MONTANA
CHAPTER 12 & 13 CASE UPDATE AND FREQUENTLY REFERENCED CASES

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ELIGIBILITY

Debt limitations

Tico Construction Company v. Powell (In re Powell), 119 F.4th 597 (9th Cir. 2024). Section 301(a) plainly states that a case is commenced by the filing of a petition—not an eligibility determination by the bankruptcy court. Even though § 301(a) also requires that the filing be done "by an entity that may be a debtor" under the designated chapter, the filing entity's certification of eligibility presumptively establishes that the filing entity "may be a debtor" under the designated chapter. But § 301(a) does not preclude the bankruptcy court from relying on a presumption of eligibility established by the debtor's certification to determine that the petition filing has commenced a case. Nor does § 301(a) expressly require that the filing party must "actually" be a debtor or must be a "bona fide" debtor or that the court must verify the debtor's eligibility. When it is determined that a debtor is not eligible for relief under the chapter they designated in their petition, the Code does not require the bankruptcy court to deem the commencement of their case invalid and void all proceedings that occurred up to that point. Instead, the bankruptcy court may consider a motion to convert or dismiss based on the debtor's ineligibility.

Nelson v. Meyer (In re Nelson) 343 B.R. 671 (9th Cir. B.A.P. 2006), on remand, No. 05-10660, 2006 WL 2091899 (Bankr. M.D. Cal. 2006). Because eligibility is determined by petition and "post petition waiver or forgiveness of a debt has no effect on eligibility," Debtor whose scheduled unsecured debts of $324,832 is ineligible. Notwithstanding schedules that reduced unsecured debt by $279,000 after Trustee objected to eligibility).

Slack v. Wilshire Insurance (In re Slack), 187 F.3d 1070 (9th Cir. 1999). Slack appeals from the decision of the district court affirming the bankruptcy court's order dismissing his petition for Chapter 13 bankruptcy. The bankruptcy court granted Wilshire Insurance Company's ("Wilshire") motion to dismiss upon finding that Slack was ineligible for relief under Chapter 13 because the record showed that he had stipulated that the amount of Wilshire's claim against Slack on its state law action was $255,954. Slack seeks reversal on the ground that the amount of Wilshire's claim was unliquidated because his liability for Wilshire's damages had not been finally determined in state court on the date the petition was filed. We affirm because we conclude that a debt can be liquidated even though liability is in dispute.

FILING OF SCHEDULES AND PROCEDURE

In re Ross, 2025 Mont. B.R. 94 (September 2, 2025).While it may be tempting to file a plan that has no chance of being confirmed with the hope that creditors, the Trustee, and the Court might not realize the plan is not confirmable, such a temptation should be resisted because it is a waste of precious time and resources. "The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable." § 1221. "The court shall hold a hearing on confirmation of the plan . . . . . Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan." § 1224. Under these circumstances, Debtor's should consider putting forth their best plan and if its confirmable be prepared to litigate confirmation at the first confirmation hearing. This timeline and other applicable rules demand it.

To date counsel, the Trustee and creditors have been afforded wide latitude to negotiate plan provisions, reach agreements and develop consensual plans without regard to §§ 1221, 1224. This Court is no longer willing to indulge an approach that sharply deviates from the Code. Initial plans should reflect something that is confirmable and debtors' employed professionals should ensure that appropriate interest rates are being utilized, amortizations are correct and their arithmetic can be trusted. Similarly, creditors' professionals should be reasonable and not construe this Order as an opportunity to overreach. Objections to confirmation that have the slightest hint of overreaching will be overruled. Every position a debtor and creditor take when negotiating a chapter 12 plan shall be anchored in the facts and law.
Parties should understand the Court expects the following: (a) the parties will negotiate a plan that enjoys the support of creditors and is confirmable without a contested confirmation hearing; or, (b) a contested hearing on confirmation will be held on October 31, 2025. These are the only outcomes.

In re Stewart, 2026 Mont. B.R. 1 (January 2, 2026). Case no. 26-40001. Fed. R. Bankr. P. 1007(b)(3) requires an individual debtor to file a statement of compliance with the credit counseling requirement pursuant to 11 U.S.C. § 109(h). 11 U.S.C. § 109(h) states an individual may not be a debtor under this title unless the individual has, during the 180-day period ending on the date of filing of the petition by such individual, received approved credit counseling. In short, a debtor must receive approved credit counseling up to 180 days before the filing of his petition else face the dismissal of their bankruptcy case. A debtor may receive a temporary waiver of the credit counseling requirement by filing a certification that (1) describes exigent circumstances that compelled the petition filing; (2) explains debtor requested credit counseling services but was unable to receive the services within seven days of the request; and (3) such certification is satisfactory to the court. 11 U.S.C. § 109(h)(3).

Debtor was required to receive credit counseling prior to the petition date to comply with the requirements of the Bankruptcy Code. Debtor has not described any exigent circumstances. Accordingly, IT IS ORDERED that Debtor's case is dismissed for failure to comply with Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 109(h).

In re Marquis, 2025 Mont. B.R. 139 (November 25, 2025). Debtors filed a "Motion for Extension of Time to File Proposed Chapter 12 Plan". The Motion seeks to extend the time in which Debtors may file their Proposed Chapter 12 Plan. The Chapter 12 Trustee, Russell Country Federal Credit Union, Weschenfelder Feedlot Inc., R & M Cattle Co., and Juniper Loan Servicing Corporation have agreed to the extension. Fed. R. Bankr. P. 9006(b) permits the Court to extend the period of time for an act to be done "for cause."

Furthermore, the Motion's only justification is that "[t]he employment of Debtors' consultant . . . was just recently approved by the Court . . . .[consultant] has been working on the Plan with the Debtors but needs additional time to finalize a Proposed Plan . . . ." This Court notes that the application was filed over two weeks after this Court set the deadlines and was approved the day it was received. Any delay is the result of Debtors' inaction. Debtors have failed to meet their burden to show that cause exists for extension of this deadline. Further, the Court is no longer willing to indulge delay in Chapter 12 cases. If counsel cannot comply with the Court's deadlines there will be consequences, including denial of the relief requested. Although frustrated, the Court will afford counsel another opportunity to meet the Court's expectations,

but its willingness to do so is not infinite.

In re Kempter, 2025 Mont. B.R. 3 (January 15, 2025). The Motion requests to continue the hearing scheduled for tomorrow until February 13, 2025. Under Mont. LBR 3015-2(a), a notice to amend plan must be filed at least three business days before a scheduled hearing and the Debtor must contact the trustee and advise them of the intent to file an amended plan. Additionally, a request to continue a hearing must be filed at least three business days before the hearing and must describe attempts to gain other parties' consent. Mont. LBR 5071-1(a), (b). The Motion is untimely and does not indicate that any efforts have been made to contact the Trustee regarding either the intent to amend the plan or the request to continue. Accordingly, IT IS ORDERED the Motion is denied.

In re Case, 2025 Mont. B.R. 20 (March 13, 2025). The Motion requests that the division be changed from Missoula to Great Falls to lower the costs to the Debtor because Debtor's counsel is in Great Falls. Venue under the bankruptcy code is proper in the place where the debtor was domiciled in the one-hundred-and-eighty-day period prior to filing their petition. 28 U.S.C. § 1408(1). A case may be transferred to another district for the convenience of the parties. 28 U.S.C. § 1412. While a change of division is permitted for district court under 28 U.S.C. § 1404(a), this language is not included in its bankruptcy analogue. Nevertheless, the Court has previously allowed hearings to be held in other divisions for the convenience of the parties without a change in division. 1 Debtor specifically requests that the 11 U.S.C. § 341 meeting be held on the Great Falls schedule. The Court has no issue with this. However, pursuant to Mont. LBR 5001-3, the U.S. Trustee's Office has sole discretion to arrange and schedule § 341 meetings. Therefore, Debtor's counsel should address this matter with the U.S. Trustee. Accordingly, IT IS ORDERED the Motion is denied. IT IS FURTHER ORDERED all parties in this case shall schedule hearings and other matters consistent with the Great Falls division schedule.

In re Szwedkowicz, 2025 Mont. B.R. 14 (February 18, 2025). Cheryl Anderson filed this case for the Debtor. Anderson is Debtor's fiancé. Debtor is unavailable because he is incarcerated. Pursuant to a general power of attorney, Debtor named Anderson his agent and granted her general authority to act for him in various "subjects." However, the power of attorney contains no reference to bankruptcy, or filing bankruptcy.

Under the applicable rules, in limited circumstances a party may file bankruptcy for another by completing and signing their petition and schedules and acting on their behalf in the case. For example, Fed. R. Bankr. P. 1004.1(a) allows a fiduciary to file bankruptcy on behalf of an infant or incompetent person. An authorized agent may act on behalf of a debtor, so long as the agent is4 not practicing law. The Ninth Circuit has not adopted a uniform approach, but courts are split about whether there needs to be a specific grant of power to file bankruptcy, or a broad grant is sufficient. The Bankruptcy Appellate Panel for the Ninth Circuit has favorably cited decisions that adopt a narrow interpretation of a power of attorney, requiring that it specifically grant the authority to file for bankruptcy. *Rodriguez Mendez v. Salven (In re Rodriguez Mendez*), 367 B.R. 119, 120 (B.A.P. 9th Cir. 2007) (citing *In re Curtis*, 262 B.R. 619, 623 (Bankr. Vt. 2001) ("something more than a general power of attorney is necessary to authorize the commencement of a bankruptcy case on behalf of a debtor")). This Court finds the rationale employed by the Curtis Court and the cases therein persuasive. A general grant of authority without some indicia

that filing a bankruptcy is contemplated may be insufficient. Here, the power of attorney is general. Further, the case has suffered from other deficiencies. Although Anderson has seemingly done her best to assist Debtor in difficult times, the challenge of assembling Debtor's complete financial information, developing a plan, and timely filing all the required documents has proven to be too much. This information is necessary for the Chapter 13 Trustee, creditors, and parties in interest to assess this case. Under the best of circumstances, debtors struggle to complete past due tax returns and compile the information necessary to successfully maintain a bankruptcy filing. In this case, Debtor's circumstances represent an obstacle to the maintenance of this chapter 13 case.

In re Blubaugh, 2024 Mont. B.R. 117 (April 15, 2024). Fed. R. Bankr. P. 1007(c) allow the Court to extend time to file schedules, statement of financial affairs, or other required documents. Mont. LBR 1007-1(e) states that any extension will not be granted beyond three days before the date set for the first meeting of creditors pursuant to 11 U.S.C. § 341(a) unless the Court orders otherwise for cause shown. Notably, an extension beyond the three days outlined above will not be granted unless debtor has been granted a continuance of the meeting of creditors pursuant to Mont. LBR 2003-4. Mont. LBR 1007-1(e).
Under Mont. LBR 2003-4, any application seeking the continuance of the meeting of creditors shall be served on the case trustee and U.S. Trustee and not to the Court. Trustee has the authority to grant or deny such application as Trustee deems appropriate. Mont. LBR 2003-4. A written application for a continuance shall conform with Mont. LBF 5 and shall be made at least 14 days before the scheduled meeting. Upon receipt of the application, Trustee files a Notice of Disposition granting or denying the application and serves a copy on debtor if it is a self-represented litigant. If the application is granted, the debtor must notify all creditors and parties in interest of the continuance at least seven days before the original date set for the meeting, conforming with Mont. LBF 6. Proof of service of the mailing of this notice of continuance shall be filed with the Clerk.

In sum, the Court may grant a motion to extend time to file necessary documents up to three days prior to the 11 U.S.C. § 341(a) meeting. If a debtor wishes to continue the 11 U.S.C. § 341(a) meeting to allow additional time to cure remaining deficiencies, he must submit an application 14-days prior to the 11 U.S.C. § 341(a) meeting consistent with the local forms to Trustee, not the Court. The discretion to grant or deny a continuance rests with Trustee. If Trustee approves the application, the debtor must provide notice to all creditors and parties in interest and filed proof of service with the Court, again consistent with local forms. Upon approval by Trustee, the debtor may submit an additional request to extend time to the Court.

VENUE

In re Case, 2025 Mont. B.R. 20 (March 13, 2025). The Motion requests that the division be changed from Missoula to Great Falls to lower the costs to the Debtor because Debtor's counsel is in Great Falls. Venue under the bankruptcy code is proper in the place where the debtor was domiciled in the one-hundred-and-eighty-day period prior to filing their petition. 28 U.S.C. § 1408(1). A case may be transferred to another district for the convenience of the parties. 28 U.S.C. § 1412. While a change of division is permitted for district court under 28 U.S.C. § 1404(a), this language is not included in its bankruptcy analogue. Nevertheless, the Court has previously allowed hearings to be held in other divisions for the convenience of the parties

without a change in division. 1 Debtor specifically requests that the 11 U.S.C. § 341 meeting be held on the Great Falls schedule. The Court has no issue with this. However, pursuant to Mont. LBR 5001-3, the U.S. Trustee's Office has sole discretion to arrange and schedule § 341 meetings. Therefore, Debtor's counsel should address this matter with the U.S. Trustee. Accordingly, IT IS ORDERED the Motion is denied. IT IS FURTHER ORDERED all parties in this case shall schedule hearings and other matters consistent with the Great Falls division schedule.

AUTOMATIC STAY

Amster v. Duplex at Sleepy Hollow (Duplex at Sleepy Hollow, LLC) (9th Cir. B.A.P. 2026). Case no. CC-25-1256-NMG. The Ninth Circuit has noted two factors considered by many courts in determining whether retroactive annulment of the stay is appropriate: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." The Ninth Circuit then clarified that "we have never held these two factors to be dispositive; instead, we have engaged in a case by case analysis. Thus, this court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." Id. (citations omitted). To assist in this balancing of the equities test, this Panel subsequently suggested a handful of additional factors to consider when deciding whether to retroactively annul the stay: 1. Number of [bankruptcy] filings; 2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; 3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; 4. The debtor's overall good faith (totality of circumstances test); 5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem; 6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; 7. The relative ease of restoring parties to the status quo ante; 8. The costs of annulment to debtors and creditors; 9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct; 10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; 11. Whether annulment of the stay will cause irreparable injury to the debtor; and 12. Whether stay relief will promote judicial economy or other efficiencies. The bankruptcy court was "not required to analyze each and every factor articulated in Fjeldsted, but it was required to balance the equities by considering whether the [creditor was] aware of the bankruptcy petition and whether prejudice would result to [the creditor] by not granting retroactive relief."

The language of the Fjeldsted factors shows the appropriate scope of the balancing of interests is somewhere in between these two extremes. The factors speak repeatedly of the "debtor" and "creditor(s)." However, Fjeldsted also includes a consideration of prejudice to "third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser." The language of the Fjeldsted factors shows the appropriate scope of the balancing of interests is somewhere in between these two extremes. The factors speak repeatedly of the "debtor" and "creditor(s)." However, Fjeldsted also includes a consideration of prejudice to "third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser." Sales were concluded. Second, as to Fjeldsted factor no. 4, the bankruptcy court separately found in the Order that the cases were filed in bad faith. Third, as to Fjeldsted factors no. 9 and 10, Enterprise acted promptly after learning of the bankruptcy filings to bring the Motion. Finally, as

to Fjeldsted factors 3 and 11, the bankruptcy court weighed the respective prejudice to Enterprise and other parties. The bankruptcy court concluded that "the equities overwhelmingly favor [retroactive] annulment as to the nine Properties that reverted to Enterprise and lacked third-party bidding." These findings are not illogical, implausible, or without support in inferences that may be drawn from the facts in the record. For the reasons set forth above, we AFFIRM.

In re Williams, 2026 Mont. B.R. 139 (May 18, 2026). The automatic stay protects debtors from any enforcement action by creditors upon the filing of a petition. The Court may impose sanctions in the form of actual damages, including costs and attorneys' fees, and, in appropriate circumstances, punitive damages for any willful violation of the stay.

Section 362(k) seeks to make the debtors whole, as if the violation never happened, to the degree possible. The availability of recovery depends on whether the actions of the creditor were willful or in good faith. A willful violation permits Debtor to recover actual damages (including costs and attorney fees) and punitive damages. A party willfully violates the stay if they knew of the automatic stay and its actions in violation were intentional. Once there has been notice, there does not need to be proof of specific intent to violate the stay, and even good faith is irrelevant. Here there is no dispute that a stay violation occurred and that it was willful because CBB had notice. There is some dispute as to actual damages.

An award of emotional distress damages under § 362(k) requires the petitioner: (1) suffer significant harm; (2) clearly establish the significant harm; and (3) demonstrate 'a causal connection' between the significant harm and the stay violation (as distinct, for instance, from the anxiety and pressured inherent in the bankruptcy process). Based on Debtor's testimony, it is clear that his stress is consistent with the inherent stress and anxiety of the bankruptcy process as opposed to instances where this and other courts have awarded emotional damages. *In re Willis*, 2024 Mont. B.R. 286 (Bankr. D. Mont. 2024) (describing how Debtor began to suffer seizures due to harassment that required increased supervision and decreased earning potential of both Debtors). This Court finds that the Debtor has not met his burden to show any of the elements and, therefore, does not award emotional distress damages. In considering the testimony from the hearing, this Court has found that Debtor suffered $464.14 in actual damages.
An award of punitive damages under § 362(k)(1) requires "a showing of reckless or callous disregard for the law or rights of others." In awarding punitive damages, the Court should consider: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages award and the civil penalties authorized or imposed in comparable cases." In many instances, this Court has imposed punitive sanctions for collection efforts that fall significantly short of levying a bank account. See *Willis; In re St. Clair*, 2018 Mont. B.R. 369 (Bankr. D. Mont. 2018). Additionally, the First Show Cause Order was clear that a failure to turnover the full amount would result in CBB being held in contempt. CBB was served electronic notice of the First Show Cause Order on May 1, 2026, and failed to comply.

Accordingly, this Court finds that the imposition of a small punitive award may serve as sufficient deterrence for future conduct. As the Ninth Circuit Court of Appeals and BAP have noted, punitive damages should "bear a relationship to the amount of compensatory damages awarded and may take the form of a multiplier of the compensatory damages award. Ere, the record reflects that CBB has unfrozen the original $314.14 of funds and is working with Debtor

to send him a check for $575, which would result in a total award of $889.14 - $425 more than his actual damages. This award is very close to a two-to-one ratio and, given CBB's candor at the hearing and efforts to comply, this Court finds that such an award is sufficient.

In re Stiffarm, 2023 Mont. B.R. 163 (September, 22, 2023). 11 U.S.C. § 362(c)(3)(A) provides that the automatic stay terminates thirty days after a debtor's bankruptcy filing where the debtor has filed a previous bankruptcy case that was dismissed within one year of their second filing. However, 11 U.S.C. § 362(c)(3)(B) permits the debtor or any other interested party to extend the automatic stay beyond this 30-day period, provided that the case was filed "in good faith as to the creditors to be stayed." Upon review of the Motion and absent any opposition after notice, IT IS ORDERED that Debtor's Motion is granted. Pursuant to 11 U.S.C. § 362(c)(3)(B), the automatic stay is extended as to all creditors until such stay is terminated under 11 U.S.C. §§ 362(c)(l) or (2) or a motion for relief from the automatic stay is granted under 11 U.S.C. § 362(d).

