

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

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

**DAY: TUESDAY**  
**DATE: DECEMBER 6, 2022**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

**RULINGS**

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

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

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

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

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

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

**ERRORS IN RULINGS**

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

1. [21-23601](#)-A-13     **IN RE: POLLEN HEATH**  
[JNV-4](#)

MOTION TO MODIFY PLAN  
10-26-2022    [\[70\]](#)

JASON VOGELPOHL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** LBR 3015-1, 9014(f)(1), opposition filed by trustee

**Disposition:** Continued to January 4, 2023, at 9:00 a.m.

**Order:** Civil minute order if appropriate

The debtor seeks an order modifying the Chapter 13 plan. The hearing on the motion will be continued to allow for the debtor to serve the motion on creditors which have filed requests for special notice.

### **NOTICE**

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

### Motion to Modify Plan

This motion is brought pursuant to Fed. R. Bankr. P. 3015(h) which requires notice to all creditors. Additionally, the court has determined that notice shall be given to parties who have filed a request for special notice as follows.

### 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, objections, and supporting papers.

In this case creditors Pingora Loan Servicing, LLC and PRA Receivables, LLC, filed requests for special notice. See Request for Notice, ECF Nos. 8, 10. Thus, the debtor is bound to serve the motion to modify plan on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion by the objecting creditor does not list Pingora Loan Servicing, LLC and PRA Receivables, LLC, as parties served with the notice as required. See Certificate of Service, ECF No. 77.

The court will continue the hearing on the motion to modify to allow for notice to the special notice parties, and for the debtors to file a reply to the trustee's opposition to the motion.

**CIVIL MINUTE ORDER**

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

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

The debtor's motion to modify plan 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 hearing on the objection is continued to January 4, 2023, at 9:00 a.m. Not later than December 20, 2022, the debtor shall file and serve the motion and an amended notice of hearing on all parties which have filed a request for special notice in this case.

IT IS FURTHER ORDERED that not later than December 20, 2022, the debtor(s) shall file and serve a reply, if any, to the opposition filed by the Chapter 13 trustee. Should the debtor(s) fail to file a reply supported by admissible evidence, the court will rule on the motion without further notice or hearing.

2. [22-21202](#)-A-13     **IN RE: MARIA ZAMORA**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-27-2022    [\[22\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
JPMORGAN CHASE BANK, N.A. VS.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2400 Eilers Lane, No. 1705, Lodi, California

**Post-Petition Delinquency:** \$2,218.12

**Plan Confirmed:** July 6, 2022

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).

J.P. Morgan Chase Bank, N.A. seeks relief from the automatic stay of 11 U.S.C. § 362(a) against the debtor, and relief from the co-debtor stay of 11 U.S.C. § 1301. Payments due to the movant are delinquent in the amount of \$2,218.12. The currently confirmed Chapter 13 Plan

does not provide for payment of the movant's obligation. See Chapter 13 Plan, ECF No. 3.

### **STAY RELIEF**

The debtor has defaulted on a loan from the moving party secured by the property described above, and postpetition payments are past due. In addition, the confirmed plan provides that the failure to include a secured claim in Class 1, 2, 3, or 4 of the plan may be cause to terminate the automatic stay. The plan does not provide for the moving party's secured claim. Cause exists to grant relief from stay under § 362(d)(1).

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

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

In this case, the confirmed plan fails to provide for payment of the movant's claim. As a result, the movant is entitled to relief from the co-debtor stay in this case.

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

### **CIVIL MINUTE ORDER**

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

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

J.P. Morgan Chase Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondents for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2400 Eilers Lane, No. 1705, Lodi, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

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

3. [22-22103](#)-A-13     **IN RE: DIANE/ANDREW GARCIA**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
10-12-2022    [\[17\]](#)

HARRY ROTH/ATTY. FOR DBT.

**Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** Continued from November 1, 2022

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the trustee's objection to confirmation was continued to allow the Chapter 13 trustee to serve the objection on parties which had filed a request for special notice. The trustee has served his objection on those parties, ECF No. 24.

The court ordered the debtors to file a reply to the trustee's objection no later than November 22, 2022, or the "court will rule on the trustee's objection without further notice or hearing." See Order, ECF No. 22.

The debtors have failed to file opposition to the trustee's objection by November 22, 2022.

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).

**FAILURE TO PROVIDE FINANCIAL/BUSINESS DOCUMENTS**

The debtors have failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The debtors failed to provide the trustee with a tax transcript or a copy of their Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A), Fed. R. Bankr. P. 4002(b)(3). The returns must be provided no later than seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

The debtors have also failed to provide a declaration indicating that they were not required to file tax returns for the 2018 and 2019 tax years.

The court will sustain the trustee's objection.

#### **LIQUIDATION**

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

. . .

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

. . .

11 U.S.C. § 1325(a)(4).

The debtors have proposed a plan which calls for 0% payment to unsecured creditors. The trustee calculates that the debtors' nonexempt assets are valued at \$141,206.23. Thus, the plan fails the liquidation test.

#### **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. [20-23811](#)-A-13     **IN RE: DENISE BATTS**  
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-17-2022    [\[93\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
DIANE WEIFENBACH/ATTY. FOR MV.  
U.S. BANK NATIONAL ASSOCIATION VS.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Post-Petition Arrears:**    \$7,132.61

**Subject:** 26 Marilyn Circle, Sacramento, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). No written opposition to the motion was required. In the absence of opposition at the hearing the court considers the record, accepting well-pleaded facts as true and will issue the following ruling. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

U.S. Bank National Association seeks relief from the automatic stay of 11 U.S.C. § 362(a). The motion also seeks relief from the co-debtor stay of 11 U.S.C. § 1301.

