spur Dr., Placerville, California

Judicial Lien Avoided: \$19,996.92 - Stohlman & Rogers, Inc.

All Other Liens:

- Deed of Trust - \$462,960.00 Chase Mortgage

Exemption: \$400,000

Value of Property: \$700,000

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 hearing on this motion was continued to allow for proper notice under Fed. R. Bankr. P. 7004. The moving party has properly noticed the motion and filed a certificate of service as ordered.

The debtor seeks an order avoiding the judicial lien of Stohlman & Rogers, Inc., under 11 U.S.C. § 522(f).

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Citibank, N.A.; and (ii) Stohlman & Rogers, Inc. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$400,000 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$882,956.92. The value of the property is \$700,000. The respondent's judicial lien, all other liens (except junior judicial 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 respondent's judicial lien will be avoided entirely.

29. [23-22481](#)-A-13 **IN RE: SCOTT DAVIS**
[WW-2](#)

CONTINUED 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

Notice: Continued from September 26, 2023

Disposition: Granted

Order: Prepared by moving party

Subject: 1511 Golden Spur Dr., Placerville, California

Judicial Lien Avoided: \$25,298.69 Citibank, N.A.

All Other Liens:

- Deed of Trust - \$462,960.00 Chase Mortgage
- Judicial Lien - \$19,996.92 - Stohlman & Rogers, Inc.

Exemption: \$400,000

Value of Property: \$700,000

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 hearing on this motion was continued to coincide with the hearing on the companion motion to avoid lien (WW-1) of Stohlman & Rogers, Inc.

The debtor seeks an order avoiding the judicial lien of Citibank, N.A., under 11 U.S.C. § 522(f).

LIEN-AVOIDANCE STANDARDS

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).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Citibank, N.A.; and (ii) Stohlman & Rogers, Inc. The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$400,000 exemption in the property.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$890,255.61. The value of the property is \$700,000. The respondent's judicial lien, all other liens (except junior judicial 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 respondent's judicial lien will be avoided entirely.

30. [23-23788](#)-A-13 **IN RE: LYNDA LOPEZ**
[MJD-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-7-2023 [\[12\]](#)

MATTHEW DECAMINADA/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 extension of the automatic stay pursuant to 11 U.S.C § 362(c)(3).

EXTENSION OF THE STAY

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

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

CIVIL MINUTE ORDER

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

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

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

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

31. [22-21690](#)-A-13 **IN RE: TRACI HAMILTON**
[DPC-4](#)

MOTION TO DISMISS CASE
10-23-2023 [\[164\]](#)

RICHARD JARE/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to January 17, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: November 7, 2023

Opposition Filed: November 7, 2023 - timely

Motion to Modify Plan Filed: November 8, 2023 - untimely

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 debtor's amended plan and motion to confirm were not timely filed. However, given the extraordinary facts in this case the court will allow the late filing and continue the hearing on the trustee's motion to dismiss.

Additionally, no later than December 19, 2023, the debtor shall file opposition to the trustee's motion to dismiss which is supported by *admissible evidence*.

A modified plan has been filed and set for hearing in this case. The scheduled hearing on the modification is January 17, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification.

This case was filed on July 7, 2022, and a Chapter 13 Plan has never been confirmed. If the plan is not confirmed, and the motion to dismiss has not been withdrawn or otherwise resolved, the court intends to 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 January 17, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than December 19, 2023, the debtor shall file and serve admissible evidence in defense of the trustee's motion to dismiss.

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.*

32. [21-21297](#)-A-13 **IN RE: RONALD/TERRY BERT**
[MOH-1](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH LARRY BUCKLEY AND/OR MOTION FOR
COMPENSATION FOR MICHAEL O. HAYS, DEBTORS ATTORNEY(S)
9-14-2023 [\[30\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

Final Ruling

Matter: (1) Motion to Approve Compromise; and (2) Application for Allowance of Compensation and Expense Reimbursement

Notice: Continued from October 3, 2023

Disposition: (1) Motion to approve compromise - denied without prejudice; and (2) Application for compensation and expense reimbursement - denied without prejudice

Order: Civil minute order

The debtors seek an order approving the settlement of a personal injury cause of action and approval of compensation for the personal injury attorney who represented the debtors in the proceedings. The motion was filed and served on September 14, 2023. Certificate of Service, ECF No. 33. Because the initial notice did not comply with the notice requirements of Federal Rules of Bankruptcy Procedure 2002(a)(3) and 9019(a), the court continued the hearing to allow the debtors to file and serve a notice of continued hearing. The debtors have complied with the court's order in this regard. Certificate of Service, ECF No. 49.

COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is

the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

A copy of the underlying settlement agreement on the personal injury cause(s) of action has not been provided.

COMPENSATION AND EXPENSES

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

The court noted additional information required to grant the debtors' motion and ordered as follows:

The hearing will be continued to allow the debtors to:

- 1) file and serve a notice of continued hearing on all interested parties;
- 2) file and serve evidence from the debtors' personal injury counsel regarding his qualifications to represent the debtors under 11 U.S.C. § 330;
- 3) file and serve exhibits evidencing the agreement for compensation and reimbursement of expenses between the debtors and personal injury counsel;
- 4) file and serve evidence of the debtors' support of the motion;
- 5) file and serve any amended bankruptcy schedules required in support of the motion;
- 6) file and serve an accounting by personal injury counsel detailing the receipt and disbursement of any and all proceeds received on behalf of the debtors in the personal injury cause of action, this

accounting shall be in the form of admissible evidence; and 7) file and serve any additional evidence in support of this motion.

Civil Minutes, ECF No. 43.

The following information was filed: Curriculum Vitae of Larry S. Buckley, ECF No. 48.

As the trustee has indicated in his reply the debtors have failed to file the following information requested by the court: 1) an exhibit evidencing the compensation agreement between the debtors and special counsel; 2) an accounting by personal injury counsel detailing the receipt and disbursement of any and all proceeds received on behalf of the debtors in the personal injury cause of action, in the form of admissible evidence; and 3) a declaration of the debtors in support of the motion.

The motion is not supported by any admissible evidence. Accordingly, the court is unable to grant the motion.

The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

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

The debtors' motion to approve the present compromise and application for allowance of final compensation and reimbursement of expenses have 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 motion is denied without prejudice.