In re Hayes, Case No. 26-20242. The prior case was dismissed on October 7, 2025, after numerous objections to the Plan and a Motion to Withdraw filed by Debtor's counsel which explained that "[i]t is apparent and unfortunate, that the above referenced Debtors do not wish to move forward with their Chapter 13 Bankruptcy. The Debtors, instead of dodging their responsibilities under the Chapter 13 Bankruptcy, should have communicated with their Attorney and requested that their Chapter 13 Bankruptcy dismissed." This same counsel represents Debtor in this bankruptcy case.

Under 11 U.S.C. § 362(c)(3), the duration of the automatic stay in a case filed by a debtor who has had a prior case dismissed within the year is limited. "If a single or joint case is filed by or against an individual debtor under chapter 7, 11 or 13, and the debtor has had a prior single or joint case that was pending within the preceding one-year period and was dismissed, the automatic stay provided under section 362(a) with respect to any action taken in relation to a debt or property securing such debt, or to any lease, expires with respect to the debtor on the 30th day after the filing of the later case." As such, parties seeking to extend the stay should file a motion with the petition or immediately thereafter to allow time for the Court to conclude any hearing prior to the expiration of the 30- day window.

This did not happen. Counsel for Debtor has created a procedural emergency of his own making by waiting until shortly before the expiration of the automatic stay under 11 U.S.C. § 362(c)(3) to request its extension. So as to not penalize Debtor, the Court will extend the automatic stay, subject to final hearing.

JOINT ADMINISTRATION/CONSOLIDATION

In re Sande, 2026 Mont. B.R. 46 (March 20, 2026). Unlike substantive consolidation, joint administration serves exclusively procedural purposes. Pursuant to Fed R. Bankr. P. 1015, joint administration is authorized when two or more cases are pending against a debtor and an affiliate. In *Sande II*, the debtors explained, the LLC is owned equally by Derek and Gary Sande, making the LLC an affiliate of debtor Gary Sande for purposes of joint administration. When two cases involving a debtor and an affiliate are pending, joint administration is to "aid in expediting the cases and rendering the process less costly."

Examples of administrative efficiency, include use of a single docket, listing of filed claims in a single docket, combining notice to creditors of each of the estates, and joint handling of administrative matters that impact all the parties in interest in interrelated cases. Courts have also explained joint administration limitations. "Joint administration does not cause a substantive consolidation of the [d]ebtors' estates. Rather, joint administration is merely a 'procedural tool' that 'does not create substantive rights.' Stated another way, "[a]n order of joint administration does not give the creditors of one entity a claim in the other, nor does it imply that they should be treated as such.'"

At the hearing, the outstanding issue underlying the Objection includes calculation of the amount of Bauste's claim for purposes of the plan in *Sande II.* Bauste testified regarding his calculation of the amount of the claim, while J.T. Korkow testified regarding his calculation of the claim amount for debtors. The different methodologies employed by Bauste and Korkow are attributable to different interpretations of various plans and stipulations in *Sande I* and *Sande II.* Often in bankruptcy, parties agree to liquidate and sell property, and set aside disputes over precise calculations, recognizing liens may attach to the sales proceeds and competing arguments or allocation of the sales proceeds will be preserved for a later date. To afford the parties an opportunity to consider such an approach, a status conference shall be held.

PROPERTY OF THE ESTATE

In re Eslick, 2025 Mont. B.R. 32 (April 11, 2025). Despite the lack of objections, the Court questioned whether the vesting of property provision could be modified. Under the confirmed Plan, property revested in Debtors at confirmation. The Modified Plan states property will revest in Debtors at the close of the case. In their initial confirmed Plan Debtors intended keeping the home. In the modification the home will be sold.

This Court previously cited *Berkley v. Burchard (In re Berkley*) for the proposition that the estate termination approach is operative in this circuit. See *In re Berkley*, 613 B.R. 547, 552 (BAP 9th Cir. 2020). However, in a later decision, the Bankruptcy Appellate Panel for the Ninth Circuit suggested that an "estate transformation" approach is more appropriate. *Rushmore Loan Mgmt. Servs., LLC v. Moon (In re Moon)*, 2021 WL 62629, at *6 n.10 (BAP 9th Jan. 7, 2021).

This Court concludes that approval of the modification is warranted. Importantly, a plan may be funded from either estate property or non-estate property, or a mixture thereof. Finally, the proposed modification would fall under the recognized modification to reduce the time for payments under the plan because the sale of the Debtors' real property and the funding of the plan with the proceeds would result in paying the claim in an expedited manner. The conflicting statements from the Bankruptcy Appellate Panel of the Ninth Circuit, specifically, *In re Berkley* and *In re Moon*, prompts this Court to make a case-by-case decision as to modifications and the impact of revesting of property. Here, the sale of real property is the cornerstone of Debtors' modified plan, and its sale will achieve the same results contemplated in the confirmed plan within a shorter period of time. The Bankruptcy Code recognizes plan funding may be dependent on multiple sources and allows for both estate and non-estate property to fund a plan. Under these circumstances, the proposed modification is subject to approval. Upon review of the Modified Plan and the Trustee's memorandum, and in consideration of the parties' comments, the Court finds that the Modified Plan meets the requirements of 11 U.S.C. § 1329.

In re Oehlke, 2024 Mont. B.R. 107 (April 9, 2024). Case No. 23-40002. The Motion represents that it is being filed because Debtors' confirmed Chapter 12 Plan specifically states that "no sale of such property shall be completed without notice to the Trustee and any lienholders and an opportunity provided for a hearing on such sale with the safeguards afforded lienholders under 11 U.S.C. § 363." Despite the absence of opposition, approval of a sale of property pursuant to 11 U.S.C. § 363(b) or (f), where the property revested in the debtor at confirmation is suspect at best. Upon confirmation of a chapter 12 plan, property revests in the debtor. In this case, the Plan explicitly states, "upon confirmation of this plan all of the property of the estate shall vest in the Debtors free and clear of any claim or interest of any creditor provided for by this plan, pursuant to 11 U.S.C. § 1227." As a result, there is no longer property of the estate. The plain language of 11 U.S.C. § 363(f) contemplates, "sale of property under subsection (b) or ©." Subsection (f) modifies subsections (b) and (c). The references to subsection (b) of § 363 highlight the property subject to sale under § 363 is "property of the estate."

In Chapter 12 cases, the plan may provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property. A joint reading of 11 U.S.C. §§ 1222(b)(8) and 1227 permits debtors to identify estate property to be sold in their plan, describe a sales process, and upon confirmation and revesting of the property in the debtor, the manner of disposition of that property is binding on debtor.3 Alternatively, a plan that contemplates the sale of property may explicitly provide that the property to be sold will not revest in the debtor at confirmation, but instead will revest at some later time, or not all if it is sold.

The Plan and the immediate Motion in this case highlight the importance of considering the following when drafting a plan of reorganization: (1) when will property be sold, before or after confirmation; (2) if property will be sold after confirmation, what are the applicable statutory provisions that permit sale of property pursuant to a plan and is there a basis for a free and clear sale post confirmation; (3) should the property that is subject to sale remain property of the estate, rather than revesting in debtor at confirmation; and (4) carefully drafting plans of reorganization that involve the sale of property. This list is not exclusive, but instead intended to illustrate a few considerations.

The sale is a post-confirmation sale of real property contemplated by the Plan, approved by the Court's confirmation Order, and to the extent it results in treatment of a secured claim different than the treatment contemplated by the Plan, the affected creditors, Debtor and Chapter 12 Trustee have agreed and consented to that treatment. 2. Having approved the Stipulation, and having previously through the confirmation order approved the sale of the Property, there is nothing before the Court that requires its consideration or approval and the Motion is denied as moot.

In re Harrington, 2021 Mont. B.R. 440 (October 8, 2021). The reference to 11 U.S.C. § 363(b)(2) is gives the Court pause for two reasons. First, subsection (b)(2) of 11 U.S.C. § 363 is applicable only to transactions that fall under section 7A of the Clayton Act. The Buy/Sell Agreement attached to the Motion does not appear to contemplate such a sale. Instead, the Motion appears to request relief under 11 U.S.C. § 363(b)(1), which authorizes a trustee or Debtor in Possession to use, sell, or lease property of the estate other than in the ordinary course of business. This leads the Court to its second, more fundamental question—the extent to which

11 U.S.C. § 363 is applicable to this sale at all.

11 U.S.C. § 1327(b) provides that "[e]xcept as otherwise provided in the plan or order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." Debtors' confirmed Chapter 13 Plan provides that all property of the estate revested with Debtors at confirmation. Furthermore, nothing in the Plan suggests that it is a liquidating plan that keeps certain property within the estate pursuant to its terms. In light of these facts, the Court questions whether court approval of this sale is required when the terms of the confirmed Plan indicate that the bankruptcy estate was terminated at the time of confirmation. The Court recognizes that its approving Debtors' Application to Employ Jennifer Jones and United Country Real Estate as a real estate broker did require Debtors to submit any accepted buy-sell agreement to the Court for approval. Accordingly, to the extend a ruling on the Motion is necessary, the Motion is granted, and the proposed sale is approved.

PROJECTED DISPOSABLE INCOME - POST BAPCPA

Saldana v. Bronitsky (In re Saldana), 122 F.4th 333 (9th Cir. 2024). Rejecting *Parks v. Drummond (In re Parks),* 475 B.R. 703 (B.A.P. 9th Cir. 2012) and *In re Prigge,* 441 B.R. 667 (Bankr. D. Mont. 2010). The statutory text of the Code unambiguously excludes voluntary contributions from a debtor's disposable income in a Chapter 13 case. The hanging paragraph reads: "except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2)." § 541(b)(7). The words are plain enough. Congress declared that the referenced funds "shall not constitute disposable income as defined in section 1325(b)(2)." Thus, pursuant to the plain language of the hanging paragraph, debtors can exclude any amount of their voluntary retirement contributions to employer managed plans from their disposable income calculation under Chapter 13. The hanging paragraph language that Congress inserted in the BAPCPA is consistent with Congress's intent to encourage individual debtors to reorganize under Chapter 13 and make consistent payments to creditors, rather than file a Chapter 7 liquidation.

The Trustee urges that we adopt the rule that disposable income under Chapter 13 includes all voluntary retirement contributions. Limiting the hanging paragraph to protect only those funds an employee contributed prepetition "makes no sense, because any funds in the hands of the employer as of the [C]hapter 13 petition date would never be considered to be disposable income, which only includes income received by the debtor after the petition is filed." We conclude, consistent with the majority of bankruptcy courts, that voluntary contributions to employer managed retirement plans do not constitute disposable income in a Chapter 13 bankruptcy.

Ransom v. MBNA, Am. Bank, N.A. (In re Ransom), 577 F.3d 1026, 1029-32 (9th Cir. 2009). Chapter 13 debtor with CMI greater than applicable median family income is not entitled to Local Standards Ownership Costs expense for a car owned free of debt. "[T]wo of our sister circuits have joined the camp allowing the deduction, which puts us in the uncomfortable position of disagreeing with them. *See Tate v. Bolen (In re Tate),* 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148 (7th Cir. 2008)....[W]e decide this issue not on the IRS's manual, but instead on the 'statutory language, plainly read,'...which we believe does not allow a debtor to deduct an 'ownership cost' (as distinct from an 'operating

cost') that the debtor does not have. An 'ownership cost' is not an 'expense' - either actual or applicable - if it does not exist, period. Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor...The 'correct' anser to the question before us, which the courts have been struggling with for years - at the unnecessary cost of thousands of hours of valuable judicial time - depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. We would hope, in this regard, that we the judiciary would be relieved of the Sisyphean adventure by legislation clearly answering a straightforward policy question: shall an above-median income debtor in a chapter 13 be allowed to shelter from unsecured creditors a standardized vehicle ownership cost for a vehicle owned free and clear, or not? Because resolution of this issue rests with Congress, we have taken the unusual step of directing the Clerk of the Court to forward a copy of this opinion to the Senate and House Judiciary Committees."), *aff'g* , 380 B.R. 799 (B.A.P. 9th Cir. 2007) (Chapter 13 debtor with CMI greater than applicable median family income is not entitled to automobile ownership expense deduction if car is owned free of lien or lease. "Congress has deemed the expense of owning a car to be a basic expense that debtors can deduct in calculating what they can afford to pay to their creditors. However, in making that calculation, what is important is the payments that debtors actually make, not how many cars they own, because the payments that debtors make are what actually affect their ability to make payments to their creditors...When the debtor has no monthly ownership expenses, it makes no sense to deduct an ownership expense to shield it from creditors...Given the ordinary sense of the term 'applicable,' how is the vehicle ownership expense allowance capable of being applied to the debtor if he does not make any lease or loan payments on the vehicle?...[A] debtor has no right to deduct a vehicle ownership expense when he or she makes no lease or loan payments on the vehicle."), *certified for further appeal*, 380 B.R. 809 (B.A.P. 9th Cir. 2007).

In re Tranmer, 355 B.R. 234 (Bankr. D. Mont. Nov. 16, 2006). Debtors with CMI greater than applicable median family income are limited to transportation expenses specified by IRS notwithstanding actual transportation expenses exceeding that allowance. IRS Local Standards allowance for transportation was $420 per month; debtors proved actual transportation expenses in excess of $600 per month. "The IRS Financial Analysis Handbook in discussing Local Standards provides in § 5.15.1.7, ¶ 4 that '[t]axpayers will be allowed the local standard or the amount actually paid, *whichever is less*.' (emphasis added). In contrast, '[t]he plain language of section 707(b)(2)(A)(ii)(I) provides that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amount specified under the Local Standards.'". . . .Other provisions of § 707(b)(2)(A)(ii) specify allowed additional expenses such as an additional allowance for food and clothing, and the absence of any additional allowance for transportation expenses such as the Debtors' suggests that their transportation expenses to be allowed in § 707(b)(2)(A)(ii), it would have drafted the subsection to include them in its detailed list of additional expenses." Debtors failed to demonstrate "special circumstances" to justify a departure from the Local Standards for Transportation.

In re George, 2007 Mont. B.R. 63 (February 7, 2007). Trustee raised an objection because line 58 of Form B22C reflected that the Debtors have disposable income of $111.71 per month. The plan was insufficiently funded to commit this amount to the class of general unsecured creditors to the applicable commitment period. The plan payment was $286.00 per month for a period of 60 months. The Debtor's plan provided the secured claims totaling $11,399.49 would be paid .

Total administrative expense is $1,550. Thus, the balance available with general unsecured creditors equal $405.60. The Debtor's must have the amount specified on line 50 to the Trustee's fee to be the monthly disposable income under line 58 on calculating the plan payment of the Debtor's Chapter 13 plan. Debtors are required to fund their plan during the applicable commitment period with sufficient funds to pay the nonpriority unsecured creditors aggregated amount computed by multiplying 60 by the disposable income appearing on line 58 of Form B22C.

Drummond v. Wiegand, 386 B.R. 238 (9th Cir. B.A.P. 2008). The Trustee objected to confirmation on the grounds the Debtors' deducted ordinary and necessary business expenses from their gross income in calculating their applicable commitment period and disposable income. Debtors may not exclude ordinary and necessary business expenses on line 3b of Form 22C in determining their current monthly income. They must instead list gross receipts as income and deduct business expenses from the expenses part of the form to determine "disposable" monthly income. NOTE: Requiring self-employed people to list their gross, rather than net income in the first part of the form pushes many of them to be above the median income for their state.

CLAIMS NOT PROTECTED FROM MODIFICATION

In re Wormington, 2023 Mont. B.R. 212 (November 1, 2023). Case No. 23-90052. Creditor's claim totals $44,966.18 and is secured by a 2017 Cadillac Escalade. Debtors do not dispute that Creditor is entitled to its claim. Instead, Debtors argue that Creditor's valuation of the collateral is incorrect. While Creditor states the value of the Collateral is $38,200.00, Debtors suggest that this valuation should be significantly lower and argue that the collateral's value is instead $25,173.00. Fed. R. Bankr. P. 3012 governs valuation procedure under 11 U.S.C. § 506(a). Prior to 2017, Fed. R. Bankr. P. 3012 provided only for a motion. The amendments in 2017 clarified that a request for valuation may additionally be made in the claims objection process or in the plan. Rule 3012(a) allows a party in interest, after notice to the holder of the claim, to request a hearing to determine the amount of the claim. Rule 3012(b) denotes three methods in which this valuation proceeding may be set: by motion; in a claim objection; or in a plan filed in a chapter 12 or chapter 13 case. However, "[w]hen the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004." To accomplish service under Fed. R. Bankr. P. 7004(h), service may be made within the United States via first class mail to an insured depository institution's3 attorney if that attorney has appeared within the case. Absent the appearance of counsel, service must be addressed to an officer of the institution. Debtors have embraced all three approaches to valuation contemplated under Fed. R. Bankr. 3012(b) by filing the Motion, Objection, and serving their Second Amended Chapter 13 Plan4 on Creditor's counsel pursuant to Fed. R. Bankr. P. 7004(h). Debtors' current approach will result in duplicative effort by the parties and this Court. Accordingly, to efficiently resolve the matter, IT IS ORDERED that the valuation dispute will be resolved via Debtors' Motion at ECF No. 79. Creditor shall file any objection to the Motion on or before November 11, 2023.

Mission Hen, LLC v. Lee, Ninth Circuit Court of Appeals, Case No. 23-4220. When Debtors filed for bankruptcy under Chapter 13, § 109(e) provided, "Only . . . an individual . . . that owe[s], on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that

aggregate less than $419,275 . . . may be a debtor under chapter 13 of this title." (dollar amount adjusted in 2022). The unsecured portion of under-secured debt that has been bifurcated pursuant to 11 U.S.C. § 506(a) "is counted as unsecured for § 109(e) eligibility purposes." We hold that the bankruptcy court reasonably relied on its own valuation in determining eligibility for Chapter 13. In Scovis, we held that "eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." Where, as here, Debtors requested a hearing on valuation when they filed their initial petition and the bankruptcy court thereafter valued the Property as of the initial filing date, it makes sense to use the court's valuation as the basis for an eligibility determination under § 109(e).
Section 1322(b)(2) provides that a Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." In *Nobelman v. American Savings Bank*, 508 U.S. 324, 332 (1993), the Supreme Court held that this provision prevented claims secured by a debtor's principal residence from being bifurcated pursuant to § 506(a). Because Mission Hen's claim is secured only by the Property, Debtors' principal residence, it would have been subject to § 1322(b)(2)'s anti-modification provision. However, a year after the Court's decision in Nobelman, Congress amended this section by adding § 1322(c)(2). This subsection created an exception to § 1322(b)(2) for short-term claims that mature during the term of a Chapter 13 plan. Mission Hen's claim is scheduled to mature on January 15, 2027, just before the final payment under the Plan. It thus falls into the time period for the exception to § 1322(b)(2) carved out by this subsection.