### **STAY RELIEF**

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The obligation is provided for in Class 1 of the debtor's confirmed plan. See Chapter 13 Plan, ECF No. 77. The debtor has defaulted on the loan as postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

### **CO-DEBTOR RELIEF**

The motion also seeks relief from the co-debtor stay of 11 U.S.C. § 1301. A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c).

Post-petition payments are delinquent. This is cause under § 362(d)(1) to grant the motion. The court will grant the motion as to the co-debtor.



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

#### **VIOLATION OF LBR 9014-1(c)**

The docket control number given for this matter violates the court's Local Rules, LBR 9014-1(c), regarding proper use of docket control numbers. When using a docket control number, a party must use both letters (usually initials of the attorney for the movant) and a number. The numerical portion of the docket control number must be "the number that is one number higher than the number of motions previously filed by said attorney" in that particular case. LBR 9014-1(c)(3). Thus, a party may not use the same docket control number on separate matters filed in the same case.

The docket control number used in this motion was used in a previous matter by the movant - an objection to confirmation of plan was filed on September 17, 2020, ECF No. 27.

#### **CIVIL MINUTE ORDER**

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

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

U.S. Bank, National Association's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 26 Marilyn Circle, Sacramento, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

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

5. [22-21218](#)-A-13     **IN RE: CYNTHIA DURAN**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-2-2022    [\[27\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
GUILD MORTGAGE COMPANY, LLC VS.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Stay Relief

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Guild Mortgage Company, LLC, seeks relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice as follows.

### **SERVICE AND NOTICE**

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

#### Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

#### Dismissal of Action for Failure to Comply with Local Rules

*Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including,*

without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

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

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 32. Use of the court's form EDC 7-005, as opposed to a typewritten form by the movant, is required. 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:

Guild Mortgage, LLC's Motion for Relief From Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

6. [22-22320](#)-A-13     **IN RE: RUDY/ROBERTA GONZALEZ**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
11-10-2022    [\[22\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

#### **Tentative Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

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

**Disposition:** Overruled and plan confirmed with modifications

**Order:** Civil minute order

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

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

## **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 122 months to fund as proposed. The overextension is caused by increased priority and secured claims filed in the case.

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

## **DEBTOR RESPONSE**

The debtors filed a response to the trustee's objection which is supported by a declaration and Supplemental Schedules I and J. See Declaration, ECF No. 28 and Schedules I and J, ECF No. 29. The debtors have made reductions to optional contributions to 401(k) plans to increase the plan payments and increase monthly disbursement to the Class 1 secured creditor. The supplemental schedules show the debtors' ability to make the increased plan payment.

Absent objection by the Chapter 13 trustee at the hearing, the court will overrule the objection and confirm the plan with the following provisions in the order confirming the plan: (1) the plan payment will be increased to \$5,520.00 beginning December 2022; and (2) the monthly dividend to Rushmore Loan Management Services shall be increased to \$625.00 beginning December 2022.

## **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 overruled. The court confirms the plan. The debtors shall submit an order confirming the plan containing terms consistent with the court's ruling, which has been approved by the Chapter 13 trustee.

7. [22-22222](#)-A-13     **IN RE: RODERICK SINGLETON**  
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
RELIEF FROM CO-DEBTOR STAY  
11-22-2022    [\[27\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
DIANE WEIFENBACH/ATTY. FOR MV.  
U.S. BANK, NATIONAL ASSOCIATION VS.

### **Tentative Ruling**

**Motion:** Stay Relief

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

**Disposition:** Granted

**Order:** Civil minute order

**Post-Petition Arrears:** \$5,934.64 - two payments

**Subject:** 6804 Vilamoura Way, Elk Grove, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). No written opposition to the motion was required. In the absence of opposition at the hearing the court considers the record, accepting well-pleaded facts as true and will issue the following ruling. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

U.S. Bank National Association seeks relief from the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301. The motion also seeks in rem relief under 11 U.S.C. § 362(d)(4).

### **JUDICIAL NOTICE**

A court may take judicial notice of documents "on file in federal and state courts," as they are undisputed matters of public record. See *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

The court takes judicial notice of the documents appearing on the court's docket in the instant case. Fed. R. Evid. 201. The court also takes judicial notice of the documents appearing on the docket in the debtor's prior three Chapter 13 cases filed in the Eastern District.

### **STAY RELIEF**

The debtor is obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above.

The obligation was provided for in Class 1 of the debtor's Chapter 13 Plan. The court previously sustained the Chapter 13 trustee's

objection to confirmation. A plan has not yet been confirmed. See Chapter 13 Plan, ECF No. 11. The debtor has defaulted on the loan as postpetition payments are past due.

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1). The court notes that the Chapter 13 trustee's objection to confirmation was sustained on November 8, 2022, in part because plan payments were delinquent. See, Objection to Confirmation, ECF No. 20. Since the court sustained the trustee's objection the debtor has not filed an amended plan.

#### **CO-DEBTOR RELIEF**

The motion also seeks relief from the co-debtor stay of 11 U.S.C. § 1301. A party in interest may seek relief from the co-debtor stay in chapter 13 and 12 cases. 11 U.S.C. §§ 1301(c), 1201(c).

Post-petition payments are delinquent. This is cause under § 362(d)(1) to grant the motion. The court will grant the motion as to the co-debtor.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

#### **SECTION 362(d)(4)**

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later

than 2 years after the date of the entry of such order." § 362(d) (4) .

#### Application

The movant's claim is secured by the subject real property. See Motion, 2:1-19, ECF No. 27.