The question before us is whether the phrase "payment of the claim as modified" in § 1322(c)(2) refers to modifications only of the terms of the "payment," or of the entire "claim" itself. This is an issue of first impression for this court. If § 1322(c)(2) modifies only the terms of the "payment," a claim falling under the § 1322(c)(2) exception could have its payment schedule modified, but the claim could not be bifurcated and stripped down to its secured portion. On the other hand, if § 1332(c)(2) modifies the terms of the "claim," it constitutes a complete exception to § 1322(b)(2)'s anti-modification provision, including the prohibition against cramdowns described in Nobelman.

First, the prefatory clause in § 1322(c)(2), "[n]otwithstanding subsection (b)(2)," indicates that the provision is an exception to § 1322(b)(2). That subsection concerns the "modif[ication] [of] the rights of holder of secured claims" and is not limited to "payments." "Because Section 1322(c)(2) is an express exception to a statute dealing with the full panoply of contractual rights tied to a claim—not just the rights pertaining to payment—Section 1322(c)(2) is reasonably construed as dealing with the modification of claims in their entirety, not just the modification of payments."

Second, § 1322(c)(2) specifies that "the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title." Section 1325(a)(5) governs a Chapter 13 "plan's proposed treatment of secured claims," including proposals to cram down a partially secured claim to "the present value of the collateral." This subsection is thus "the source of a Chapter 13 debtor's authority to bifurcate secured claims and to 'strip down' the value of the claim to an amount equal to the value of the collateral." The reference to § 1325(a)(5) makes clear that § 1322(c)(2) was intended to allow debtors to bifurcate and cram down such claims that are to be paid off before the final payment of the plan is due.

Lam v. Investors Thrift, 211 B.R. 36, 40-41 (9th Cir. B.A.P. 1997). Wholly unsecured mortgage is not protected from modification by § 1322 (b)(2) or Nobelman. The state law rights afforded a holder of an unsecured lien, if such a situation exists, indicated these rights are empty rights from a practical, if not a legal, standpoint. . . . The policies behind section 1322 (b)(2) lend further support to this view . . . Extending section 1322 (b)(2)s protection to secured Creditors holding completely unsecured claims might induce more Debtors who would qualify for Chapter 13 relief to file Chapter 11 cases . . . A point of certain is that . . . outcomes of cases will turn on appraisers estimates of property values . . . A one dollar difference in property value could have a profound effect on a secured Creditors rights . . . We believe this concern to be unfounded.

In re Stratton, 18 Mont. B.R. 293 (January 11, 2000). Donna Stratton filed Chapter 13 listing a mobile home and claiming a homestead exemption. Greenpoint financed the mobile home for $55,059.00. Stratton moved for valuation of Greenpoint's security alleging the value at the amount of $37,712.00. Greenpoint argued its secured claim could not be modified as a matter of law under the anti modification provision of Section 1323(b)(2). Greenpoint's claim is not secured by a security interest in real property that is the Debtor's principal residence as required for anti-modification protection. It's secured interest in personal property under the UCC is not among the home lending mortgagee rights protected against modification.

VALUATION OF COLLATERAL

In re Wormington, 2023 Mont. B.R. 212 (November 1, 2023). Case No. 23-90052. Creditor's claim totals $44,966.18 and is secured by a 2017 Cadillac Escalade. Debtors do not dispute that Creditor is entitled to its claim. Instead, Debtors argue that Creditor's valuation of the collateral is incorrect. While Creditor states the value of the Collateral is $38,200.00, Debtors suggest that this valuation should be significantly lower and argue that the collateral's value is instead $25,173.00. Fed. R. Bankr. P. 3012 governs valuation procedure under 11 U.S.C. § 506(a). Prior to 2017, Fed. R. Bankr. P. 3012 provided only for a motion. The amendments in 2017 clarified that a request for valuation may additionally be made in the claims objection process or in the plan. Rule 3012(a) allows a party in interest, after notice to the holder of the claim, to request a hearing to determine the amount of the claim. Rule 3012(b) denotes three methods in which this valuation proceeding may be set: by motion; in a claim objection; or in a plan filed in a chapter 12 or chapter 13 case. However, "[w]hen the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004." To accomplish service under Fed. R. Bankr. P. 7004(h), service may be made within the United States via first class mail to an insured depository institution's3 attorney if that attorney has appeared within the case. Absent the appearance of counsel, service must be addressed to an officer of the institution. Debtors have embraced all three approaches to valuation contemplated under Fed. R. Bankr. 3012(b) by filing the Motion, Objection, and serving their Second Amended Chapter 13 Plan4 on Creditor's counsel pursuant to Fed. R. Bankr. P. 7004(h). Debtors' current approach will result in duplicative effort by the parties and this Court. Accordingly, to efficiently resolve the matter, IT IS ORDERED that the valuation dispute will be resolved via Debtors' Motion at ECF No. 79. Creditor shall file any objection to the Motion on or before November 11, 2023.

In re Heierbacher, 2021 Mont. B.R. 336 (September 2, 2021). Notwithstanding the absence of objections, a proceeding to determine the amount of a secured claim under Fed. R. Bankr. P.

3012 commences a contested matter. Motions commencing a contested matter shall be served in the manner provided for service of a summons and complaint by Fed. R. Bankr. P. 7004. If the recipient of a motion is an insured depository institution, service shall be made by certified mail upon an officer of the institution, unless certain exceptions apply. Fed. R. Bankr. P. 7004(h). To determine whether an institution is an insured depository for purposes of Fed. R. Bankr. P. 7004, one may utilize the "BankFind Suite" on the FDIC website: https://banks.data.fdic.gov/bankfind-suite/bankfind . The exceptions do not appear to be applicable here. The Certificate of Service shows the Motion was transmitted by first class mail to Katherine Sabol at P.O. Box 89424, Cleveland OH 44101 – 8539. The Court cannot discern from the record before it whether service on the Creditor was proper, (certified mail to an officer) and absent indicia of appropriate service the Court is reluctant to grant the relief requested simply because there was no objection. To afford Debtor an opportunity to address the Court's concerns, the matter will be set for hearing. If prior to the hearing, Debtor determines that service was not proper, re-serves the Motion and a copy of this Order in compliance with Fed. R. Bankr. P. 7004(h) on the Creditor, and files a new certificate of service, the Court may vacate the hearing and grant the relief requested if Creditor fails to respond or object to the Motion within the new notice period.

INTEREST RATE

Till v. SCS Credit Corp, 124 S.Ct. 1951, 1961 (2004). The approach begins by looking to the national prime rate, reported daily in the press, which reflects the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate for the opportunity costs of the loan, the risk of inflation, and the relatively slight risk of default. Because bankrupt debtors typically pose a greater risk of nonpayment than solvent commercial borrowers, the approach then requires a bankruptcy court to adjust the prime rate accordingly. The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan. The court must therefore hold a hearing at which the debtor and any creditors may present evidence about the appropriate risk adjustment. Some of this evidence will be included in the debtor's bankruptcy filings, however, so the debtor and creditors may not incur significant additional expense. Moreover, starting from a concededly *low* estimate and adjusting *upward* places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing (such as evidence about the "liquidity of the collateral market," . . . .

. . .

We do not decide the proper scale for the risk adjustment, as the issue is not before us. The Bankruptcy Court in this case approved a risk adjustment of 1.5%, and other courts have generally approved adjustments of 1% to 3%.

CURING DEFAULT
Including curing default and maintaining payments on long term-debt.

Mission Hen, LLC v. Lee, Ninth Circuit Court of Appeals, Case No. 23-4220. When Debtors filed for bankruptcy under Chapter 13, § 109(e) provided, "Only . . . an individual . . . that owe[s], on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $419,275 . . . may be a debtor under chapter 13 of this title." (dollar amount

adjusted in 2022). The unsecured portion of under-secured debt that has been bifurcated pursuant to 11 U.S.C. § 506(a) "is counted as unsecured for § 109(e) eligibility purposes." We hold that the bankruptcy court reasonably relied on its own valuation in determining eligibility for Chapter 13. In *Scovis*, we held that "eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." Where, as here, Debtors requested a hearing on valuation when they filed their initial petition and the bankruptcy court thereafter valued the Property as of the initial filing date, it makes sense to use the court's valuation as the basis for an eligibility determination under § 109(e).

Section 1322(b)(2) provides that a Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." In *Nobelman v. American Savings Bank*, 508 U.S. 324, 332 (1993), the Supreme Court held that this provision prevented claims secured by a debtor's principal residence from being bifurcated pursuant to § 506(a). Because Mission Hen's claim is secured only by the Property, Debtors' principal residence, it would have been subject to § 1322(b)(2)'s anti-modification provision. However, a year after the Court's decision in Nobelman, Congress amended this section by adding § 1322(c)(2). This subsection created an exception to § 1322(b)(2) for short-term claims that mature during the term of a Chapter 13 plan. Mission Hen's claim is scheduled to mature on January 15, 2027, just before the final payment under the Plan. It thus falls into the time period for the exception to § 1322(b)(2) carved out by this subsection.

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In re Serafin, 2022 Mont. B.R. 33 (February 8, 2022). An agreement between the debtor and secured creditor to modify a loan will not conflict with § 1322(b)(2), because the lender is a party to the agreement. Under § 1322(b)(2) a chapter 13 plan may not modify the rights of the holder of a secured claim which is "secured only by a security interest in real property that is the debtor's principal residence." However, this prohibition does not bar a secured creditor from consenting to modification of its claim, and further accepting the plan under § 1325(a)(5)(A). Courts have recognized that the confirmed plan represents the new contract between debtor and its creditors. As a result, an agreement to modify a loan, reached by debtor and creditor prior to confirmation, may be incorporated into the plan and approved through the confirmation process.

Post confirmation an agreement to modify a loan may require modification of a confirmed plan under § 1329(a). If a plan has been confirmed, the post confirmation loan modification may have a material effect on the confirmed plan, and at a minimum the trustee should be afforded notice of the modified loan in order to evaluate whether the modified loan has any impact on plan administration. Alternatively, if a debtor recognizes a loan modification agreement entered with the creditor post confirmation requires modification of the plan, debtor could elect to file a motion to modify plan, incorporating the modifications to the loan with an appropriate explanation and any modified documents, so that the court, trustee and other parties entitled to notice can evaluate the proposed plan and modification and object, if grounds exist to do so.

In this case, the Motion seems to contemplate approval of the loan modification agreement independent of confirmation. In this case, Debtor has not confirmed a plan. Debtor's operative plan treats Creditor's claim as an unimpaired secured claim. Further, the Plan shows no arrearages on unimpaired secured claims. The Motion explains that delinquent payments totaling $24,223.90 were capitalized and a new note and deed of trust were executed. The loan modification and the Plan do not conflict. As a practical matter, the Plan incorporates the loan modification because the Plan does not provide for any arrearages to be paid through the Plan. Rather than approve the Motion, and confirm the Plan, the Plan will be confirmed by separate order, and the Motion denied as moot because, in essence, the Plan incorporates the modified loan terms by eliminating any arrearages, and Creditor's withdrawal of its objection constitutes its acceptance of the Plan.

DURATION OF PLAN
Term of Chapter 13 Plan - 5 years

In re George, 2007 Mont. B.R. 63 (February 7, 2007). Trustee raised an objection because line 58 of Form B22C reflected that the Debtors have disposable income of $111.71 per month. The plan was insufficiently funded to commit this amount to the class of general unsecured creditors to the applicable commitment period. The plan payment was $286.00 per month for a period of 60 months. The Debtor's plan provided the secured claims totaling $11,399.49 would be paid . Total administrative expense is $1,550. Thus, the balance available with general unsecured creditors equal $405.60. The Debtor's must have the amount specified on line 50 to the Trustee's fee to be the monthly disposable income under line 58 on calculating the plan payment of the Debtor's Chapter 13 plan. Debtors are required to fund their plan during the applicable commitment period with sufficient funds to pay the nonpriority unsecured creditors aggregated amount computed by multiplying 60 by the disposable income appearing on line 58 of Form B22C.

In re Bokma, 15 Mont.B.R. 127 (1996). Debtor violated '1326(a)(1) in failing to make the annual interim payment, the Debtor did not apply for an Order from relief from the 30-day rule under 11 U.S.C.'1326, and the amended Plans violate '1322(d) in extending the Plans beyond the 5-year allowable term. 5-year term calculated from date first payment due (30 days after Plan filed). Amendment to reduce payments to 4 years would not be feasible. Under these circumstances, the Plans have not been filed in good faith.

TAX RETURNS

In re Pattiglen Angus Ranch, LP, 2026 Mont. B.R. 164 (July 1, 2026). A properly filed proof of claim constitutes prima facie evidence as to the validity and amount of the claim. Where an objection to the claim is filed, "the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves.'" "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." The claimant bears the ultimate burden of persuasion. Debtor's Objection asserts that the Claim should be amended to reflect the actual amount owed rather than an estimated claim amount.

According to Debtor, tax returns for the years 2021, 2022, 2023, and 2024 were filed, and the tax is capable of calculation. The IRS argues that Debtor has failed to file the required 1065 partnership returns for the identified tax periods 2019 through 2025, and that Debtor has not carried its burden to overcome the prima facie validity of the Claim. As a result, this Court considers whether the Debtor has filed its tax returns for 2019 through 2025. When considering whether a filing with the IRS constitutes a return, this Court considers the "widely-accepted" test adopted by the Ninth Circuit. To qualify as a "return," a document: (1) "must purport to be a return; (2) it must be executed under penalty of perjury; (3) it must contain sufficient data to allow calculation of tax; and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law." Further, "[a] return is 'filed' at the time it is delivered to the IRS.

The IRS does not contest these four factors. Instead, it seeks to disqualify the filing as a "return" because the data was not presented in its preferred manner. Based on the testimony at the hearing, the admitted exhibits qualify as returns under the "widely accepted" test. The exhibits were executed under penalty of perjury and purport to be a return. Further, having observed the testimony of Terrance Murphy, the Court can only conclude that the Exhibits reflect the Debtor's honest and reasonable attempt to satisfy the requirements of tax law. As Debtor's counsel summarily argued at the end of the hearing, Debtor must essentially take their partners' already filed Schedule Fs and divide the numbers between two forms. In essence, the IRS's argument elevates form over substance because Schedule F as filed by Debtor contains the information necessary to calculate the tax due. It simply requires taking the information provided and dividing by two. The documents constitute returns, and the IRS does not dispute that the returns have been delivered. Accordingly, the Court finds that the returns have been filed. Because the IRS is in possession of filed returns that would enable it to calculate the applicable tax, the Debtor has met its burden to rebut the proof of claim. The Objection will be sustained.

GOOD FAITH

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir.1999). The Ninth Circuit held that in determining whether a chapter 13 plan was proposed in good faith, a bankruptcy court should consider (1) whether the debtor misrepresented facts in his plan or unfairly manipulated the Code, (2) the debtor's history of filings and dismissals, (3) whether the debtor intended to defeat state court litigation, and (4) whether egregious behavior is present.

FEASIBILITY

In re Snyder, 420 B.R. 794 (2009). Objections filed by creditor and Trustee to Debtor's Chapter 13 Plan. Proposed Plan provides for cure-by-sale of the Debtor's residence and repayment of all allowed secured claims before August 11, 2011. Witnesses included Debtor and Debtor's realtor who is employed to sell the residence. Debtor lives in the home built by her parents in the 1960's. They passed away in 1992 after Debtor had already moved in to take care of them. Debtor borrowed money and mortgaged the residence to pay her brother cash for his interest in the home. Debtor testified that she borrowed money from a creditor as a last resort to stave off foreclosure. Debtor's Plan proposed monthly payments of $100.00 for thirty-six months and provided for the sale or refinance in twenty-four months.

The only evidence in the record is that Debtor is current on her monthly Plan payments. Debtor modified her Plan to provide for sale of residence within one year. Debtor has a drop- dead provision after one year authorizing sale of the property or conversion to Chapter 7. Debtor's ability to make her monthly Plan payment is undisputed. Debtor's Plan does not propose a cramdown of interest rate and does not seek to cramdown valuation of the Debtor's security. Instead, Plan provides that they will be paid in full prior to the new drop-dead date. 11 U.S.C. § 1322(b)(8) allows a Plan to be partially funded through the sale of property of the estate or property of the Debtor, but issues of good faith, feasibility, and adequate protection rise when the Plan proposes only monthly token payments to the secured creditor. Debtor satisfied her burden of proof by showing that substantial equity cushion. Creditor argues Plan is not filed in good faith but the only evidence in the record supporting the argument are the Debtor's prior bankruptcy cases. No evidence exists in the record of misrepresentation of facts in the Plan or unfair manipulation of the code, state court litigation in which Debtor intended to defeat and nothing suggests egregious behavior is present.

Court concludes that the Debtor satisfied her burden to show that relief from the stay should not be granted and court exercises broad discretion and denies Motion to Modify Stay.

INTEREST TO UNSECURED

In re Knauer, 2023 Mont. B.R. 222 (November 20, 2023). Case No. 20-90276. After Creditor filed her Amended Claim, Debtor filed his Objection. The Objection explains that Debtor is not disputing the Initial Claim, but rather the interest component included in the Amended Claim. Debtor objects to the inclusion of interest on two grounds. First, Debtor argues that no interest

accrued prepetition because a written instrument supporting the debt explicitly states that the debt would be interest free. Second, Debtor argues that any post-petition interest should accrue at the federal judgment interest rate rather than the state judgment rate of 10%.
Mont. Code Ann. § 31-1-103 states "[w]henever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing." If there is not "an express contract in writing fixing a different rate," then interest is payable at a rate of 10% on any instrument of writing. Absent an express writing that a different interest rate or no interest rate applies, the presumptive interest rate of 10%, is applicable when no interest rate is specified by the parties. Thus, interest is presumed at 10% on any loan instrument, absent a writing setting it at a different rate.

Although the Loan Agreement explicitly states, "there shall be no interest on such loan payable by Nora, Jewels or Erich," the Court is not persuaded this language relates to the Promissory Note entered more than three years later, especially as the Letter, sent a year after the Loan Agreement, indicated that the obligations under the 2010 Loan had been satisfied through Creditor's seizure and transfer of the Mexico property. after considering the Loan Agreement, Letter, and Promissory Note, the Court cannot conclude that the Loan Agreement relates to or controls the Promissory Note entered into three years later. Accordingly, no express writing supports the application of 0% interest to the Promissory Note and Creditor is entitled to the presumptive interest rate of 10% found in Mont. Code Ann. § 31-1-106(1)(a) for her prepetition claim. Having concluded Creditor is entitled to pre-petition interest of 10%, the Court must consider whether the same interest rate is applicable postpetition.

This circuit has held that the legal rate in 11 U.S.C. § 726(a)(5) is the federal judgment rate. Further, the Bankruptcy Appellate Panel applied the legal rate (in other words, the federal judgment rate) of interest under 11 U.S.C. § 726(a)(5) to a solvent debtor in a Chapter 13 case where the creditor's claim was impaired, rejecting the application of state law setting a higher rate of interest. A claim is unimpaired in a Chapter 13 case if the "the claim being paid directly to the creditor was not in default at the petition date and there was no alteration or modification of treatment of the claim by the debtors' chapter 13 plan." Here, the claim is impaired. The loan's maturity date was 2014, and Debtor was in default long before his bankruptcy. Further, Debtor's confirmed plan necessarily alters the treatment of the claim through a payment period rather than immediate payment. As a result, due to the impairment of Creditor's claim, the federal judgment rate is the appropriate rate of interest to apply to her claim post-petition. IT IS ORDERED that Debtor's Objection is sustained in part. Creditor's allowed, unsecured claim of $130,497.19 shall be entitled to the state interest rate of 10% prior to Debtor's bankruptcy and the federal judgment rate of .11% post-petition.

SURRENDER OR SALE OF PROPERTY

In re Widder, 2026 Mont. B.R. 359 (October 24, 2026). Case no. 26-90049. Cure by sale plans reflect a unique bargain between creditors and debtors that permit debtors to liquidate property and use the proceeds to pay creditors. It is most often utilized when a debtor has equity in real property and seeks to utilize that equity to fund the plan. *In re Malek*, 2018 Mont.B.R. 210 (April

11, 2018) (recognizing cure by sale plans are often a debtor's final opportunity to capture any equity available to fund a plan). In many instances, allowed claims will be paid in full and the debtor will retain the surplus. *In re Jurgens,* 2015 Mont. B.R. 469 (October 30, 2025). In many instances, allowed claims will be paid in full and the debtor will retain the surplus. During the marketing term, secured creditors may receive monthly payments, but the size of the payment is closely related to the size of the equity cushion, interest accrual during the marketing period, and other factors. Other factors include the length of the marketing term. Id. Careful consideration of these factors ensures secured creditors are adequately protected during the marketing term.
In rare instances, there is the risk that the debtor may discourage robust marketing during the initial marketing term and seek to modify the plan to increase the term of the marketing plan. In other cases, debtors have failed to ensure a realtor was employed for the duration of the marketing term. o counter such tendencies, this Court and the Chapter 13 Trustee have closely scrutinized cure by sale plans to ensure creditors and debtors receive the benefit of the sale bargain. Doing so has ensured that cure by sale plans in this district align with cure by sale plans in other districts.

As a result, most cure by sale plans in this district require debtors to make certain commitments in their Chapter 13 plan. In their plan, debtors have the burden of describing: 1. Terms with enough detail to show the likelihood of realization for the secured party; 2. Terms showing the immediate marketing and sale of the assets to be liquidated; 3. Terms under which the debtor proposes to market the property, including the length and commencement date of the listing agreement; 4. Any default remedies, including allowing the Trustee to market the property or lifting the automatic stay as to the affected secured party if the sale does not close by the end of the proposed cure period; 5. Terms under which a debtor shall timely employ a real estate professional, subject to the approval of this Court if necessary; and 6. Terms acknowledging that the debtor will communicate developments in the sales process to the Chapter 13 Trustee. *In re Strang*, 2024 Mont. B.R. at 191-92. With rare exceptions, every cure by sale plan must comply with the above provisions. While a proposed plan that delays the employment of a real estate professional in favor of a "For Sale by Owner," or "FSBO" marketing period may technically satisfy the standards set forth in prior case law, this Court harbors real concerns that such an approach has disadvantages that will negatively impact the sales process.

While Debtor's reasons to pursue FSBO are laudable, the commission paid to a realtor ensures the property is marketed by an independent professional with a duty to maximize the value of the property for the benefit of the estate and its creditors. While a debtor may embrace such duties during the FSBO period, real estate professionals enjoy an advantage, access to the Multiple Listing Service ("MLS"). Approval of a FSBO marketing term in this case would invite other debtors to make similar proposals and this Court is not prepared to develop on an ad hoc basis multi factor criteria that signal when such an approach may be permitted or prohibited. As a result, the Court declines to adopt a sea change to this jurisdiction's historic practice.

The cure by sale plan is a unique hybrid in which debtors enjoy the benefits of Chapter 13, such as a "super discharge," while at the same time liquidating property without the oversight or compensation of a Chapter 7 Trustee. A cure by sale approach is creative and judge made, rather

than an alternative explicitly recognized by the Bankruptcy Code. Under these circumstances, the fixed cost of a realtor is a comparatively small price to pay when compared to a Chapter 7 Trustee's compensation, and additional compensation paid to a realtor. Further, the transparency and access to MLS that accompany this arrangement are intangible benefits that this Court is not prepared to jettison. This Court is not persuaded a cure by sale plan with a FSBO provision, even when coupled with the future retention of a realtor, has a reasonable chance of success.

In re Lee, 2025 Mont. B.R. 103 (September 3, 2025). The Motions seek authorization to sell personal property of the estate pursuant to § 363(b). A debtor may use, sell, or lease property of the estate out of the ordinary course of business after notice and a hearing. A debtor has the rights and powers of the trustee under § 363(b). The role of the Court is to assess the business judgment of the Debtor in pursing the proposed sales. In assessing business judgment, courts look to whether adequate business justifications for the sale exist and whether the sale is in the best interest of creditors and the estate.

To assess adequate business justification and the best interest of creditors and the estate, courts analyze: (1) if the sale is fair and reasonable; (2) if there has been adequate marketing; (3) if the sale has been negotiated and proposed in good faith; (4) if the purchaser is proceeding in good faith; and (5) if the sale has been negotiated at arms-length. Id. In § 363(b) sales the Court has an obligation to assure that optimal value for the property is attained under the circumstances. Lee testified regarding the value of the Property. The Ninth Circuit has stated that without contrary evidence "an owner's opinion of property value may be conclusive." The Sabins offer no contrary testimony or evidence refuting Lee's valuation of the Property. As such, this Court considers Lee's testimony conclusive regarding the value of the Property subject to the Motions. Nothing in the record suggests the proposed sales are tainted by bad faith. Debtor's testimony regarding Lippencott and Jeskey demonstrated that although Debtor was familiar with and knew both parties, the ultimate sales price agreed to was not unduly influenced by those relationships.

Having considered the evidence, the record in this case and the Motions, the creditors' interests are best served by approval of the Motions. Although Sabins questioned Debtor's marketing efforts, opinion of value and the proposed sales transactions, this Court can discern no alternative likely to achieve a better result for the estate and its creditors. The only alternative suggested, an auction or third-party sales process, would be accompanied by a corresponding increase in administrative costs that would likely render the value of the exercise negligible. While this outcome may disappoint creditors like Sabins, this Court is convinced no other alternative would produce a better result.

In re Stanley, 2025 Mont. B.R. 83 (August 4, 2025). Section 363(b) allows the court to authorize sales of "property of the estate." Debtors' Plan was confirmed. Under the confirmed Plan, property of the estate revests in the Debtors upon confirmation, pursuant to 11 U.S.C. § 1327(b). Further, there is nothing in the confirmation order that reserves the Property as property of the estate. Lastly, Debtors' plan did not contemplate sale of the Property. While the Motion refers to *In re Oehlke,* 2024 Mont. B.R. 107, *Oehlke* explained:

> *Despite the absence of opposition, approval of a sale of property pursuant to 11 U.S.C. § 363(b) or (f), where the property revested in the debtor at confirmation is suspect at best. . . . . The references to subsection (b) of § 363 highlight the property subject to sale under § 363 is, property of the estate...*

Upon confirmation of their Plan, Debtors became owners of all property at confirmation except the sums specifically dedicated to the Plan. The Property is no longer property of the estate, making § 363 inapplicable.

Despite the inapplicability of § 363, the Motion explains, "[t]he Trustee should be allowed to participate in the closing in order to either collect the arrearage and/or the statutory commission due to his office from payment of the arrearage." Under Debtors' confirmed Plan, Lakeview/Loancare was treated as an unimpaired secured creditor. Debtors agreed to make their regular payments to Lakeview/Loancare "outside the plan," and pay arrearages of $9,679.82 to Lakeview/Loancare through the Plan. As a result, the Trustee has an interest in this sale and a right to participate in it.

To the extent Debtors have obtained a title commitment that includes as a condition or exception, "approval of the sale by the bankruptcy court," there is nothing for this Court to approve. Debtors are capable post-confirmation, where property has revested in the debtor, to enter transactions and sell property pursuant to applicable non-bankruptcy law. It appears Debtors have entered a buy-sell, and nothing in the confirmed Plan or otherwise in this bankruptcy places any conditions or restraints on their ability to sell the Property.

In re Teig, 2025 Mont. B.R. 16 (January 21, 2025). The Motion states that the title company's underwriting requires clarification as to which liens will be released at closing.2 As such, the Motion requests this Court amend the Order at ECF No. 104 to include specified liens to be released, but the sale free and clear granted by the Order at ECF No. 104 remains intact. The Motion also recites that the Chapter 13 Trustee does not object to the relief requested. Section 105 provides that the Court may issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code. Rule 9005 allows the Court to order the correction of any error or defect or cure any omission which does not affect substantive rights. The Court would like to draw attention to the motion for sale free and clear at ECF No. 169 in Case No. 4:23-bk-40044 as an example of a § 363(f) motion that outlines for the Court the interests that are subject to being sold free and clear. A clarification of the Order at ECF No. 104 to specifically reference the liens will permit the parties to proceed to closing as intended. The modification will not affect any substantive rights because the sale "free and clear" of the affected interests was already approved the Order at ECF No. 104. IT IS ORDERED that the Motion is Granted, the Order at ECF No. 104 is amended to authorize Debtors to sell the Property free and clear of all liens and interests pursuant to § 363(f)(1).

In re Robinson and Brazee, 2022 Mont. B.R. 27 (January 26, 2022). The Motion seeks approval of a sale of Debtors' real property. The Motion acknowledges that an order approving the sale is not necessary because the Property revested in the debtor upon confirmation. Nevertheless, the Motion requests an order from the court approving the sale along with other

relief, identified in the Motion explaining that an order approving the sale will address issues associated with closing and concerns or questions of the title company conducting the closing. According to the Motion, in connection with the sale of the Property: (1) The Trustee will participate in the closing; (2) The secured lender's unimpaired secured claim will be paid at closing; (3) The secured lender's prepetition arrearage claim that is included in Debtors' confirmed plan will be paid at closing, (as if it was paid by the Trustee) ; and 4) The closing agent will pay an additional $12,000 to the Trustee, for payment of administrative claims, including Trustee's administrative claims and Debtors' attorney's fees. In essence, sale of the Property will result in a supplemental source of plan funding. The plain language of 11 U.S.C. § 363(b), provides in part:

> The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate [emphasis added].

Pursuant to 11 U.S.C. § 1327(b), confirmation of a plan vests all of the property of the estate in the debtor, except as otherwise provided in the plan or the order confirming the plan. Here, the Plan revested property of the estate in the Debtors upon confirmation.

Although relief under 11 U.S.C. § 363(b) may not be available, proceeds from the sale of the property are to be utilized to fund the plan. More specifically, "[u]nder § 1329, the bankruptcy court can approve a plan modification that increases the debtor's plan payments due to a post-confirmation increase in the debtor's income, whether or not the additional income is property of the estate." Id. Notably, the Plan in this case was not a liquidating plan. Instead, Debtors' plan was to be funded with payments of $320/month for 60 months. According to the Motion, Debtors will use the sales proceeds from the sale of the Property to payoff the secured creditor, including the prepetition arrearage claim. In essence, the Motion requests Court approval of an additional source of plan funding from the sale of the Property to pay the arrearage claim of the secured creditor, and administrative claims. Based on the Court's review of the Motion, relief is appropriate. Accordingly, absent any opposition after notice, IT IS ORDERED that the Motion is denied in part and granted in part.

EFFECT OF CONFIRMATION
Vesting

In re Eslick, 2025 Mont. B.R. 32 (April 11, 2025). Despite the lack of objections, the Court questioned whether the vesting of property provision could be modified. Under the confirmed Plan, property revested in Debtors at confirmation. The Modified Plan states property will revest in Debtors at the close of the case. In their initial confirmed Plan Debtors intended keeping the home. In the modification the home will be sold.

This Court previously cited *Berkley v. Burchard (In re Berkley*) for the proposition that the estate termination approach is operative in this circuit. See *In re Berkley*, 613 B.R. 547, 552 (BAP 9th Cir. 2020). However, in a later decision, the Bankruptcy Appellate Panel for the Ninth Circuit suggested that an "estate transformation" approach is more appropriate. *Rushmore Loan Mgmt. Servs., LLC v. Moon (In re Moon)*, 2021 WL 62629, at *6 n.10 (BAP 9th Jan. 7, 2021).

This Court concludes that approval of the modification is warranted. Importantly, a plan may be

funded from either estate property or non-estate property, or a mixture thereof. Finally, the proposed modification would fall under the recognized modification to reduce the time for payments under the plan because the sale of the Debtors' real property and the funding of the plan with the proceeds would result in paying the claim in an expedited manner. The conflicting statements from the Bankruptcy Appellate Panel of the Ninth Circuit, specifically, *In re Berkley* and *In re Moon*, prompts this Court to make a case-by-case decision as to modifications and the impact of revesting of property. Here, the sale of real property is the cornerstone of Debtors' modified plan, and its sale will achieve the same results contemplated in the confirmed plan within a shorter period of time. The Bankruptcy Code recognizes plan funding may be dependent on multiple sources and allows for both estate and non-estate property to fund a plan. Under these circumstances, the proposed modification is subject to approval. Upon review of the Modified Plan and the Trustee's memorandum, and in consideration of the parties' comments, the Court finds that the Modified Plan meets the requirements of 11 U.S.C. § 1329.

In re Oehlke, 2024 Mont. B.R. 107 (April 9, 2024). Case No. 23-40002. The Motion represents that it is being filed because Debtors' confirmed Chapter 12 Plan specifically states that "no sale of such property shall be completed without notice to the Trustee and any lienholders and an opportunity provided for a hearing on such sale with the safeguards afforded lienholders under 11 U.S.C. § 363." Despite the absence of opposition, approval of a sale of property pursuant to 11 U.S.C. § 363(b) or (f), where the property revested in the debtor at confirmation is suspect at best. Upon confirmation of a chapter 12 plan, property revests in the debtor. In this case, the Plan explicitly states, "upon confirmation of this plan all of the property of the estate shall vest in the Debtors free and clear of any claim or interest of any creditor provided for by this plan, pursuant to 11 U.S.C. § 1227." As a result, there is no longer property of the estate. The plain language of 11 U.S.C. § 363(f) contemplates, "sale of property under subsection (b) or (c)." Subsection (f) modifies subsections (b) and (c). The references to subsection (b) of § 363 highlight the property subject to sale under § 363 is "property of the estate."

In Chapter 12 cases, the plan may provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property. A joint reading of 11 U.S.C. §§ 1222(b)(8) and 1227 permits debtors to identify estate property to be sold in their plan, describe a sales process, and upon confirmation and revesting of the property in the debtor, the manner of disposition of that property is binding on debtor.3 Alternatively, a plan that contemplates the sale of property may explicitly provide that the property to be sold will not revest in the debtor at confirmation, but instead will revest at some later time, or not all if it is sold.

The Plan and the immediate Motion in this case highlight the importance of considering the following when drafting a plan of reorganization: (1) when will property be sold, before or after confirmation; (2) if property will be sold after confirmation, what are the applicable statutory provisions that permit sale of property pursuant to a plan and is there a basis for a free and clear sale post confirmation; (3) should the property that is subject to sale remain property of the estate, rather than revesting in debtor at confirmation; and (4) carefully drafting plans of reorganization that involve the sale of property. This list is not exclusive, but instead intended to illustrate a few considerations.

The sale is a post-confirmation sale of real property contemplated by the Plan, approved by the Court's confirmation Order, and to the extent it results in treatment of a secured claim different than the treatment contemplated by the Plan, the affected creditors, Debtor and Chapter 12 Trustee have agreed and consented to that treatment. 2. Having approved the Stipulation, and having previously through the confirmation order approved the sale of the Property, there is nothing before the Court that requires its consideration or approval and the Motion is denied as moot.

Provided for by Plan

In re Stanley, 2025 Mont. B.R. 83 (August 4, 2025). Section 363(b) allows the court to authorize sales of "property of the estate." Debtors' Plan was confirmed. Under the confirmed Plan, property of the estate revests in the Debtors upon confirmation, pursuant to 11 U.S.C. § 1327(b). Further, there is nothing in the confirmation order that reserves the Property as property of the estate. Lastly, Debtors' plan did not contemplate sale of the Property. While the Motion refers to *In re Oehlke*, 2024 Mont. B.R. 107, *Oehlke* explained:

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Despite the inapplicability of § 363, the Motion explains, "[t]he Trustee should be allowed to participate in the closing in order to either collect the arrearage and/or the statutory commission due to his office from payment of the arrearage." Under Debtors' confirmed Plan, Lakeview/Loancare was treated as an unimpaired secured creditor. Debtors agreed to make their regular payments to Lakeview/Loancare "outside the plan," and pay arrearages of $9,679.82 to Lakeview/Loancare through the Plan. As a result, the Trustee has an interest in this sale and a right to participate in it.

To the extent Debtors have obtained a title commitment that includes as a condition or exception, "approval of the sale by the bankruptcy court," there is nothing for this Court to approve. Debtors are capable post-confirmation, where property has revested in the debtor, to enter transactions and sell property pursuant to applicable non-bankruptcy law. It appears Debtors have entered a buy-sell, and nothing in the confirmed Plan or otherwise in this bankruptcy places any conditions or restraints on their ability to sell the Property.

In re Pickering, 15 Mont. B.R. 271 (1996). No such thing as payments "outside" the Plan. Claims must be provided for as required by statute.

In re Eslick, 2025 Mont. B.R. 32 (April 11, 2025). Despite the lack of objections, the Court questioned whether the vesting of property provision could be modified. Under the confirmed Plan, property revested in Debtors at confirmation. The Modified Plan states property will revest

in Debtors at the close of the case. In their initial confirmed Plan Debtors intended keeping the home. In the modification the home will be sold.

This Court previously cited *Berkley v. Burchard (In re Berkley*) for the proposition that the estate termination approach is operative in this circuit. See *In re Berkley*, 613 B.R. 547, 552 (BAP 9th Cir. 2020). However, in a later decision, the Bankruptcy Appellate Panel for the Ninth Circuit suggested that an "estate transformation" approach is more appropriate. *Rushmore Loan Mgmt. Servs., LLC v. Moon (In re Moon)*, 2021 WL 62629, at *6 n.10 (BAP 9th Jan. 7, 2021).