The instant case is the debtor's fourth Chapter 13 bankruptcy case filed in the Eastern District during the past 6 years. The cases are as follows:

Case Number	Date Filed	Date Plan Confirmed	Date Dismissed	Dismissed: Plan Delinquency
16-27370	11/05/2016	01/13/2017	09/12/2017	\$5,657.02
17-26972	10/23/2017	06/18/2018	08/28/2019	\$7,790.40
19-26213	10/02/2019	11/21/2019	10/02/2020	\$18,241.28
22-22222	08/31/2022	N/A	N/A	N/A

Each of the previous Chapter 13 cases was dismissed for plan delinquency, and the second and third cases were filed immediately following the dismissal of the previous case.

The instant case was filed 23 months after the previously dismissed case. However, during the interim period the debtor and co-debtor obtained an injunction against the movant in state court.

The movant has filed a claim in the instant case which indicates that the pre-petition arrears total \$157,244.50. See Claim No. 2. The court notes that the plan initially proposed by the debtor, listed mortgage arrears of only \$113,246.00 a difference of over \$43,000. See Chapter 13 Plan, Section 3.07, ECF No. 11.

#### State Court Litigation and Injunction

On September 24, 2021, the debtor and the co-debtor filed a complaint in the Sacramento County Superior Court, Case No. 34-2021-00308494 against Movant's loan servicer, Rushmore Loan Management Services regarding the subject loan. The complaint alleged numerous purported violations of the Homeowner's Bill of Rights; the Rosenthal FDCPA; violations of California's Business and Professions Code and negligence. All allegations and the State Court Litigation were subsequently dismissed in their entirety with prejudice, pursuant to Movant's servicing agent's Motion to Dismiss entered on November 16, 2022. See Motion, 3:5-14, ECF No. 27.

During the pendency of the state court litigation, the debtor and co-debtor requested and obtained an injunction prohibiting Movant from foreclosing on the subject property. The injunction was terminated by Court Order entered August 23, 2022. *Id.*, 3:15-22. See also Exhibits 6 and 7, ECF No. 31.

On August 31, 2022, the instant bankruptcy petition was filed by the debtor.

Between the four Chapter 13 cases and the injunction in the state court proceeding the debtor and the co-debtor have enjoyed protection from foreclosure for a five-year period, while payments were not made for a large portion of the time between the dismissal of the 2019 bankruptcy case and the filing of the instant case. The court notes that the arrears have increased significantly since the 2019 bankruptcy case was filed. The claim filed by the movant in that case shows that arrears totaled \$46,469.02 while the arrears have increased to \$157,244.50 in the instant case. See Claim No. 2, 2019-26213, E.D. Cal. Bankr. (2019).

Absent any evidence by the debtor and/or the co-debtor the court finds that the serial nature of the first three bankruptcy filings and the immediate filing of the instant case upon the dismissal of the state court action to be a scheme intended to delay and hinder the efforts of the movant to foreclose upon the subject property. The significant increase in mortgage arrears over time, the plan delinquency which has prevented payments to the movant in the instant case, and the erroneous listing of the mortgage arrears in the proposed plan in the instant case support this conclusion. The court will grant the motion for in rem relief.

#### **CIVIL MINUTE ORDER**

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

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

U.S. Bank, National Association's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 6804 Vilamoura Way, Elk Grove, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

IT IS FURTHER ORDERED, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the



consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

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

8. [22-22522](#)-A-13     **IN RE: JONATHAN KENYON**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
11-10-2022    [\[17\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Final Ruling**

**Objection:** Trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), 9014-1(f)(2); written opposition filed by the debtor

**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 Chapter 13 trustee has filed an objection to the confirmation of the debtor's plan. The debtor has filed a written response opposing the objection. See Response, ECF 22. The debtor's Response is supported by the Declaration of Nallely Kenyon, and Exhibits 1-3. See Declaration, ECF No. 23, and Exhibits, ECF No. 24.

### **ORAL ARGUMENT**

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

### **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).

The Chapter 13 trustee objects to confirmation of the debtor's plan contending the plan is not feasible under 11 U.S.C. § 1325(a)(6) because the debtor has failed to prove he has listed all obligations, including community obligations, in his bankruptcy schedules. The debtor proposes a 100% repayment to all unsecured creditors under the proposed plan and if debts have been improperly omitted the plan is not feasible. The trustee believes that the debtor has failed to list community obligations owed by the debtor and his non-filing spouse.

The debtor has responded to the trustee's objection and has filed 105 pages of exhibits which the trustee has not had an opportunity to review and/or analyze.

The debtor also suggests that waiting for the claims bar date to pass will resolve the matter. See Response, 5:9-15, ECF No. 22. This is incorrect. If all obligations were not correctly listed in the debtor's bankruptcy schedules and matrix, then unlisted creditors would not have received notice of the bankruptcy filing and would be prevented from participating in the Chapter 13 Plan distributions. Simply waiting for the claims bar date to pass will not resolve the matter of whether the debtor has properly listed all debts to which he was obligated in the schedules and mailing matrix.

The debtor also claims that a significant portion of the debts owed by the debtor's non-filing spouse are attributable to student loans incurred by the spouse prior to the marriage.

#### **INADMISSIBLE EVIDENCE**

The court notes that Exhibit 3 which was filed by the debtor is very difficult to read as filed. The print is faint, and the type is miniscule.

Exhibit 3 is a credit report prepared by Equifax on behalf of Nallely Kenyon, the debtor's spouse. The report is hearsay, Fed. R. Evid. 801-802 and is inadmissible. The declarant, Nallely Kenyon is not the proper party to authenticate the credit report as she lacks the personal knowledge required to do so. As such, the court gives no weight to the credit report or its contents.

Ms. Kenyon's declaration admits that at least some of the credit card debt was incurred during the marriage with the debtor. The declaration lacks specificity in that it does not identify which credit card obligations might be impacted. See Declaration, 1:23-25, ECF No 23. The court finds that the debtor has failed to prove that all obligations are listed and that his plan is feasible.