This Court concludes that approval of the modification is warranted. Importantly, a plan may be funded from either estate property or non-estate property, or a mixture thereof. Finally, the proposed modification would fall under the recognized modification to reduce the time for payments under the plan because the sale of the Debtors' real property and the funding of the plan with the proceeds would result in paying the claim in an expedited manner. The conflicting statements from the Bankruptcy Appellate Panel of the Ninth Circuit, specifically, *In re Berkley* and *In re Moon*, prompts this Court to make a case-by-case decision as to modifications and the impact of revesting of property. Here, the sale of real property is the cornerstone of Debtors' modified plan, and its sale will achieve the same results contemplated in the confirmed plan within a shorter period of time. The Bankruptcy Code recognizes plan funding may be dependent on multiple sources and allows for both estate and non-estate property to fund a plan. Under these circumstances, the proposed modification is subject to approval. Upon review of the Modified Plan and the Trustee's memorandum, and in consideration of the parties' comments, the Court finds that the Modified Plan meets the requirements of 11 U.S.C. § 1329.

In re Oehlke, 2024 Mont. B.R. 107 (April 9, 2024). Case No. 23-40002. The Motion represents that it is being filed because Debtors' confirmed Chapter 12 Plan specifically states that "no sale of such property shall be completed without notice to the Trustee and any lienholders and an opportunity provided for a hearing on such sale with the safeguards afforded lienholders under 11 U.S.C. § 363." Despite the absence of opposition, approval of a sale of property pursuant to 11 U.S.C. § 363(b) or (f), where the property revested in the debtor at confirmation is suspect at best. Upon confirmation of a chapter 12 plan, property revests in the debtor. In this case, the Plan explicitly states, "upon confirmation of this plan all of the property of the estate shall vest in the Debtors free and clear of any claim or interest of any creditor provided for by this plan, pursuant to 11 U.S.C. § 1227." As a result, there is no longer property of the estate. The plain language of 11 U.S.C. § 363(f) contemplates, "sale of property under subsection (b) or ©." Subsection (f) modifies subsections (b) and (c). The references to subsection (b) of § 363 highlight the property subject to sale under § 363 is "property of the estate."

In Chapter 12 cases, the plan may provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property. A joint reading of 11 U.S.C. §§ 1222(b)(8) and 1227 permits debtors to identify estate property to be sold in their plan, describe a sales process, and upon confirmation and revesting of the property in the debtor, the manner of disposition of that property is binding on debtor.3 Alternatively, a plan that contemplates the sale of property may explicitly provide that the property to be sold will not revest in the debtor at confirmation, but instead will revest at some later time, or not all if it is sold.
The Plan and the immediate Motion in this case highlight the importance of considering the following when drafting a plan of reorganization: (1) when will property be sold, before or after

confirmation; (2) if property will be sold after confirmation, what are the applicable statutory provisions that permit sale of property pursuant to a plan and is there a basis for a free and clear sale post confirmation; (3) should the property that is subject to sale remain property of the estate, rather than revesting in debtor at confirmation; and (4) carefully drafting plans of reorganization that involve the sale of property. This list is not exclusive, but instead intended to illustrate a few considerations.

The sale is a post-confirmation sale of real property contemplated by the Plan, approved by the Court's confirmation Order, and to the extent it results in treatment of a secured claim different than the treatment contemplated by the Plan, the affected creditors, Debtor and Chapter 12 Trustee have agreed and consented to that treatment. 2. Having approved the Stipulation, and having previously through the confirmation order approved the sale of the Property, there is nothing before the Court that requires its consideration or approval and the Motion is denied as moot.

CLAIMS

Enlargement of and exceptions to bar date

In re Bache, 2024 Mont. B.R. 24 (January 18, 2024) Case No. 23-90138. Attorneys Title Guaranty Fund filed a "Motion to Extend Time to File Proof of Claim." The Motion seeks to extend the time in which Creditor may file its Proof of Claim. The filing of timely proofs of claim in a Chapter 13 bankruptcy is governed by Fed. R. Bankr. P. 3002(c). A proof of claim is "timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or 13." The deadline is "rigid, and the bankruptcy court lacks equitable power to extend this deadline after the fact . . . it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules."

The Motion explains that Creditor meets the exception under Fed. R. Bankr. P. 3002(c)(6). This exception states*:*

> *On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.*

Creditor's Motion explains that it only became aware of Debtors' bankruptcy after the expiration of the proof of claim deadline. The Motion further indicates that Debtors' mailing matrix did not include Creditor. As such, the Court is satisfied that notice to Creditor was insufficient under the circumstances to give it a reasonable time to file a proof of claim. Accordingly, IT IS ORDERED that the Motion is granted.

Duarte v. Hillard, October 23, 2025. Case No. 24-5156. The Bankruptcy Court correctly determined that Hillard did not file an informal proof of claim on Duarte's behalf under Fed. R. Bankr. P. 3004. The informal claim doctrine requires that a creditor affirmatively act to evidence his intent to hold a debtor liable prior to creditor's claim bar date. See *In re Franciscan Vineyards, Inc.*, 597 F.2d 181, 182-83 (9th Cir. 1979) (per curiam) (holding that county's letter

to trustee enclosing two tax bills sent prior to creditor's claim bar date was an informal proof of claim); *In re Anderson-Walker Indus., Inc*., 798 F.2d 1285, 1288 (9th Cir. 1986) (holding that creditor's letter to trustee sent prior to creditor's claim bar date was an informal proof of claim). Here, Duarte did not demonstrate his intent to enforce his claim against *Hillard* until after creditor's claim bar date. That alone is dispositive.

Additionally, we have held that a debtor's schedules do not constitute an informal proof of claim on a creditor's behalf because debtors' schedules "are not an explicit demand and do not demonstrate the [creditor's] intent to hold [the debtor] liable for the listed debt." *Barker*, 839 F.3d at 1196-97. For that same reason, when *Hillard* amended her Chapter 13 plan, the revised plan did not constitute an informal proof of claim on Duarte's behalf. Each of *Hillard'*s amended plans at paragraph 3.01 state that "[w]ith the exception of the payments required by sections 3.03, 3.07(b), 3.08(b), 3.10, and 4.01, a claim will not be paid pursuant to this plan unless a proof of claim is filed by or on behalf of a creditor, including a secured creditor." It would be a stretch to construe *Hillard*'s Chapter 13 plan as evidencing an intent to hold herself liable when the plan itself requires a proof of claim to be filed for payments to be made. *Hillard* never filed a proof of claim.

Binding effect of Plan

In re K BAR A Ranch, 2025 Mont. B.R. 125 (October 7, 2025). Under § 1227, a confirmed Plan is binding on all parties. As an initial matter, the parties were bound by the Plan. Ordinarily, in addition to being binding on all parties, a confirmed Plan is entitled to res judicata effect as to all issues that could have or should have been litigated at or prior to confirmation. Res judicata "promotes fairness to parties who have negotiated and relied upon" plans and supports the "strong policy of finality in the reorganization process." Application of res judicata principles to confirmed plans ensures the finality of the confirmation process. A combined reading of § 1227 and cases considering the res judicata effect of confirmed plans support Creditor's position that the Second Claim Objection violates these principles. A Plan my be modified after confirmation, but before completion of plan payments for the following purposes: (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan; (2) extend or reduce the time for such payments; (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or (4) provide for the payment of a claim described in section 1232(a) that arose after the date on which the petition was filed. § 1229. To the extent Debtor construes the Modified Plan as a resurrection of its right to make a material objection to Creditor's Claim, § 1229 does not permit such a modification. Subsections (1)-(4) specifically delineate the purposes for which a confirmed Plan may be modified. Under subsection (1), payments may be increased or reduced. It contemplates a change to an allowed claim's treatment, not a new claim objection. Neither subsection (2) or (4) permit modification of a plan to allow a claim objection. Finally, while subsection (3) permits alteration of the distribution a creditor will receive, it is applicable when a payment has been made to a creditor, but is otherwise unaccounted for and, absent adjustment, the creditor may receive more than it is otherwise entitled to receive under the plan. Scrutiny of § 1229 combined with the Trustee's testimony weigh in favor of finding the language Debtor relies on was a scrivener's error. It was not intended to and should not be construed as conferring any substantive right on Debtor to revisit issues subject to finality under the confirmed Plan.

Courts faced with a motion for relief under § 502(j) must consider whether the claim was allowed or disallowed without being contested. Reconsideration of a claim allowed after contest must be brought within a year of the order allowing the claim. Alternatively, if a claim is allowed without being contested, a motion for reconsideration under § 502(j) may be considered timely if presented before the case is closed. As a result, this Court must consider whether Creditor's Claim was allowed with or without being contested. The order approving the Stipulation resolving the First Claim Objection is entitled to finality. Civil Rule 60(c)(1), made applicable by Rule 9024 to these proceedings, required any request for reconsideration of the Claim be made within one year of the Order approving the Stipulation. Here, the Court has construed Debtor's Brief as a request for reconsideration. It was filed almost three years after the order approving the Stipulation. Rule 9024(a)(1) is not applicable because the order approving the Stipulation disposed of a contested matter that sought disallowance of the Claim. Under these circumstances, taking into consideration the text of § 502(j) and its purpose, nothing equitable would be achieved by reconsideration of the Claim in this case.

STUDENT LOANS

Irigoyen v. 1600 West Investments (In re Irigoyen), 659 B.R. 1 (B.A.P. 9th Cir. 2024). We believe the phrase "selfexecuting," for purposes of § 523(a)(8), means simply that the parties are not required to initiate an adversary proceeding to determine the dischargeability of a debt. It does not mean that a debt that does not meet the statutory criteria of § 523(a)(8) is considered nondischargeable until proven otherwise. If a debt clearly falls under one of the "self-executing" subsections of § 523(a), a creditor need not suffer the time and expense of litigation to enforce the debt post-discharge. However, if it be determined that a debt falls outside one of the "self-executing" subsections of § 523(a), and is thus dischargeable, creditors will not be shielded from the reach of the discharge injunction and the bankruptcy court's power to impose contempt sanctions when appropriate. We think a more prudent interpretation is that § 523(a)(8) is "selfexecuting" in the sense that neither party is required to file a lawsuit to determine the dischargeability of the debt. The debt is excepted from the general discharge order only if it actually qualifies as the type of educational loan covered by § 523(a)(8). Otherwise, the debt is discharged with every other dischargeable debt. This interpretation harmonizes §§ 523, 524, and 727, such that only the specific debts enumerated by Congress are excepted from the general discharge.

"Undue hardship" cases are unique because they are circumstantial, and circumstances change; a debtor may reopen her case and seek an "undue hardship" determination based on changed circumstances at any time. The nature of the student loan and whether it qualifies as an excepted loan, on the other hand, is static – either the loan satisfies the statutory criteria set forth in § 523(a)(8) or it does not. As such, it is either excepted from the general discharge order or it is not. For the reasons stated above, based on the bankruptcy court's determination that the Debt did not qualify as the type of debt excepted from discharge under § 523(a)(8), the Debt was discharged at the time the court entered its discharge order.

Rightmier v. Navient Solutions, LLC, 2024 Mont. B.R. 48 (February 27, 2024) Case No. 23-10142. Adversary No. 23-01008. Defendant narrowed the focus of its argument to whether Plaintiff's Complaint seeking the discharge of his student loans pursuant to 11 U.S.C. §

523(a)(8) was prudentially ripe. Consideration of prudential ripeness requires the Court to consider two factors: 1) the fitness of the issues for judicial decision; and 2) the hardship to the parties of withholding court consideration. Under the first prong, the Court considers whether to delay consideration of an issue where the further development of facts would aid the Court's consideration. Id. Under the second prong, "[h]ardship to the debtor from postponing a decision in this situation supports a finding of ripeness."

Based on the facts and circumstances before it, the factors weigh in favor of Plaintiff. Here, Plaintiff is a 72-year-old retiree, living on a fixed income. Payments to Defendant amount to approximately $777 per month for 300 months. Scrutiny of Plaintiff's Summary of Assets and Liabilities reveals that he has a combined monthly income of $4,577.84 and combined monthly expenses in the amount of $4,341.00. Finally, the impetus for Plaintiff's Chapter 13 bankruptcy was to address the dischargeability of Defendant's loan. Presumably, Debtor would like it addressed sooner rather than later, otherwise he may not have filed the Complaint. When considering these circumstances, further factual development will not aid the Court's consideration of the issues. In this case, as a retiree, Plaintiff is not subject to some of the typical pitfalls faced by a Chapter 13 debtor, such as loss or change in employment. Further, requiring Plaintiff to commit to a Plan without any guarantee that the loan will be discharged weighs in favor of a finding of hardship, especially when the impetus behind his bankruptcy was to receive such a determination. IT IS ORDERED that Defendant's Motion to Dismiss is denied. Defendant shall file an answer to Plaintiff's Complaint on or before March 12, 2024. For most matters, the time line from consent to trial should not exceed 150 days and in many cases be much shorter.

NONDISCHARGEABLE CLAIMS

Irigoyen v. 1600 West Investments (In re Irigoyen), 659 B.R. 1 (B.A.P. 9th Cir. 2024). We believe the phrase "selfexecuting," for purposes of § 523(a)(8), means simply that the parties are not required to initiate an adversary proceeding to determine the dischargeability of a debt. It does not mean that a debt that does not meet the statutory criteria of § 523(a)(8) is considered nondischargeable until proven otherwise. If a debt clearly falls under one of the "self-executing" subsections of § 523(a), a creditor need not suffer the time and expense of litigation to enforce the debt post-discharge. However, if it be determined that a debt falls outside one of the "self-executing" subsections of § 523(a), and is thus dischargeable, creditors will not be shielded from the reach of the discharge injunction and the bankruptcy court's power to impose contempt sanctions when appropriate. We think a more prudent interpretation is that § 523(a)(8) is "selfexecuting" in the sense that neither party is required to file a lawsuit to determine the dischargeability of the debt. The debt is excepted from the general discharge order only if it actually qualifies as the type of educational loan covered by § 523(a)(8). Otherwise, the debt is discharged with every other dischargeable debt. This interpretation harmonizes §§ 523, 524, and 727, such that only the specific debts enumerated by Congress are excepted from the general discharge.

"Undue hardship" cases are unique because they are circumstantial, and circumstances change; a debtor may reopen her case and seek an "undue hardship" determination based on changed circumstances at any time. The nature of the student loan and whether it qualifies as an excepted loan, on the other hand, is static – either the loan satisfies the statutory criteria set forth in §

523(a)(8) or it does not. As such, it is either excepted from the general discharge order or it is not. For the reasons stated above, based on the bankruptcy court's determination that the Debt did not qualify as the type of debt excepted from discharge under § 523(a)(8), the Debt was discharged at the time the court entered its discharge order.

OTHER CLAIMS QUESTIONS

In re Knauer, 2023 Mont. B.R. 164 (October 4, 2023). The Objection states that Debtor promised to provide for full payment of claims including unsecured claims and notes that Creditor's Claim is not mentioned in Debtor's Plan as a specific claim. Further, the Objection states that the Plan indicates unsecured claims are set to be paid "dividends, to the extent possible…. on a pro rata basis." In short, the Objection raises concerns that although conversion was premised on the repayment of all unsecured claims in full, Debtor's Plan does not allow for such repayment.

Under the non-standard provisions contained with paragraph 11 of the Plan, Debtor provides that:

> Full payment of unsecured claims is a necessary condition to the successful completion of this plan and the failure to pay all unsecured claims in full during the term of this plan shall be grounds for default and conversion to chapter 7.

It is standard practice in this district to utilize paragraph 11 of Local Bankruptcy Form 19 to set forth nonstandard provisions in a debtor's Chapter 13 Plan. Further, as Debtor notes, LBF 19 does not require the listing of unsecured creditors and the amount to be paid on their claims.

This Court allowed the conversion of Debtor's Chapter 7 case on the grounds that unsecured creditors would be paid in full on their claims. Debtor's Plan provides for that requirement, and Creditor's fears are ultimately misplaced. Accordingly, IT IS ORDERED that Creditor's Objection is overruled, and the Court finds that the Plan meets the requirements of 11 U.S.C. § 1325

In re O'Neill, 2021 Mont. B.R. 13. Case No. 20-20257. Creditor is an insured depository institution. Although Rule 3007 was amended in 2017, and clarifies that service under Rule 7004 is not required in most instances, Collier's explains that, "If the claimant is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), the notice and objection must be served in accordance Rule 7004(h)." Rule 7004(h) requires that service on insured depository institutions in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless:

> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or,
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

None of the exceptions listed in Rule 7004(h) apply.

A proof of claim filed under section 501 is deemed allowed, absent an objection. Subject to certain exceptions, if an objection to a claim is made, the court, after notice and a hearing, shall determine the amount of the claim as of the petition date, and shall allow such claim in such amount. Here, the Objection does not challenge Creditor's secured claim of $552.47. Instead the Objection seeks disallowance of Claim 7, "to the extent that it values the collateral at $5,075 instead of $3,500." Ordinarily, valuation issues are addressed by motion under Rule 3012. The Court cannot determine whether Debtors are objecting to Claim 7, or attempting to obtain a valuation of the collateral through the claims allowance process. To the extent the issue is valuation, Debtors may wish to consider whether relief should be sought in accordance with Rule 3012 and Mont. LBR 3012-1, by using Mont. LBF 22.

In re Counts, 2007 Mont. B.R. 34 (September 6, 2007). Debtors filed a motion for valuation of security seeking to set the allowed amount of Capital One's allowed secured claim at $7,140.00. Capital One countered that its claim should be allowed as filed because the claim is a purchase money security interest in a motor vehicle incurred within 910 days of the filing date and cannot be crammed down pursuant to 11 U.S.C. § 1325(a). The parties agree that Capital One's claim stems from a purchase money security interest. Debtors alleged that they are entitled to cram down the value of the vehicle because the debtors purchased the vehicle for use in the debtors' home care and house cleaning business. Debtors deduct Terry's use of the car for her business on their income tax returns. As Schedule C to Form 1040 reflects that Terry drove 9282 miles for business in the year 2005. The eight words contained in the phrase "acquired for the personal use of the debtor" had sparked large amounts of litigation. Here, the uncontested testimony is that the 2001 Dodge was acquired because Terry needed a vehicle that was dependable with four wheel drive that she could use to get through her various jobs associated with TLC Home Care and House Cleaning. Additionally, the debtors have four motor vehicles which would indicate that one of these motor vehicles was not necessarily needed to satisfy debtor's personal need.). HELD: The hanging paragraph of § 1325 does not apply. The debtors may cram down the value of the vehicle because it was acquired for business use and not the "personal use of the debtor."