#### **PROJECTED EXPENSE**

The trustee also objects to confirmation because the debtor's Schedule J includes a deduction of \$500.00 per month for a projected second vehicle payment and insurance. See Schedule J, ECF No. 1. A vehicle payment is already included outside the plan by the debtor's non-filing spouse in the amount of \$316.00. See *Id.* The trustee contends that the debtor has not proven the need for the additional \$500.00 expense, nor has he yet filed a motion to incur in support of this expense. Viewed in context, where the non-filing spouse is already setting aside \$1,000.00 per month for her own debt, without detailing the monthly payments due on her debt, the trustee is justifiably concerned.

The declaration filed by the non-filing spouse states that the household is operating with only one vehicle and that the \$500.00 expense is needed now for the collection of a down payment on a vehicle. However, the declaration lacks specificity, as it does not indicate the amount of a required down payment, or when a motion to incur debt is anticipated. Neither does the declaration provide any detail about the specific need for a second vehicle in the context of the household employment circumstance. See Declaration, 2:22-32, ECF No. 23.

The court finds that the debtor has failed to meet his burden of proof regarding the plan's feasibility. The court sustains 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,

IT IS ORDERED that the trustee's objection to confirmation is sustained. The court denies confirmation of the debtor's plan.

9. [22-22825](#)-A-13     **IN RE: SHALITA BASS**  
[FEC-1](#)

MEMORANDUM/LETTER  
11-17-2022    [\[16\]](#)

**No Ruling**

10. [22-22444](#)-A-13     **IN RE: BRADLEY/ANDREA MCGRATH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-3-2022    [\[26\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.  
11/7/22 FINAL INSTALLMENT PAYMENT \$313

**Final Ruling**

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

11. [22-21346](#)-A-13     **IN RE: ALLAN WEST**  
[DBL-1](#)

MOTION TO MODIFY PLAN  
10-26-2022    [\[23\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

## PLAN FEASIBILITY

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

### Mortgage Classification

The previously confirmed plan misclassified the obligations owed to PHH Mortgage Services and SPS Mortgage. Because of the misclassification post-petition mortgage arrears now exist to PHH Mortgage Services in the amount of \$5,858.05. These arrears have not been factored into the proposed modified plan.

The modified plan proposes to reclassify SPS Mortgage and PHH Mortgage Services as follows. The modified plan proposes to reclassify PHH Mortgage Services regarding 20450 Lakeview Drive to Class 1, with \$17,000.00 in prepetition mortgage arrears. The plan further changes SPS Mortgage from Class 1 to Class 4 regarding 20454 Lakeview Drive.

In addition to the arrears issue identified by the trustee an erroneous disbursement has occurred because of the misclassification of the mortgages. The Chapter 13 trustee has disbursed \$4,686.44 (4 payments) to SPS Mortgage for the months of June through September 2022 under the currently confirmed plan. The debtor's attorney asserts, that the debtor has made five additional direct payments to SPS Mortgage. See Declaration, 3:3-4, ECF No. 26.

The proposed plan does not provide for the post-petition arrears to PHH Mortgage, as indicated by the trustee. Neither does the proposed plan state that payments have been made directly by the debtor to PHH Mortgage. Thus, the creditor has not been notified how its claim is to be fully treated under the proposed modified plan.

A similar problem exists regarding the obligation which the trustee has paid to SPS Mortgage and the reclassification of its claim. The

plan does not account for the payments previously paid by the Chapter 13 trustee to this creditor. Thus, if the court approves the modified plan the trustee would be required to retrieve the payments tendered to this creditor or payments to the creditor would need to be skipped for a period of four months. The modified plan does not address the resolution of the misclassification at all and thus the creditor has not been notified of the treatment now contemplated by the parties.

#### **DEBTOR REPLY**

The debtor has filed a reply, ECF No. 32. The reply proposes to cure all the trustee's concerns in the order granting the modification by skipping payments to SPS Mortgage and increasing payments to the trustee. The resolutions proposed by the debtor should be contained in the additional provisions of the plan such that notice is given to the impacted creditors of the proposed new treatment. A further amended plan is required to correct the deficiencies in the proposed modified plan.

The court will deny the motion. This will allow the debtor and the trustee to discuss appropriate resolution of the mortgage claim misclassifications and for the debtor to file and serve a plan which contains all relevant terms and provides notice of same to each of the impacted mortgage claimants.

#### **CIVIL MINUTE ORDER**

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

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

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

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

12. [22-21558](#)-A-13     **IN RE: MARK/DEBRA KOBOLD**  
[CRG-1](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF  
LINCOLN LAW, LLP FOR CARL R GUSTAFSON, DEBTORS ATTORNEY(S)  
9-23-2022    [\[27\]](#)

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

### **Final Ruling**

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

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

**Disposition:** Approved

**Order:** Civil minute order

**Compensation Approved:**    \$9,991.00

**Prepetition Retainer:**    \$1,645.00

**Pay Through Plan:**    \$8,346.00

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, Lincoln Law, LLP, has applied for an allowance of interim compensation. The application is supported by a declaration of the debtors indicating their support of the compensation requested. The application requests that the court allow compensation in the amount of \$9,991.00. The Chapter 13 trustee has filed a non-opposition to the motion and stated that the plan funding is not impacted with the allowance of the compensation. See Non-Opposition, ECF No. 37.

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.

Lincoln Law, LLP'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 \$9,991.00. The aggregate allowed amount equals \$9,991.00. As of the date of the application, the applicant held a retainer in the amount of \$1,645.00. The amount of \$8,346.00 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.



13. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DBL-1](#)

MOTION TO VALUE SECURED PORTION OF LIEN OF TYLER GARRETT  
10-28-2022    [\[37\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Value Collateral

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 3356 Avington Way, Shasta Lake, California

The debtor requests an order valuing collateral under 11 U.S.C. § 506, to avoid the judgment lien held by creditor Tyler Garrett. The creditor has not yet filed a claim. The Chapter 13 trustee opposes the motion contending that the debtor has selected an improper method of resolving the lien of Tyler Garrett. The court agrees with the trustee.

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### Rule 9013

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. *The motion shall state with particularity the grounds therefor*, and shall set forth the relief or order sought. . . .

Fed. R. Bankr. P. 9013.

The debtor has stated the motion is brought pursuant to 11 U.S.C. § 506. However, the movant has failed to provide any authority for the premise that a judicial lien is the type of lien which can be "stripped" after valuation and completion of the plan.

The obligation owed to Tyler Garrett is secured by a judgment lien. See Exhibits 2 and 3, ECF No. 35. Exhibit 2 is a copy of the debtor's Schedule D which states that the obligation is secured by a judgment lien. Exhibit 3 is a copy of an abstract of judgment held by Tyler Garrett.

The proper means of resolving the secured interest of Tyler Garrett, if applicable, appears to be a motion to avoid lien under 11 U.S.C. § 522(f). However, the court notes that the debtor has claimed no exemption in the subject property. See Schedule C, ECF No. 12.

The court will deny the motion to value without prejudice as the debtor has failed to provide sufficient authority that a motion to value collateral of Tyler Garrett is appropriate in this case.

#### **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)).

#### Special Notice Creditors Not Served With Motion

In addition to providing notice under Rule 7004 to the impacted creditor the debtor is required to provide notice to the creditors which have filed a request for special notice in this case as follows.

#### 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.

In this case creditors AIS Portfolio Services, LP and Aurora Financial Group, Inc., each filed a request for special notice. See *Request for Notice*, ECF Nos. 9, 10. LBR 9014-1(d)(3)(B)(iv) does not limit the notice required (to special notice creditors) to Rule 2002 motions. Thus, the debtor is bound to serve his motion to value on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion does not indicate that the creditors which have filed a request for notice have been served as required. See *Certificate of Service*, ECF No. 41. In addition to the substantive ruling indicated above the motion will be denied for inadequate service.

**CIVIL MINUTE ORDER**

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

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

The debtor's motion to value real property collateral has been presented to the court. For the reasons indicated in the ruling,

IT IS ORDERED that the motion is denied without prejudice.

14. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DBL-2](#)

MOTION TO VALUE SECURED PORTION OF CLAIM OF JOSH MASON  
10-28-2022    [\[42\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Value Collateral

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 3356 Avington Way, Shasta Lake, California

The debtor requests an order valuing collateral under 11 U.S.C. § 506, to avoid the judgment lien held by creditor Josh Mason. The creditor has filed claims, Claim Nos. 14 and 15. The Chapter 13 trustee opposes the motion contending that the debtor has selected an improper method of resolving the lien of Josh Mason. The court agrees with the trustee.

### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### Rule 9013

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. *The motion shall state with particularity the grounds therefor*, and shall set forth the relief or order sought. . . .

Fed. R. Bankr. P. 9013.

The debtor has stated the motion is brought pursuant to 11 U.S.C. § 506. However, the movant has failed to provide any authority for the premise that a judicial lien is the type of lien which can be "stripped" after valuation and completion of the plan.

The obligation owed to Josh Mason is secured by a judgment lien. See Exhibits 2 and 3, ECF No. 45. Exhibit 2 is a copy of the debtor's Schedule D which states that the obligation is secured by a judgment lien. Exhibit 3 is a copy of the Claim No. 14 filed by Josh Mason which includes a copy of an abstract of judgment.

The proper means of resolving the secured interest of Josh Mason, if applicable, appears to be a motion to avoid lien under 11 U.S.C. § 522(f). However, the court notes that the debtor has claimed no exemption in the subject property. See Schedule C, ECF No. 12.

Th court will deny the motion to value without prejudice as the debtor has failed to provide sufficient authority showing that a motion to value collateral of Josh Mason is appropriate in this case.

### **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)).

### Special Notice Creditors Not Served With Motion

In addition to providing notice under Rule 7004 to the impacted creditor the debtor is required to provide notice to the creditors which have filed a request for special notice in this case as follows.

### 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.

In this case creditors AIS Portfolio Services, LP and Aurora Financial Group, Inc., each filed a request for special notice. See *Request for Notice*, ECF Nos. 9, 10. LBR 9014-1(d)(3)(B)(iv) does not limit the notice required (to special notice creditors) to Rule 2002 motions. Thus, the debtor is bound to serve his motion to value on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion does not indicate that the creditors which have filed a request for notice have been served as required. See *Certificate of Service*, ECF No. 46. In addition to the substantive ruling indicated above the motion will be denied for inadequate service.

## CIVIL MINUTE ORDER

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

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

The debtor's motion to value real property collateral has been presented to the court. For the reasons indicated in the ruling,

IT IS ORDERED that the motion is denied without prejudice.

15. [22-20661](#)-A-13      **IN RE: ROBERT BLANKENSHIP**  
[DBL-3](#)

MOTION TO VALUE SECURED PORTION OF CLAIM OF WASHINGTON  
INTERNATIONAL INSURANCE COMPANY  
10-28-2022    [\[32\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### Final Ruling

**Motion:** Value Collateral

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

**Subject:** 3356 Avington Way, Shasta Lake, California

The debtor requests an order valuing collateral under 11 U.S.C. § 506, to avoid the judgment lien held by creditor Washington International Insurance Company. The creditor has filed claims, Claim Nos. 8 and 13. Claim No. 8 was withdrawn by the claimant on October 19, 2022. Subsequently Claim No. 13 was filed. The Chapter 13 trustee opposes the motion contending that the debtor has selected an improper method of resolving the lien of Washington International Insurance Company. The court agrees with the trustee.