POST-PETITION CLAIMS

In re Bache, 2024 Mont. B.R. 24 (January 18, 2024). Attorneys Title Guaranty Fund filed a "Motion to Extend Time to File Proof of Claim". The Motion seeks to extend the time in which Creditor may file its Proof of Claim. The filing of timely proofs of claim in a Chapter 13 bankruptcy is governed by Fed. R. Bankr. P. 3002(c). A proof of claim is "timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or 13." The deadline is "rigid, and the bankruptcy court lacks equitable power to extend this deadline after the fact . . . it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules." *Spokane Law Enforcement Fed. Credit Union v. Barker (In re Barker)*, 836 F.3d 1189, 1198 (9th Cir. 2016), 2016 Mont. B.R. 546, 555 (October 27, 2016).
The Motion explains that Creditor meets the exception under Fed. R. Bankr. P. 3002(c)(6). This exception states*:*

> *On motion filed by a creditor before or after the expiration of the time to file a proof of*

claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

Creditor's Motion explains that it only became aware of Debtors' bankruptcy after the expiration of the proof of claim deadline. The Motion further indicates that Debtors' mailing matrix did not include Creditor. As such, the Court is satisfied that notice to Creditor was insufficient under the circumstances to give it a reasonable time to file a proof of claim. Accordingly, IT IS ORDERED that the Motion is granted.

***United States v. Fowler*, (*In re Fowler*)**, 394 F.3d 1208, 1212-14 (9th Cir. 2005). FICA and FUTA taxes that accrued during a Chapter 11 case before conversion to Chapter 13 are administrative expenses entitled to priority and full payment with interest and penalties. "Postpetition tax debt may constitute an administrative expense if it relates to 'any tax incurred by the estate,' except certain defined taxes. . . The first priority accorded to administrative expense taxes also extends to interest and penalties that accrue on that debt. . . . [Section] 1305 does not govern priority status. . . . Section 1305 requires only what it says - that for purposes of allowing or disallowing a creditor's claim, the claim is treated as if it arose prepetition. It does not address the statutory treatment of the claim itself once it has been allowed into the bankruptcy proceeding. A § 1305 claims is not automatically determined as if it were a prepetition claim for all purposes."

LIEN AVOIDANCE

***In re Robinson and Overman*,** 2026 Mont. B.R. 27 (February 9, 2026). "[Section] 522, dealing with debtor's exemptions, specifically, provides that, for purposes of that section, 'value means fair market value as of the date of the filing of the petition'" The fair market value is the price which a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy would agree upon after the property has been exposed to the market for a reasonable time."

Based on the evidence presented to the Court, the methodology of Mr. Stevens is more reliable—as even Mr. Lanser conceded. Even if this Court was persuaded to adopt Mr. Lanser's recommendations, it would appear reasonable to value the property at the average within the range—$410,000— resulting in Creditors' lien being subject to avoidance because it impairs Overman's homestead exemption.

The homestead exemption amount as of the petition date was $409,450.50. The lien amount is approximately $263,697.63 as of the petition date. As a result, even if this Court adopted Mr. Lanser's methodology, the judgment lien still reduces or impairs Overman's exemption because $410,000 is less than the full amount needed to equal Overman's exemption and the Wells Fargo lien. However, as noted above, Mr. Stevens's methodology and opinion correspond to "value" rather than an expected sales price. Further, Mr. Stevens had the benefit of examining the interior of the Property. Accordingly, the value of the Property is $300,546. Creditors' lien impairs the value of the homestead because the homestead exemption exceeds the value of the

Property.

An allowed claim of a creditor secured by a lien on a property is secured to the extent of the value of the creditor's interest "in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." § 506(a)(1). Section 506 provides that value is determined "in light of the purpose of the valuation and of the proposed disposition or use of such property . . . ." The value of collateral under § 506 is typically determined based on the available enforcement procedures. Due to the exemption, the lien is subject to being avoided and Creditors have no available enforcement remedies with respect to the Property. Creditors' claim is unsecured.
Having determined the value of the Property, the matters before this Court are easily resolved. Accordingly, IT IS ORDERED the Avoidance Motion is granted. Pursuant to 11 U.S.C. § 522(f)(1)(A), the judicial lien is avoided in the Property. IT IS FURTHER ORDERED the Claim Objection is sustained. Pursuant to §§ 502(b) and 506(a), Claim Number 1 shall be allowed as an unsecured claim.

In re Stapley, 2022 Mont. B.R. 57 (March 28, 2022). Debtor filed a Motion to Avoid Lien under 11 U.S.C. § 522(f)(1)(A). Debtor requests the Court avoid a judicial lien that impairs Debtor's interest in exempt property. Debtor has claimed an exemption pursuant to 11 U.S.C. § 522(b)(3) and Mont. Code Ann. § 70-32-101. The total value of the homestead exemption claimed may not exceed $364,000.00 in 2022. This amendment to the statute was effective May 10, 2021. The amount of the exemption increases 4% each year after 2021. 11 U.S.C. § 522(f)(1)(A) permits the debtor "to avoid the fixing of a lien" on property of the debtor to the extent such lien impairs an exemption "if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]" The type of lien specified in 11 U.S.C. § 523(a)(5) is one that secures a "domestic support obligation." The case register report attached as an exhibit to the Motion shows the judgment that is the subject of the Motion was entered in an action for a dissolution of marriage. The Court could not discern from the exhibits if the exception under 11 U.S.C. § 523(a)(5) is applicable. In the Order setting the matter for hearing, the Court stated that "[p]rior to the hearing, Debtor may submit copies of the property settlement agreement, complaint to renew judgment and judgment, and if consideration of those items persuades the Court the judgment does not correspond to a domestic support obligation, the hearing may be vacated." Debtor filed a Notice and included copies of the property settlement agreement, complaint to renew judgment, and judgment. Upon review of the documents attached to the Notice, the Court finds that the judicial lien sought to be avoided in the Motion is not one that secures a domestic support obligation. Thus, the exception does not apply, and it is a judicial lien that may be avoided under 11 U.S.C. § 522(f)(1)(A).

In re Wormington, 2023 Mont. B.R. 212 (November 1, 2023). Case No. 23-90052. Creditor's claim totals $44,966.18 and is secured by a 2017 Cadillac Escalade. Debtors do not dispute that Creditor is entitled to its claim. Instead, Debtors argue that Creditor's valuation of the collateral is incorrect. While Creditor states the value of the Collateral is $38,200.00, Debtors suggest that this valuation should be significantly lower and argue that the collateral's value is instead $25,173.00. Fed. R. Bankr. P. 3012 governs valuation procedure under 11 U.S.C. § 506(a). Prior to 2017, Fed. R. Bankr. P. 3012 provided only for a motion. The amendments in 2017 clarified that a request for valuation may additionally be made in the claims objection process or in the plan. Rule 3012(a) allows a party in interest, after notice to the holder of the claim, to request a

hearing to determine the amount of the claim. Rule 3012(b) denotes three methods in which this valuation proceeding may be set: by motion; in a claim objection; or in a plan filed in a chapter 12 or chapter 13 case. However, "[w]hen the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004." To accomplish service under Fed. R. Bankr. P. 7004(h), service may be made within the United States via first class mail to an insured depository institution's3 attorney if that attorney has appeared within the case. Absent the appearance of counsel, service must be addressed to an officer of the institution.

Debtors have embraced all three approaches to valuation contemplated under Fed. R. Bankr. 3012(b) by filing the Motion, Objection, and serving their Second Amended Chapter 13 Plan4 on Creditor's counsel pursuant to Fed. R. Bankr. P. 7004(h). Debtors' current approach will result in duplicative effort by the parties and this Court. Accordingly, to efficiently resolve the matter, IT IS ORDERED that the valuation dispute will be resolved via Debtors' Motion at ECF No. 79. Creditor shall file any objection to the Motion on or before November 11, 2023.

INCOME DEDUCTION ORDERS

In re Gibson, 2009 WL 2868445, at *4 (Bankr. D. Idaho 2009). Standard wage deduction provision is reasonable approach to administering plans and is required notwithstanding fear of unfavorable treatment from employer. "Trustee prefers to include the wage deduction provision in the plan.... Trustee's approach to administering plans is reasonable. Trustee is duty-bound to ensure that Debtors' plan is performed... As a measured tool to assist chapter 13 trustees in their difficult jobs, the wage deduction provision makes sense. Debtors' fear that their employers may willfully violate federal law if a wage deduction order is issued is not good cause to omit it...Absent [s]ome persuasive cause to the contrary, to be confirmed, Debtors' plan must include the standard from wage deduction provision."

CHAPTER 12 CONFIRMATION

In re Marquis, 2026 Mont. B.R. 152 (June 29, 2026). Case No. 25-40068. A debtor is not required to guarantee the success of a plan, but must "provide a reasonable assurance that the plan can be effectuated," which must be more than "bare agronomic feasibility." Because past behavior and productivity are excellent indicators of future productivity, courts have frequently rejected plans which are premised on highly optimistic projections of increased production. While the court is to give debtors the "benefit of the doubt" regarding the issue of feasibility and not require a plan to be "bomb proof," the debtor must demonstrate that their projections are reasonable and that it is probable they can make payments under the plan. The court cannot confirm plans that are purely "visionary." Despite the benefit of the automatic stay and no payments to creditors for eight months, Debtors have barely maintained positive income throughout this bankruptcy.38 While the estimate of expenses in their plan is accurate, Debtors' gross income has only twice exceeded $4,500 per month (due to one-off events) and has dipped below $3,500. To meet their January 15, 2027, payment, Debtors would need to generate an average net income of $20,813.26 per month (assuming they zeroed out all their bank accounts including Pumpt). To do so, Debtors must work to generate new revenue and litigate to collect past due receivables. Debtors' financial projections do not inspire confidence because the

projections appear to be internally inconsistent. Specifically, the Debtors incorrectly totaled their net income from each month at the end of the year and used that as a balance forward for the next year. Since they already included a balance forward in each month, this more than doubled their projected available funds from $86,600 to $200,808 between December 2026 and January 2027. Without this duplication error, Debtors are short $9,843 in January 2027 and are at negative $81,286 in February 2026. In other words, Debtors' plan is not feasible when examined under their own projections without the carry-forward error.

The Debtors' liquidation analysis also includes inconsistencies. According to the liquidation analysis, 5792 Hwy 89 has a value of $1,227,550. It is encumbered by liens totaling $388,516, 46 and Debtors assert an exemption of $409,450. After deducting the lien and exemption amounts, equity available to creditors would be approximately $420,000 according to the liquidation analysis. Under the Powell Contract, Debtors are selling 805 US Hwy 87. 48 It allegedly has a value of $486,800 and no liens.49 Despite being free of liens, the liquidation analysis does not show $486,800 as available to pay unsecured creditors. Instead, an explanatory note indicates that the funds will be paid to Juniper to clear title, presumably on 5792 Hwy 89. This appears to be an error because the lien value was already deducted above from the value of 5792 Hwy 89. If funds from the Powell Contract are used to pay off Juniper, the Juniper lien should not reduce the value of 5792 Hwy 89 by $388,516. Juniper's liens should only be counted once, not twice in the liquidation analysis. While not feasibility issue per se, it shows that creditors would be entitled to significantly higher plan payments in order to satisfy the best interests of creditors test, reinforcing the Plan is not feasible.

A finding of feasibility requires this Court to ignore Debtors' own testimony and calculations. Debtors have not met their burden to show that their projections are reasonable or that it is probable they will be able to complete payments. Accordingly, this Court finds that the plan is not feasible under § 1225(a)(6). As this Court explained at the March 16, 2026, hearing on the Trustee's motion to dismiss and in its order at ECF No. 126, this was Debtors' last and best chance to confirm a plan. The court may dismiss a case for cause, including "denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan." § 1208(c)(5). Additionally, for the reasons outlined above, it is clear that there is no reasonable likelihood of rehabilitation, the estate is continuing to diminish, and there has been unreasonable delay prejudicial to creditors, creating further cause under § 1208(c)(1) and (9). The Trustee moved to dismiss "for cause generally," but specified that "Debtors cannot propose a confirmable Plan and further delay will be prejudicial to creditors." Having determined that the Trustee is correct, the motion will be granted.

Arnold Farms, Inc., 2025 Mont. B.R. 146 (December 5, 2025). Case No. 24-10131. For each of its loans, the Bank attached the loan documents for all of the loans and a copy of a judgment for $1,132,258.80 that Bank obtained in August 2024. The judgment is in favor of Bank and against Debtor, Jerry, and the Estate of Arthur Arnold. The judgment aggregated the principal balances, late fees, and accrued interest of the four loans. It further indicated that the judgment accrued interest at $285.57 per day. The parties agree that on the petition date Bank's claim against Debtor was $1,138,401.30. Debtor and Bank have agreed that the value of the personal property securing Bank's claims is $1,060,000 but dispute the value of Bank's interests attributable to its judgment liens.

Under § 1225(a), confirmation generally requires: 1. the plan complies with the provisions of the Code; 2. all fees and charges are paid before confirmation; 3. the plan is "proposed in good faith and not by any means forbidden by law"; 4. the "best interests" of creditors test is met; 5. each secured claim is properly treated; 6. the plan is feasible; 7. all domestic support obligations first coming due post-petition have been paid in full; and, 8. the plan satisfies the "disposable income" test for the length of the plan approved by the court (if an objection has been filed).

The Ninth Circuit uses the "market approach" to determine the interest rate sufficient to provide a secured creditor the value of the secured claim. This Court has previously calculated the interest rate using the market approach by taking the prime rate and adding a risk factor. *In re Standley,* 2013 Mont. B.R. 58 (December 6, 2013). The prime rate is 7.25%. Debtor's Plan adds 0.25% as a risk factor. The risk factor is determined by considering the risk of default and the nature of the security, moreover, in *Standley*, this Court acknowledged that risk is heightened in the agricultural economy because of its inherent unpredictability. However, *Standley* acknowledged the competing principles that the interest rate must be high enough to compensate the creditor for risk but "not so high as to doom the plan." When the Plan was proposed, the prime rate was 7.25%. Currently at least one equipment lender, Hanmi, has accepted an interest rate of 7%. On this record, the Court has difficulty concluding the interest rate is insufficient. This conclusion is reinforced when the Court considers the term, and the Bank's security interest is a combination of personal and real property.

When assessing the term of obligation under § 1225(a)(5), this Court must consider whether the proposed length of time is appropriate under the circumstances. This Court considers several factors: (1) the type of property securing the debt; (2) the customary term for such property; (3) whether the length is necessary to preserve the debtor's farming operation; and (4) the length of term in the original loan. Ordinarily real estate loans enjoy longer terms of amortization and repayment—15, 20, and 30 years are common. Bank's interest in the real property is not attributable to a real estate loan. It is a judgment lien. Under applicable Montana law, a judgment is effective for a period of ten years and the judgment may be renewed. These statutes lend weight to the conclusion that the "customary term" for repayment of a judgment is ten years, unless renewed. If renewed, it could be twenty years. The Plan proposes a final balloon payment in year eight, two years less than the judgment's expiration date pursuant to the statute. Considering the four factors outlined in *Standley*, the original terms on the underlying notes are given the least weight in this case because none included real property collateral. The additional real property collateral insulates the Bank from any risk associated with the additional 12 months proposed by Debtor. Based on the evidence presented to this Court, the rate and term proposed in the Plan satisfy the present value requirement.

The Bank's discriminatory treatment objection is subject to being overruled because the Hanmi claim is sufficiently different from the Bank's claim to warrant different treatment. Chapter 12 plan must "provide the same treatment for each claim or interest within a particular class, unless the holder of a particular claim or interest agrees to less favorable treatment." The Plan broadly classifies Bank and Hanmi as impaired secured claims. Under this broad classification, Hanmi's claim is paid in five years instead of eight. Hanmi's interest rate is 7% and Bank's interest rate is 7.5%. In essence, although Hanmi's claim is paid in full 36 months before the Bank's claim is paid in full, Bank has real property collateral and a higher interest rate. This Court has difficulty

concluding Bank is prepared to release its judgment liens and accept a lower interest rate in order to achieve the same treatment as Hanmi. The claims are materially different and the difference in treatment is reasonable. Debtor's projections and Korkow's testimony support finding the Plan's proposed treatment of the Bank is necessary for completing the Plan. There are no indicia of bad faith. The Plan does not discriminate.

Section 1225(a)(6) requires that a debtor be able to make all payments under the plan and comply with the plan. A debtor bears the burden of proving its plan is feasible. For a plan to be feasible, a debtor need only show a "reasonable assurance that the plan can be effectuated" and is not required to guarantee the success of the plan. To succeed, Debtor must obtain additional financing. To do so, the new lender will require Bank to subordinate its liens up to $500,000. Bank has unequivocally said it will not do so, ensuring Debtor will fail. To overcome this hurdle, the Plan provides for prospective court imposed subordination of Bank's interest in favor of a yet to be identified lender in connection with a loan that has not been sought or approved to date. Subordination is a common law concept. It is equitable and may impose harsh consequences. Ordinarily, subordination may occur under 11 U.S.C. § 510(c). Under § 510(c), a bankruptcy court may subordinate a claim under the principles of equitable subordination. Equitable subordination requires a showing of inequitable conduct, injury as a result of the misconduct, and that equitable subordination is not inconsistent with the bankruptcy code. As there is no evidence of the Bank's misconduct, subordination cannot be approved under § 510(c). First, Debtor has not requested relief pursuant to § 364. However, if it had, the Plan provides for revesting of all property in the Debtor at confirmation.57 By its terms, § 364 only applies to estate property. Although not explicitly considered in a Chapter 12 case, the Ninth Circuit Court of Appeals and BAP have construed analogous Chapter 13 provisions as causing the estate to terminate at confirmation absent specific language in the plan or order that dictates a different result. It is difficult to conclude that following confirmation there remains property of the estate for purposes of § 364, when the Plan provides that all property of the estate will revest in Debtor. While this Court has determined that the Plan does not discriminate against Bank, the Plan is not feasible. This Plan is entirely dependent on contingent financing, and such financing is entirely dependent on subordinating the Bank's claim without authority to support such an action. Accordingly, confirmation is denied.

MODIFICATION OF CHAPTER 13 PLANS
Post-confirmation Modification; 11 U.S.C. § 1329.

In re Eslick, 2025 Mont. B.R. 32 (April 11, 2025). Despite the lack of objections, the Court questioned whether the vesting of property provision could be modified. Under the confirmed Plan, property revested in Debtors at confirmation. The Modified Plan states property will revest in Debtors at the close of the case. In their initial confirmed Plan Debtors intended keeping the home. In the modification the home will be sold.

This Court previously cited *Berkley v. Burchard (In re Berkley*) for the proposition that the estate termination approach is operative in this circuit. See In re Berkley, 613 B.R. 547, 552 (BAP 9th Cir. 2020). However, in a later decision, the Bankruptcy Appellate Panel for the Ninth Circuit suggested that an "estate transformation" approach is more appropriate. Rushmore Loan Mgmt. Servs., LLC v. Moon (In re Moon), 2021 WL 62629, at *6 n.10 (BAP 9th Jan. 7, 2021).