### VALUATION OF COLLATERAL

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the

holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

#### Rule 9013

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. *The motion shall state with particularity the grounds therefor*, and shall set forth the relief or order sought. . . .

Fed. R. Bankr. P. 9013.

The debtor has stated the motion is brought pursuant to 11 U.S.C. § 506. However, the movant has failed to provide any authority for the premise that a judicial lien is the type of lien which can be "stripped" after valuation and completion of the plan.

The obligation owed to Washington International Insurance Company is secured by a judgment lien. See Exhibits 2 and 3, ECF No. 35. Exhibit 2 is a copy of the debtor's Schedule D which states that the obligation is secured by a judgment lien. The creditor has filed a claim. See Claim No. 13 which states that the claimant holds an abstract of judgment.

The proper means of resolving the secured interest of Washington International Insurance Company, if applicable, appears to be a motion to avoid lien under 11 U.S.C. § 522(f). However, the court notes that the debtor has claimed no exemption in the subject property. See Schedule C, ECF No. 12.

The court will deny the motion to value without prejudice as the debtor has failed to provide sufficient authority showing that a motion to value collateral of Washington International Insurance Company is appropriate in this case.

#### **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)).

#### Special Notice Creditors Not Served With Motion

In addition to providing notice under Rule 7004 to the impacted creditor the debtor is required to provide notice to the creditors



which have filed a request for special notice in this case as follows.

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.

In this case creditors AIS Portfolio Services, LP and Aurora Financial Group, Inc., each filed a request for special notice. See

*Request for Notice*, ECF Nos. 9, 10. LBR 9014-1(d)(3)(B)(iv) does not limit the notice required (to special notice creditors) to Rule 2002 motions. Thus, the debtor is bound to serve his motion to value on creditors who have filed requests for special notice.

The Certificate of Service filed in support of this motion does not indicate that the creditors which have filed a request for notice have been served as required. See *Certificate of Service*, ECF No. 36. In addition to the substantive ruling indicated above the motion will be denied for inadequate service.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value real property collateral has been presented to the court. For the reasons indicated in the ruling,

IT IS ORDERED that the motion is denied without prejudice.

16. [22-20661](#)-A-13     **IN RE: ROBERT BLANKENSHIP**  
[DBL-4](#)

MOTION TO VALUE SECURED PORTION OF CLAIM OF INTERNAL REVENUE  
SERVICE  
10-28-2022    [\[47\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Value Collateral

**Disposition:** Denied

**Order:** Civil minute order

**Subject:** 3356 Avington Way, Shasta Lake, California

The debtor requests an order valuing collateral under 11 U.S.C. § 506, to avoid the lien held by the Internal Revenue Service (IRS). Both the Chapter 13 trustee and the IRS oppose the motion.

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may strip off a wholly unsecured junior lien encumbering the debtor's principal residence. 11 U.S.C. §§ 506(a), 1322(b)(2); *In re Lam*, 211 B.R. 36, 40-42 (B.A.P. 9th Cir. 1997); *In re Zimmer*, 313 F.3d 1220, 1222-25 (9th Cir. 2002) (holding that the trial court erred in deciding that a wholly unsecured lien was within the scope of the antimodification clause of § 1322(b)(2) of

the Bankruptcy Code). A motion to value the debtor's principal residence should be granted upon a threefold showing by the moving party. First, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. Second, the motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j). Third, the moving party must prove by admissible evidence that the debt secured by liens senior to the respondent's claim exceeds the value of the principal residence. 11 U.S.C. § 506(a); *Lam*, 211 B.R. at 40-42; *Zimmer*, 313 F.3d at 1222-25. "In the absence of contrary evidence, an owner's opinion of property value may be conclusive." *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Both the trustee and the IRS argue that the obligation owed to the IRS is fully secured. Absent evidence to the contrary the court agrees.

The debtor owes the IRS \$60,476.20, which is secured by all the debtor's assets including the subject property. See Claim No. 4. The debtor has claimed the value of the subject property as \$510,000.00. See Schedule A, ECF No. 12. The subject property is encumbered by a deed of trust held by Flagstar Bank in the amount of \$240,242.79. See Claim No. 10.

The debtor's motion acknowledges equity of \$269,262.00. See Motion to Value Collateral, 2:24, ECF No. 47. Thus, the lien of the IRS attaches to the equity acknowledged by the debtor. As such the motion cannot be granted.

Given the equity in the subject property the court is unaware of any other authority which would allow the debtor to "strip" the lien of the IRS under these circumstances and the debtor has provided no such authority for the motion under Fed. R. Bankr. P. 9013.

The motion will be denied.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value real property collateral has been presented to the court. For the reasons indicated in the ruling,

IT IS ORDERED that the motion is denied.

17. [22-20967](#)-A-13     **IN RE: JONATHAN EMMONS**  
[DPC-1](#)

CONTINUED OBJECTION TO DISCHARGE BY DAVID CUSICK  
9-28-2022    [\[30\]](#)

MARK BRIDEN/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Objection to Discharge

**Notice:** Continued from November 8, 2022

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

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). The hearing on this motion was continued to allow the Chapter 13 trustee to serve the motion on the creditor(s) which had filed a request for special notice in this case.

The court ordered as follows:

Not later than November 15, 2022, the Chapter 13 trustee shall file and serve the objection and an amended notice of hearing on the debtor and all parties which have filed a request for special notice in this case.

Order, ECF No. 43.

Nothing has been filed since the last hearing. The court will overrule the motion 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 trustee's Objection to Discharge 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.

18. [22-22974](#)-A-13     **IN RE: GREGORY BUSH**  
[KLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
11-18-2022    [\[9\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Extend Stay

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **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).

The motion and supporting documents were served on November 22, 2022. See Certificate of Service, ECF No. 14. As such, the court presumes that notice under LBR 9014-1(f)(2) was intended.

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

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

. . .

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

The notice filed and served in this matter provides in its entirety as follows:

NOTICE IS HEREBY GIVEN that GREGORY PATRICK BUSH, the debtor herein has filed a motion, a copy of which is being served upon you with this notice, for entry of an order extending and continuing the automatic stay as to all creditors pursuant to 11 U.S.C Section 362(c) (3) (B); and A hearing will be held on December 6, 2022, at 9:00 am before the Honorable Judge Fredrick E. Clement, via tele/videoconference. All interested parties should consult the bankruptcy court's website at [www.canb.uscourts.gov](http://www.canb.uscourts.gov) for information about court operations. The Bankruptcy Court's website provides information regarding how to appear at a court hearing. You may also contact the Bankruptcy Court by calling 1-866-582-6878.

Notice of Hearing, 1:22-28, 2:1-3, ECF No. 10.

The notice given in this matter does not satisfy the requirements of LBR 9014(d) (3) (B) as it fails to state that written opposition is not required in this matter.

LBR 9014-1(d) (3) (B) (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](http://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) (B) (iii).

In addition to advising parties whether opposition is required the notice must also advise potential respondents how to determine if the matter has been resolved, and how to access this information. The notice in this case fails to comply with LBR 9014-1(d) (3) (B) (iii) as it fails to notify potential respondents of the need to review predisposition rulings prior to appearing at the hearing.

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)). 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 debtor's motion to extend the automatic stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

19. [22-21177](#)-A-13     **IN RE: JENELL SINGLETON**  
[MMM-2](#)

MOTION TO MODIFY PLAN  
10-25-2022    [\[32\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Chapter 13 Plan, filed October 25, 2022

### **DEFAULT OF RESPONDENT**

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

The debtor seeks an order modifying her Chapter 13 Plan. The plan is supported by supplemental Schedules I and J, filed October 25, 2022, ECF No. 36. The Chapter 13 trustee has filed a non-opposition to the plan, ECF No. 38.

### **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.

20. [22-22378](#)-A-13      **IN RE: MELINDA AGDIPA**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
11-10-2022    [\[21\]](#)

D. ENSMINGER/ATTY. FOR DBT.

#### **Tentative Ruling**

**Objection:** Trustee’s Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

The Chapter 13 trustee objects to confirmation of the debtor’s plan as follows.

#### **11 U.S.C. § 1322(b)(5)**

The trustee objects to the provisions contained in Section 7.01 of the proposed plan. See Chapter 13 Plan, Section 7.01, ECF No. 12.



The provisions proposed by the debtor in the Additional Provisions of the plan are locally known as the "Ensminger Provisions". This court does not approve these provisions as there is no provision for payment of mortgage arrears within a reasonable time as required by Section 1322(b)(5). Moreover, the proposed provisions place an unreasonable administrative burden upon the Chapter 13 trustee.

In addition to the § 1322(b)(5) concerns the debtor does not appear to be complying with the terms of the proposed plan which was signed and filed on October 4, 2022. The debtor asserts that she "has in process (sic) Application for modification of the loan upon which the Planet Home Lending LLC secured claim (sic)." *Id.*, 7.02.2. Yet Planet Home Lending, LLC, which has also objected to confirmation of the plan, reports that "as of September 21, 2022, a denial letter was sent denying the loan modification application submitted by Debtor." See Objection to Confirmation, 2:20-21, ECF No. 18. Thus, the debtor has signed a plan containing incorrect assertions.

The court will sustain the trustee's objection and deny confirmation of the plan.

#### **CIVIL MINUTE ORDER**

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

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

The 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.

21. [22-22378](#)-A-13     **IN RE: MELINDA AGDIPA**  
[KMB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PLANET HOME LENDING,  
LLC  
11-10-2022    [\[18\]](#)

D. ENSMINGER/ATTY. FOR DBT.  
KELLI BROWN/ATTY. FOR MV.

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

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

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

### **11 U.S.C. § 1322(b)(5)**

Planet Home Lending, LLC objects to the provisions contained in  
Section 7.01 of the proposed plan. See Chapter 13 Plan, Section  
7.01, ECF No. 12.

The provisions proposed by the debtor in the Additional Provisions  
of the plan are locally known as the "Ensminger Provisions". This  
court does not approve these provisions as there is no provision for  
payment of mortgage arrears within a reasonable time as required by  
Section 1322(b)(5). Moreover, the proposed provisions place an  
unreasonable administrative burden upon the Chapter 13 trustee.

In addition to the § 1322(b)(5) concerns the debtor does not appear  
to be complying with the terms of the proposed plan which was signed  
and filed on October 4, 2022. The debtor asserts that she "has in  
process (sic) Application for modification of the loan upon which  
the Planet Home Lending LLC secured claim (sic)." *Id.*, 7.02.2. Yet  
Planet Home Lending, LLC, which has also objected to confirmation of  
the plan, reports that "as of September 21, 2022, a denial letter  
was sent denying the loan modification application submitted by

Debtor." See Objection to Confirmation, 2:20-21, ECF No. 18. Thus, the debtor has signed a plan containing incorrect assertions.

#### **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).

Planet Home Lending, LLC objects to confirmation contending that the proposed plan is not feasible under 11 U.S.C. § 1325(a)(6). The mortgage arrears claimed by the objecting creditor total \$162,804.96. See Claim No. 7. Debtor's Schedules I and J reflect a monthly disposable income in the amount of \$925.55. See Schedules I and J, ECF No. 11. The proposed plan payment is \$925.00 yet no monthly payment has been proposed to cure the arrears.

The court will sustain the creditor's objection and deny confirmation of the plan.