This Court concludes that approval of the modification is warranted. Importantly, a plan may be funded from either estate property or non-estate property, or a mixture thereof. Finally, the proposed modification would fall under the recognized modification to reduce the time for payments under the plan because the sale of the Debtors' real property and the funding of the plan with the proceeds would result in paying the claim in an expedited manner. The conflicting statements from the Bankruptcy Appellate Panel of the Ninth Circuit, specifically, *In re Berkley* and *In re Moon*, prompts this Court to make a case-by-case decision as to modifications and the impact of revesting of property. Here, the sale of real property is the cornerstone of Debtors' modified plan, and its sale will achieve the same results contemplated in the confirmed plan within a shorter period of time. The Bankruptcy Code recognizes plan funding may be dependent on multiple sources and allows for both estate and non-estate property to fund a plan. Under these circumstances, the proposed modification is subject to approval. Upon review of the Modified Plan and the Trustee's memorandum, and in consideration of the parties' comments, the Court finds that the Modified Plan meets the requirements of 11 U.S.C. § 1329.

In re Sunahara, 326 B.R. 768, 781, 782 (9th Cir. B.A.P. 2005). Section 1329(b) does not incorporate disposable income test at modification after confirmation. Confirmed plan required payments totaling $41,400 over 60 months with estimated dividend of 50%. Model plan contained provision that unless all claims were paid in full, plan could not be completed sooner than 36 months. Shortly after confirmation, debtor proposed modification of refinance home and pay off plan immediately. Trustee objected arguing that debtor was obligated to commit income for a minimum of 36 months. Debtor argued that 36-month requirement was not a measure of time but measured value creditors must receive. "Section 1329(b) expressly applies certain specific Code sections to plan modifications but does *not* apply § 1325(b). Period. The incorporation of § 1325(b) is not, as has been posed by some courts, the functional equivalent of an indirect incorporation of § 1325(b)(1)(B) with respect to modified plans. Had Congress intended to impose such a requirement, it could have easily done so by making the appropriate incorporating reference." Court must still consider carefully whether modifications has been proposed in good faith: "Such a determination necessarily requires an assessment of a debtor's overall financial condition including, without limitation, the debtor's current disposable income, the likelihood that the debtor's disposable income will significantly increase due to increased income or decreased expenses over the remaining term of the original plan, the proximity of time between confirmation of the original plan and the filing of the modification motion, and the risk of default over the remaining term of the plan versus the certainty of immediate payment to creditors."

In re Kapperud, 2020 Mont. B.R. 469 (December 7, 2020) (Chapter 12). Case No. 19-60946. Amended, modified and/or substituted pleadings are generally treated as superseding any prior related pleading in the docket, and if the new pleading has a notice, that becomes the operative notice for objecting parties. In some circumstances, this approach suffers from certain deficiencies. For example, if an amended motion is filed on the eve of the hearing set by an objecting party, proceeding with the hearing may be problematic if the new motion raises issues the objecting party did not have an opportunity to consider. In these instances, the new issues are not properly before the Court because responding parties have not received proper notice under the applicable rules.

Conversely, some amended, modified and/or substituted pleadings on the eve of a hearing may

be considered without triggering a notice issue. In reorganization cases, a party may file on the eve of a confirmation hearing an amended or modified plan in order to cure a specific objection. If the objecting party consents, or otherwise affirmatively signals to the Court that the amendment cures the objections, and there are no other objections, proceeding with a hearing or confirming the plan without further notice may be appropriate. Increasingly, the Court has been scrutinizing the relationship between amended, modified and/or substituted pleadings, and its effect these pleadings have on any notice required under the Rules and Mont. LBRs. In this case, the Court must consider whether the notice provided in the Motion should be grafted onto the later filed amended, modified and/or substituted pleading.

ECF No. 153 is labeled "Amended Chapter 12 Plan dated November 11, 2020." Notably, the Code employs "modify" rather than "amend". Although the words have the same meaning, the Court will refer to proposed plans under § 1223, as, "amended plans." Plans proposed after confirmation under § 1229 will be referred to as "modified plans." A similar distinction will be made in cases under chapter 13.

The Court would strongly encourage practitioners that file amended, modified and/or substituted pleadings to clearly set forth at the beginning of those pleadings, whether the amended pleading supersedes the prior pleading, including a reference to the related ECF Nos., and any new notice required or effect the amended, modified and/or substituted pleadings have on any pending hearing. The Court cannot overemphasize the importance of this explanation. In addition to assisting the Court, it will eliminate confusion for unrepresented creditors, or less sophisticated parties who do not have the benefit of counsel. Further, modified plans shall be accompanied by a motion requesting leave to modify. These motions should explain the material differences between the confirmed plan and the modified plan.

Absent a motion to continue the Court will maintain the hearing. However, if at the hearing the parties move to continue the hearing, the Court may be inclined to deny the request because Mont. LBR 5071-1 requires a motion to continue to be filed at least three business days prior to the scheduled trial, hearing or conference. As a practical matter, parties should be prepared to proceed or move to continue any requested hearing four business days before a hearing, and file either their motion to continue or witness and exhibit list three business days prior to the scheduled trial, hearing or conference.

FEES ALLOWED

(Note: A file of allowed debtor's attorney fees in Chapter 13 cases can be found in the Montana Bankruptcy Reporter toolbox)

In re Arnold Farms, 2026 Mont. B.R. 315 (August 24, 2026) (Creditor's attorney fees). The Application asserts Applicant's right to post-petition legal fees and costs as representatives of an over-secured creditor pursuant to 11 U.S.C. § 506(b). Under 11 U.S.C. § 506(b), to the extent a creditor is over-secured, that creditor "shall be allowed . . . interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." The 9th Circuit has summarized that code section to allow recovery of attorney's fees if four distinct elements are met: (1) The claim is an allowed secured claim; (2) the creditor is over-secured; (3) fees are reasonable; and (4) the fees are provided for under the agreement. Here, Creditor has an allowed secured claim, is over-secured, and the underlying

loan documentation giving rise to the claim includes a provision for attorneys' fees. Whether the fees are reasonable requires more in-depth analysis. "An over-secured creditor should not be paid attorney's fees for unnecessary or redundant tasks or for doing the very thing any creditor, unsecured as well as secured, is entitled to do under the Bankruptcy Code."

Here, a review of the Application and fees incurred shows Creditor had to review, analyze and object to no less than four proposed plans. Creditor prepared for and participated in a contested confirmation that resulted in a denial of confirmation, but the decision highlighted problems with the Creditor's objection as well as Debtor's plan. Ultimately, Creditor and Debtor agreed on plan treatment and a plan was confirmed. This Court cannot discern the cause of the significant fees incurred by Debtor and Creditors' counsel in this case. Specifically, whether confirmation was expensive because the proposed plans included treatment of Creditor that were patently unreasonable and not confirmable, or whether Creditor insisted on plan treatment that was aspirational.

After scrutinizing its own fees, Creditor's counsel reduced the amount subject to approval by almost $10,000. Taking into account the contested hearings, the results, and more broadly, the range of issues litigated, this Court cannot conclude the fees are unreasonable. Upon review of the Application, and in the absence of any objection after notice, the Court finds that the services provided by Applicant and costs incurred were reasonable, the Creditor has an allowed claim, the Creditor is over-secured, and the underlying agreement provides for attorneys' fees. Accordingly, pursuant to 11 U.S.C. § 506(b), IT IS ORDERED the Application is approved.

In re Winkowitsch, 2026 Mont. B.R. 290 (August 11, 2026) (Debtors' attorney fees). Professionals may receive reasonable compensation pursuant to 11 U.S.C. § 330. Section 330 further delineates factors to consider when assessing whether compensation is reasonable. It also highlights circumstances under which the court shall not allow compensation. The court may allow reasonable compensation to the debtor's attorney based on a consideration of the benefit and necessity of services to the debtor and other factors set forth under § 330(a)(3). A court determines reasonable compensation utilizing factors that include: (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and, (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

While professionals cannot predict the future, the Court observes that at status conference after status conference, creditor's counsel, the Trustee, and the Court relied on the representations of Debtor's counsel. While these representations may have reflected counsel's best efforts at the time, delay and successive modifications of the plan are the hallmarks of this case. Had the modifications resulted in adequate plan funding, the Court might consider the additional fees being requested now, "reasonable." Instead, the modifications prolonged a process that likely compounded creditor losses while at the same time failing to benefit the Debtor, the estate or achieve the objectives of Chapter 12.

Chapter 12 was designed to give family farmers facing bankruptcy a fighting chance to reorganize their debts in the face of financial pressure and the tightening of agricultural credit during the early and mid-1980s. Reorganization was intended to save family farms. Instead, in this case the Trustee is selling a combination of real and personal property, following Debtors' serial defaults on prior modified plans. The farm will not be saved.

To date, Debtor has been unable to fund a plan either through operations or liquidation calling into question the utility of the exercise and benefit of the services provided throughout the case. The court has already approved Debtors' attorneys' fees in excess of $75,000. Approval of an additional $18,000 in fees would result in aggregate fees in this case of approximately $93,000. This Court simply cannot conclude the services reflected in the billing attached to the prior and immediate fee Application are reasonable in the aggregate, taking into consideration compensation in Chapter 12 cases handled by other counsel. As the Court considers this Application it has the benefit of the total fees incurred in a series of Chapter 12 cases that were filed 2019-2021, and have been completed or are near plan completion. and Associates are consistently higher than the fees incurred by other counsel for similar Chapter 12 work. Having considered no less than seven other Chapter 12 cases involving varying degrees of complexity in which the debtors' attorneys' fees incurred were a fraction of those already approved in this case, the Court cannot conclude approval of additional fees would be reasonable. As the Court noted at the hearing, the Court contemplated revisiting its prior award of $75,000, and reducing it. Instead, it has elected to deny the Application before it.

In re Hearn, 2024 Mont. B.R. 26, 2024 (January 23, 2024) (Debtors' attorney fees). Case No. 19-61235. The total amount sought is $20,750.00. Ordinarily, the Total Amount requested would give the Court pause, as it is nearly three times greater than what the Court typically approves in a Chapter 13 case. However, as Applicant explains in the Application, Debtors' Chapter 13 bankruptcy has been significantly more complex than a standard case. Applicant indicates that, among other obstacles, he has resolved plan objections, filed multiple modified plans, defended eight motions to dismiss, and helped Debtors resolve a fraud inquiry from the Montana Department of Revenue. The Application further indicates that Applicant has billed total fees and costs in the amount of $31,766.46 but has elected to reduce the amount by nearly $10,000.00. The Court commends Applicant for reducing his requested fees by such a significant amount. If Applicant requested fees and costs totaling over $30,000.00, the Court likely would have reduced them to an amount comparable to the Total Amount Applicant requests. After reviewing the requested fees and costs, the Court finds that the requested fees and costs are both reasonable and necessary in accordance with 11 U.S.C. § 330.

In re Bodine, 2023 Mont. B.R. 166 (October 6, 2023) (Realtor fees). The Application seeks to pay associated fees related with Debtor's sale of real property, including the brokerage fee associated with the sale of the property of $1,560.00 and the Buyer's agent's fee of $19,500.00. The total amount sought is $ 21,060.00. Pursuant to Mont. LBR 9013-1, a "Notice" attached to the Application explains that the time to respond or object to the Application and schedule the matter for a hearing is fourteen (14) days. The time to respond or object has passed. No objections were filed.

Although Debtor attached a Notice, pursuant to Mont. LBR 2002-4, an application for professional fees or reimbursement of expenses exceeds $1,000.00, except as otherwise provided

in Mont. LBR 2016-1, the professional shall file a notice with the Court consistent with Mont. LBR 9013-1 and Mont. LBF 18, providing a notice period of twenty-one (21) days within which a party in-interest may object. In short, Debtor's Application should have provided a notice period of twenty-one days. However, rather than require Debtor to refile the Application, the Court deems it appropriate to reduce the notice period pursuant to Fed. R. Bankr. P. 9006(c), which permits the Court to reduce applicable notice periods, except when reduction is prohibited. Reduction is not prohibited in this case. After reviewing the requested fees, the Court finds that the requested fees are both reasonable and necessary in accordance with 11 U.S.C. § 330.

In re Stroh, 2021 Mont. B.R. 277 (June 24, 2021) (Chapter 12) (Creditor's attorney fees). Applicant represents secured creditor Bank of Malta. Applicant seeks approval of the Total Amount pursuant to §§ 331 and 506(b). Applicant tailored Mont. LBF 17 to incorporate prior decisions by this Court denying approval of fees for failure to include any citation to authority or sufficient allegations relevant to the requested relief.

A. § 331 is not applicable. A trustee, an examiner, a debtor's attorney, or any professional person employed under §§ 327 or 1103 may apply to the court not more than once every 120 days after an order for relief for compensation for services rendered or reimbursement for expenses incurred before the date of the application as provided under § 330. Applicant was not employed under §§ 327 or 1103. As a result, § 331 is not applicable. Applicant is not an officer of the estate. More importantly, the Application discloses Applicant has been paid $9,597.97 and seeks approval of fees in the amount of $9,589.50. Applicant is not suffering the hardship addressed by § 331. Interim allowance of fees under § 331 is not available to oversecured creditors who seek reimbursement of their fees pursuant to § 506(b).

B. § 506(b). A creditor may recover attorney's fees from the estate if the conditions of § 506(b) are satisfied. To recover attorney's fees from the estate the applicant must show: (i) the claim is an allowed, secured claim; (ii) the creditor holding the claim is oversecured; (iii) the fees, costs and charges are provided for by the agreement, or state statute, under which the creditor's claim arose; and (iv) the fees, costs and charges are reasonable. *In the Matter of Lehua Hoopai*, 581 F.3d 1090, 1098 (9th Cir. 2009). Additionally, Rule 2016(a) requires in part, "An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." At a minimum, an application for reimbursement of attorneys' fees or expenses by an oversecured creditor should collectively address the elements identified in *Hoopai* as well as the requirements of Rule 2016(a).
The Court would be remiss if it did not address Mont. LBR 2016-1(a), which provides, "All applications for fees and costs of professionals filed pursuant to Fed. R. Bankr. P. 2016 in cases under Chapters 7, 11, 12, 13 or 15 shall be in conformity with Mont. LBF 17." Counsel has endeavored to modify Mont. LBF 17 to address the immediate Application. The Court commends counsel for these efforts, but the Court's scrutiny of Mont. LBF 17 has caused it to question whether a form ordinarily used by professionals employed by the estate seeking compensation should be the starting point for a form used by oversecured creditors seeking reimbursement of attorneys' fees and expenses under § 506(b). Mont. LBF 17 does not neatly address items (i)-(iii) outlined in Hoopai, and even with counsel's modifications, Mont. LBF 17 seems deficient for purposes of seeking reimbursement under § 506(b). IT IS ORDERED that

the Application is denied without prejudice. Counsel may refile the Application providing 21-days' notice. Further, the Court instructs counsel to disregard Mont. LBF 17 and prepare a new application that specifically considers an oversecured creditor's request for reimbursement of attorney's fees under § 506(b). Counsel is authorized to disregard Mont. LBR 2016-1(a)'s mandate that "all applications for fees and costs of professionals filed pursuant to Fed. R. Bankr. P. 2016 in cases under Chapters 7, 11, 12, 13 or 15 shall be in conformity with Mont. LBF 17," for purposes of its renewed filing.

In re Somerfeld, 2025 Mont. B.R. 36 (April 28, 2025). Case Nos. 18-61148, 18-61141. (Creditor's attorney fees). Under the Code, if the value of property securing an allowed claim is greater than the claim, "there shall be allowed to the holder of [a secured] claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." § 506(b). Case law has distilled the text of § 506(b) into four elements: (1) the claim is an allowed secured claim; (2) the creditor is oversecured; (3) the fees are reasonable; and (4) the fees are provided for under the agreement. "A secured claim holder has the burden of proving the reasonableness of its fee claim under § 506(b)." In this case, there is no dispute Creditor has an allowed secured claim, it is oversecured, and fees are provided under its underlying agreement and pursuant to the confirmed plan. The only issues are: (1) may Creditor seek reimbursement for fees incurred postconfirmation; and, (2) the reasonableness of the fees requested.

This Court has previously taken up the question of postconfirmation attorney fees for a secured creditor in In re Winkowitsch, 2024 Mont. B.R. 195 (Bankr. D. Mont. 2024). In that case, creditors applied for postconfirmation fees under § 506(b) arguing that modification acted as a new confirmation. There, this Court found that confirmation "is the watershed event" and that modification—while subject to most of the same requirements as confirmation— was a limited intervention for narrowly defined purposes. The Court explained that confirmation of a plan was entirely different than approval of a modification to that plan. As this Court explained in *In re McLaughlin*, confirmation in Chapters 12 and 13 require a hearing while modification does not. 2022 Mont. B.R. 143.

Section 502 dictates allowance of claims, while § 506(b) permits the inclusion of postpetition interest and attorneys' fees as a component of a claim for oversecured creditors. Once a claim is allowed, a plan confirmed, and the new claim is fixed, the new claim may include interest that accrued, or attorneys' fees incurred from the petition date to confirmation. After confirmation, § 506(b) is no longer applicable, irrespective of whether modification occurs once or on multiple occasions. Instead, after a plan is confirmed, the interest rate and right to recover attorneys' fees must be provided for in the parties' new contract, the plan.

Under Montana law, "the reasonableness of attorney's fees must be ascertained under the unique facts of each case." To determine reasonable fees, the court must review: (1) The amount and character of the services rendered; (2) The labor, time, and trouble involved; (3) The character and importance of the litigation in which the services were rendered (4) The amount of money or the value of the property to be affected; (5) The professional skill and experience called for; (6) The attorneys' character and standing in their professions; and (7) The results secured by the services of the attorneys.

In reviewing reasonableness, this Court has historically considered the value of the claim and the importance of the applicant's work in protecting their clients claim. See Olson, 2020 Mont. B.R. 147–48. In Olson, this Court expressed skepticism "whether there are any circumstances in which a creditor could establish that attorney's fees and expenses totaling $80,399.50 or $$66,323.16 [sic], are reasonable when the claim is $92,577.92, or even $115,377.10 . . . ." (emphasis added). Additionally, the Court has reiterated that "An oversecured creditor should not be paid attorney's fees for unnecessary or redundant tasks or for doing the very thing any creditor, unsecured as well as secured, is entitled to do under the Bankruptcy Code."

Consistent with other cases, this Court will not scrutinize line-by-line Applicant's fees. See *Winkowitsch*, 2024 Mont. B.R. at 200. The Court recognizes that Applicants have already reduced their fees, but finds that numerous entries were disproportionate to their results or more than what was reasonable. Accordingly, the Court will reduce compensation for fees to $19,447.76—25% of their original amount. Together with costs, the total award under the Application shall be $20,219.07. This award more closely aligns with the fees incurred by Debtor's counsel and more closely approximate "reasonable." Consistent with Montana law, no fees or costs shall be awarded for litigation of the Application. The fees may be collected either at the time the loan is paid off, or in connection with any foreclosure sale conducted by creditor as a component of any credit bid at the sale.