#### **CIVIL MINUTE ORDER**

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

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

Planet Home Lending, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

22. [19-22488](#)-A-13      **IN RE: BRENDA LEMMA**

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE  
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,  
AS TO DEBTOR  
10-25-2022    [\[101\]](#)

NIKKI FARRIS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Substitution of Representative, Continued Administration, Waiver of Personal Financial Management and Waiver of Certifications

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

**Disposition:** Granted

**Order:** Civil minute order

Rita Anderson seeks the following relief: (1) that she be substituted as the representative of the estate; (2) that the estate be allowed continued administration; and (3) for a waiver of the post-petition education requirement and the § 1328 certification for the debtor in this case who is now deceased. Ms. Anderson is the daughter of the deceased debtor, Brenda Lemma.

### **DEFAULT**

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

### **DISCUSSION**

#### Suggestion of Death

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

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

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

Here, a notice of death of the debtor was filed and served on all parties on October 13, 2022. Accompanying the notice was an Exhibit containing a copy of the death certificate. See Notice of Death, Exhibit, ECF Nos. 98, 99.

#### Substitution of Representative

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

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

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

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed as the Rule allows for continued administration of a Chapter 13 case. And that appointment process is implemented by Rule 25(a).

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

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

The request for substitution of Ms. Anderson as the estate representative has been timely made.

#### Continued Administration

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

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered, and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. *If a reorganization, family farmer's debt adjustment, or individual's*

*debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.*

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

The applicant is the deceased debtor's daughter. The Chapter 13 plan has been completed. See Motion, 2:1, ECF No. 101.

#### Waiver of Post-Petition Education Requirement

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

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

Section 109(h) provides:

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

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

Death is a disability within the meaning of § 109(h)(4). The debtor education requirement is waived in this case.

#### **WAIVER OF § 1328 CERTIFICATIONS**

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

compliance with § 1328, including Forms EDC 3-190 and EDC 3-191 required under LBR 5009-1.

#### **CIVIL MINUTE ORDER**

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

Rita Anderson's motion has been presented to the court. Having entered the default of the respondents and having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted; and

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

23. [22-22189](#)-A-13     **IN RE: FLORA BROUGHTON**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
10-12-2022    [[31](#)]

PETER MACALUSO/ATTY. FOR DBT.  
CASE DISMISSED: 11/8/22

#### **Final Ruling**

This case was dismissed on November 8, 2022. This objection is removed from the calendar as moot. No appearances are required.

24. [22-22189](#)-A-13     **IN RE: FLORA BROUGHTON**  
[KMB-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT  
LLC  
10-13-2022    [[35](#)]

PETER MACALUSO/ATTY. FOR DBT.  
KELLI BROWN/ATTY. FOR MV.  
CASE DISMISSED: 11/08/2022

#### **Final Ruling**

This case was dismissed on November 8, 2022. This objection is removed from the calendar as moot. No appearances are required.

25. [17-20993](#)-A-13     **IN RE: EVAN/CELESTE NEISER**  
[MRL-7](#)

MOTION TO INCUR DEBT  
11-21-2022    [\[122\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Approve New Debt

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

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **MOTION TO INCUR DEBT**

The debtors seek to incur new debt to finance the purchase of a vehicle. The debtors have not yet entered into a contract to purchase a vehicle and the terms of the vehicle purchase contract, and the loan offered to finance the purchase are not provided in the motion. Thus, the motion is premature. The debtors have completed the plan payments. Once the debtors have found a vehicle and secured appropriate financing, they may wish to consider the procedure outlined in LBR 3015-1(h)(2) in securing an appropriate order.

Even if the motion was ripe the court would deny it for the following reasons.

### **SERVICE AND NOTICE**

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

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

In this case there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

### Limited Notice Not Appropriate

The Certificate of Service indicates that the motion is subject to limited noticing under Fed. R. Bankr. P. 3015(h) and LBR 3015-1(d)(3). See Certificate of Service, Section 3, ECF No. 125. This assertion is incorrect as this is not a motion to modify a Chapter 13 plan. The limited notice provisions are inapplicable in this motion to incur debt. The mailing matrix affixed to the certificate shows that numerous creditors were omitted from service in this matter. As such service was not complete in this matter.



### Outdated Certificate of Service

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

The Certificate of Service indicates that it is the form in use as of September 2022. At the bottom the form it states as follows: "EDC Form 7-005, New 09/2022". See Certificate of Service, page 1, ECF No. 125.

### Use of Form EDC 7-005 is Mandatory

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

LBR 7005-1 (emphasis added).

### Altered Certificate of Service

The court has previously noted that the form certificate used in this matter is outdated. Form EDC 7-005 was updated in October 2022 to add information to the form including but not limited to the following: (1) the addition of "Fewer than all creditors, check at least one below" in Section 5; (2) the warnings contained in Section 6B2a; and (3) Section 7 in its entirety. Each of these items represents a change from the September 2022 version of EDC Form 7-005 and each newly appear in the current October 2022 version.

The form certificate of service appears to have been altered in this case as it contains each of the provisions identified above by the court. Yet the certificate also indicates that it is the September 2022 version of the form which did not contain any of these provisions. The court concludes that Form EDC 7-005 has been altered which contravenes LBR 7005-1 requiring use of the Official Certificate of Service Form.

### **CIVIL MINUTE ORDER**

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

The debtors' Motion to Incur Debt 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.

26. [22-21996](#)-A-13     **IN RE: GUADALUPE JOHNSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-15-2022    [[36](#)]

DAVID FOYIL/ATTY. FOR DBT.

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.

27. [22-21997](#)-A-13     **IN RE: DENISE VARNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-15-2022    [[24](#)]

GEORGE BURKE/ATTY. FOR DBT.  
11/22/22 FINAL INSTALLMENT PAID \$156.00

**Final Ruling**

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