In re Harrington, 2024 Mont. B.R. 130 (June 7, 2024) (Debtor's attorney fees). The court may allow reasonable compensation to the debtor's attorney based on a consideration of the benefit and necessity of services to the debtor and other factors set forth under § 330(a)(3). In Montana, chapter 13 debtor's counsel may receive compensation at a presumed reasonable flat rate of up to $6,000 in fees and $750 in costs in representing chapter 13 debtors, for a combined presumptive reasonable fee of $6,750. Mont. LBR 2016-1(b). This Court recently increased this combined "no look" fee from $4,750. Mont. LBR 2014-2(b) requires that "[a]ll debtor's attorneys in chapter 13 cases shall use the standard Attorney Retention Agreement set forth in Mont. LBF 3-A if they wish to have the presumption of reasonableness of their fees as described in Mont. LBR 2016-1(b)." In essence, the "no look" fee establishes $6,000 is presumptively reasonable compensation for completion of the defined services outlined in LBF 3-A. If these services are provided for $6,000, an application for approval is not necessary because the fixed fee is presumed reasonable. If counsel agree to provide the defined services for $6,000, a future decision to convert to an hourly rate and request additional compensation must be scrutinized by this Court. Along with considering §§ 330(a)(3) and (4), counsel's explanation for the transition the hourly fee must justify the decision, the client must be informed, the services being performed must be outside the defined services included in LBF 3-A, and the disclosure of compensation must be amended.

Every attorney must file a disclosure of compensation within 14 days after the petition date. Rule 2016(b). Additionally, Mont. LBR 9009-1 requires that a debtor's chapter 13 plan conform with Mont. LBF 19. Mont. LBF 19 states that if debtor's counsel requests fees and costs that differ from "the Disclosure of Compensation originally filed by the Debtor'(s) attorney, said Disclosure must be amended simultaneously with the filing of this Plan or Amended Plan, as provided in [Rule] 2016(b)." any compensation in a chapter 13 plan that differs from that in counsels' initial Disclosure of Compensation requires counsel to file an amended Disclosure of Compensation simultaneously with the plan. Further, any services excluded from a "no look" fee

agreement must be clearly delineated and the hourly rate the professional will charge for those services must be clearly disclosed. Absent these disclosures at the beginning of the case, and amendments as required later in the case, practitioners may inadvertently violate Rule 2016 or Mont. R. Prof. Conduct 1.5(b). Amending the Rule 2016 disclosure statement if the initial fee arrangement is altered is mandatory. Notably, Rule 2016(b) requires that counsel disclose any payment or agreement not previously disclosed. This requires counsel to amend their disclosure statement if they choose to change their billing arrangement from a flat rate to an hourly rate, regardless of whether this Court has yet approved any fees. A hybrid fee arrangement that contemplates a "no look" fee for defined services, and hourly fees for other excluded services is permissible. However, any application for approval of fees incurred must, at a minimum, demonstrate to the court that the services were initially excluded from the "no look" fee and the necessity of the fees later incurred. The penalties can be harsh if counsel fails to do so, including denial and disgorgement of all fees in excess of what was contemplated in the initial disclosure.

Those duties outlined under LBF 3-A provide a guidepost and ceiling for what this Court will approve as reasonable for services that are routinely performed in most cases, even though time and effort required to perform those services may vary depending on the relative complexity of the case. Unless compelling circumstances exist otherwise, this Court will not approve fees in excess of the "no look" fee for time spent performing the defined legal services and ancillary tasks associated with those services, such as filing a Notice of Change of Address, filing a modified plan or amending a debtor's schedules. If debtor's counsel's fees exceed the presumed reasonable fee under Mont. LBR 2016-1(b), this Court expects that circumstances exist that would warrant an increased award. These circumstances include initiating or defending an adversary proceeding for debtor's benefit, litigating a complex contested matter, such as a motion for valuation, or navigating some unforeseen difficulty in a debtor's case, such as a divorce. Certainly, this list is not exclusive. This Court acknowledges that the problems encountered in a case are not always easily characterized as typical or atypical.

Scrutiny of the docket in Debtors' case reveals no contested hearings were held and no adversary proceedings were filed in this case, and Debtors' filings were largely unopposed. Applicant has not discounted or written off any time associated with his work on Debtors' case. While this Court does not doubt the veracity of Applicant's time entries and trusts that he incurred the time reflected in the billing statements, it cannot conclude approval of any additional fees would be reasonable. Indeed, this Court considered revisiting its prior approval of $13,620.74, but ultimately concluded that it would not do so. Although this Court is not persuaded that fees in excess of $20,000 in this case are reasonable, this does not in any way diminish the importance of the services Applicant provides to debtors. Despite the significant and important service Applicant provides, where defined services presumptively cost $6,000, permitting counsel to receive $12,000 to $18,000 for providing essentially the same services calls into question the integrity and fairness of this Court's analysis of reasonableness. Under these circumstances, this Court must exercise its authority and award less fees than requested.

In re Doty, 2022 Mont. B.R. 78 (May 25, 2022) (Creditor's attorney fees). Since the Total Amount does not exceed $1,000, notice to creditors and other parties in interest is not required under Fed. R. Bankr. P. 2002(a)(6) or Mont. LBR 2002-4. Nevertheless, this Court has an "independent obligation to review each application for compensation to ensure that applicants provide an adequate summary of work performed and costs incurred."

Under 11 U.S.C. § 506(b), to the extent a creditor is over-secured, that creditor "shall be allowed . . . interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." The 9th Circuit has summarized that code section to allow recovery of attorney's fees if four distinct elements are met: (1) The claim is an allowed secured claim; (2) the creditor is over-secured; (3) fees are reasonable; and (4) the fees are provided for under the agreement.
A creditor is over-secured if "the value of [the collateral] . . . is greater than the amount of such claim." Here, Creditor is over-secured. At the time of default the principal and interest Debtors owed Creditor was $393,807.43. The Buy-Sell Agreement filed with this Court at ECF No. 129 states the value of the real estate securing creditor's claim is $930,000.00. The value of the collateral exceeds the amount of Creditor's claim. Therefore, Creditor is over-secured.

This Court considers the following factors when evaluating the reasonableness of a fee application under 11 U.S.C. § 506(b): (1) the nature, extent, length and value of the services rendered; (2) the bankruptcy and non-bankruptcy experience, reputation, and ability of the attorneys; (3) awards in similar cases; (4) the novelty and difficulty (or lack thereof) of the questions presented; (5) the skill requisite to perform the legal services properly; (6) the customary fee; (7) professional time actually spent; (8) amount involved in potential risk; (9) the results of the cases; (10) specialty in which the attorneys may be practicing; (11) fees sought to be applied; (12) distinction between partner and associates time; (13) costs of comparable services; (14) use (or lack thereof) of paralegals; and (15) duplication of efforts. *In re Olson,* 2020 Mont. B.R. 137, 147 (Bankr. D. Mont. 2020). This Court also considers "the proportion of fees sought in relation to the total claim" Here, Applicant's request of $1,000.00 of professional fees is reasonable. The Application indicates over $18,000.00 worth of services have been provided. The Court notes this amount was substantially reduced in the Application due to the statutory constraints of Mont. Code Ann. § 71-1-320 which provides: *[i]f prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustee's fees and attorneys' fees to be charged to the grantor shall not exceed the lesser of $1,000 or 1% of the amount due on the obligation, both principal and interest, at the time of default."*

The statutory limitation of Mont. Code Ann. § 71-1-320 restrained Applicant from seeking an award exceeding $1,000.00. Nevertheless, considering the above factors along with the substantial reduction in amount requested, the Court concludes the total Amount is reasonable.

In re Teig, 2023 Mont. B.R. 180 (October 18, 2023) (Debtor's attorney fees). The reasonableness of compensation for debtors' attorneys is analyzed under the standard set for in 11 U.S.C. § 330. The Court considers several lodestar factors including: (A)The time spent on the services; (B) the rates charged for the services; (C) whether the services were necessary or beneficial at the time the services were rendered: (D) whether the services were performed withing a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) whether the person demonstrated skill and experience in the bankruptcy field: (F) whether the compensation is reasonable based on the customary compensation charged by comparable skilled practitioners in cases other than bankruptcy cases.
In this case, the Total Amount requested by Applicant significantly exceeds the presumed reasonable fee in a Chapter 13 case under Mont. LBR 2016-1(b). However, the Court has

previously stated in the past that it is willing to entertain higher fees and costs if counsel provides an appropriate explanation for the request. Here, the Application explains that:

> This case presented unique issues that required additional time, research, and careful analysis. For example, the Debtors initiated an adversary proceeding with the Internal Revenue Service on a preference claim arising from the filing of a federal tax lien. While the analysis for judgment liens is straightforward under the Code, courts have analyzed federal tax liens differently. This analysis, as well as negotiating with the IRS, has taken additional time. The IRS claim, per the Stipulation, was also bifurcated, which required additional time and analysis. The Debtors also divorced in the midst of these proceedings. As a result, Counsel worked with the Debtors to resolve which of the Debtors was retaining specific property. In addition to that, one of the Debtors is a wage-earner while the other is self-employed. This was an additional layer of complexity.

A review of the docket also shows that Debtors contested creditor Fundation Group, LLC's proof of claim. Debtors and Creditor negotiated and ultimately resolved Debtors' objection via a Stipulation. Accordingly, the Court is satisfied that Debtors' case is more complex than the typical Chapter 13. After reviewing the requested fees and costs, the Court finds that the requested fees and costs are both reasonable and necessary in accordance with 11 U.S.C. § 330. Accordingly, IT IS ORDERED that the Application is approved. Applicant is awarded reasonable professional fees in the Total Amount of $21,703.58. The Applicant is authorized to apply the current amount they are holding of $3,874.00 toward the balance due, leaving the amount of $17,829.58 to be treated as an administrative expense of this bankruptcy estate under 11 U.S.C. § 503(b)(2).

In re Pezdark, 2022 Mont. B.R. 244 (December 28, 2022) (Debtor's attorney fees). The reasonableness of compensation for debtors' attorneys is analyzed under the standard set forth in 11 U.S.C. § 330. The Court looks at factors including: (A)the time spent on the services; (B) the rates charged for the services; (C) whether the services were necessary or beneficial at the time the services were rendered; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) whether the person demonstrated skill and experience in the bankruptcy field; (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than bankruptcy cases. Of particular importance here is the time spent on services, the rates charged for the services, and the complexity of the case. While none of the forgoing alone distinguishes this case from an ordinary chapter 13 case, the Court acknowledges that in the aggregate the issues increase the cost.
The Court acknowledges that a creditor's action may increase the fees incurred. HCU's filing and determination that despite a 50% equity cushion it was inadequately protected is at odds with ordinary practice before this Court and well accepted notions of adequate protection. HCU's Amended Motion to Modify Stay, along with more generally its impractical approach to the case undoubtedly increased the fees in the case.

Applicant explains in paragraph 14 of the Application that issues in this case included: challenges attributable to COVID; negotiations with the secured lender; several plan modifications; negotiations with a private financer; and, defense of a state court foreclosure suit. Further, action by at least one other creditor with a tax lien required consideration of the stay and

whether it had been violated. Finally, Applicant has elected not to include fees incurred after September 30, 3022. This explanation is consistent with the Court's own review of the time records and record in the case.

Ordinarily, services in a Chapter 13 case are provided with a "no look fee." Effective December 31, 2022, this no look fee will be increased to $6,000. Although the immediate Application includes fees that are almost triple that amount, the time records reflect no shortage of issues Applicant was tasked with handling for the Debtor. Importantly, many tasks were delegated to competent paralegals with a significantly lower rate than the attorney. Although $16,000 in fees is an outlier and greatly exceeds the Court's ordinary expectations of reasonableness in a chapter 13 case, Applicant has persuaded the Court this case was not ordinary. After reviewing the Application, the Court finds that the fees and costs comprising the Total Amount are reasonable and necessary in accordance with 11 U.S.C. § 330(a)(4)(B). Accordingly, IT IS ORDERED that the Application is approved.

FEES NOT ALLOWED

In re Arnold Farms, Inc., 2026 Mont. B.R. 315 (August 24, 2026). The Application asserts Applicant's right to post-petition legal fees and costs as representatives of an over-secured creditor pursuant to 11 U.S.C. § 506(b). Under 11 U.S.C. § 506(b), to the extent a creditor is over-secured, that creditor "shall be allowed . . . interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose." The 9th Circuit has summarized that code section to allow recovery of attorney's fees if four distinct elements are met: (1) The claim is an allowed secured claim; (2) the creditor is over-secured; (3) fees are reasonable; and (4) the fees are provided for under the agreement.

Here, Creditor has an allowed secured claim, is over-secured, and the underlying loan documentation giving rise to the claim includes a provision for attorneys' fees. Whether the fees are reasonable requires more in-depth analysis. "An over-secured creditor should not be paid attorney's fees for unnecessary or redundant tasks or for doing the very thing any creditor, unsecured as well as secured, is entitled to do under the Bankruptcy Code."

Here, a review of the Application and fees incurred shows Creditor had to review, analyze and object to no less than four proposed plans. Creditor prepared for and participated in a contested confirmation that resulted in a denial of confirmation, but the decision highlighted problems with the Creditor's objection as well as Debtor's plan. Ultimately, Creditor and Debtor agreed on plan treatment and a plan was confirmed. This Court cannot discern the cause of the significant fees incurred by Debtor and Creditors' counsel in this case. Specifically, whether confirmation was expensive because the proposed plans included treatment of Creditor that were patently unreasonable and not confirmable, or whether Creditor insisted on plan treatment that was aspirational.

After scrutinizing its own fees, Creditor's counsel reduced the amount subject to approval by almost $10,000. Taking into account the contested hearings, the results, and more broadly, the range of issues litigated, this Court cannot conclude the fees are unreasonable. Upon review of the Application, and in the absence of any objection after notice, the Court finds that the services provided by Applicant and costs incurred were reasonable, the Creditor has an allowed claim, the

Creditor is over-secured, and the underlying agreement provides for attorneys' fees. Accordingly, pursuant to 11 U.S.C. § 506(b), IT IS ORDERED the Application is approved.

CONVERSION, DISMISSAL AND REVOCATION OF CONFIRMATION

Conversion to Chapter 7

Castleman v. Burman, Ninth Circuit Court of Appeals, Case No. 22-35604. The purpose of the Bankruptcy Code is to grant a "fresh start to the honest but unfortunate debtor." Chapter 13 "allows a debtor to retain his property if he proposes, and gains court confirmation of, a plan to repay his debts over a three-to-five-year period." Chapter 13 can benefit the debtor and creditors: the former keeps his assets, and the latter "usually collect more under a Chapter 13 plan than they would have received under a Chapter 7 liquidation."

Section 348(f) does not define the word "property" or the phrase "property of the estate." However, "property of the estate" is a term of art which appears throughout the Bankruptcy Code. Under § 541(a)(1), filing for bankruptcy creates an estate which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." The estate also includes all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." In this circuit, we have likewise concluded that the broad scope of § 541(a), and especially § 541(a)(6), means that post-petition "appreciation [i]nures to the bankruptcy estate, not the debtor." We recently re-affirmed this in Wilson v. Rigby, noting that when a debtor files for bankruptcy, the "proceeds, product, offspring, rents, or profits" which become part of the estate under § 541(a)(6) "include[] the appreciation in value of a debtor's home." The Castlemans point out that Wilson was originally filed as a Chapter 7 case, but the definition of property of the estate in § 541(a) applies equally to Chapter 13. There is no textual support for concluding that § 541(a) has a different meaning upon conversion from Chapter 13.

Some courts have also relied on the implicit operation of § 1327(b), which provides: "Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." Under this reasoning, equity increases from the time of the initial filing up until plan confirmation would inure to the estate, then from time of confirmation until conversion would vest in the debtor, and finally upon conversion, any additional post-conversion changes would benefit the estate. However, we find it difficult to believe Congress envisioned this valuation and accounting process without making any explicit cross-reference to § 1327(b), and because in other instances where Congress wanted to exclude assets or certain interests of the debtor from the bankruptcy estate, it has done so with specificity.

In sum, the plain language of § 348(f)(1) dictates that any property of the estate at the time of the original filing that is still in debtor's possession at the time of conversion once again becomes part of the bankruptcy estate, and our case law dictates that any change in the value of such an asset is also part of that estate. In this case, that property increased in value. In other cases, the value might decline, or the value of one asset in the estate might increase while other property depreciates in value. This is simply a happenstance of market conditions, which sometimes will benefit the debtor and sometimes benefit the estate.

In re Kale, 2020 Mont. B.R. 332 (August 4, 2020). Case No. 19-60541. Debtors' counsel attempted to convert Debtor Ryan Kale's case to Chapter 7 of the Bankruptcy Code. Joint debtors cannot file a single case with one debtor operating in a Chapter 13 and the other in a Chapter 7. If Debtor Ryan Kale wants to convert to a Chapter 7, Debtors must file a motion to bifurcate their case, with notice to all parties of an opportunity to respond. Debtors must also pay the fee of $310.00 to split their Chapter 13 case. Once Debtors' case is bifurcated, Debtor Ryan Kale may voluntarily convert his Chapter 13 case to one under Chapter 7. Until Debtors properly file a motion to bifurcate and pay the appropriate fee, they may not jointly operate under two chapters of the Bankruptcy Code. This case will remain as a Chapter 13 case until both Debtors convert their case to Chapter 7 or until the case is bifurcated.

RECONVERSION NOT ALLOWED

Netteberg v. Berner (In re Berner), 21 Mont. B.R. 132 (2004). Debtors initially filed Ch. 13. The Ch. 13 Trustee and Creditors Shirno and Netteberg moved to convert to Ch. 7 on grounds that Debtors intended to use $12,000 cash and a $7,000 tax refund to live on while in Ch. 13, thus depleting estate assets. Debtors subsequently converted to Ch. 7 after making a single payment of $100 to the Trustee. Debtors now seek to reconvert back to Ch. 13. Shirno and Netteberg object.

The Court's decision is a close call. 2 of the 4 Leavitt factors are shown by substantial creditor evidence, the 3rd is shown to some extent, the 2nd not at all. Debtors experienced a bona fide change in circumstances when they moved to North Carolina and increased their income. However, their proposed schedules do not reflect present expenses since Steven continues to pay for and enjoy his $20,000 motorcycle. Debtors' misstatements regarding their liquid assets, failure to keep the Clerk apprised of their change of address, and admission that they moved to reconvert because of the adverse order entered by the Court, persuade the Court that its discretion should not be exercised in a manner which would let them avoid the effect of this Court's order. While Debtors seek to obtain Ch. 13 benefits, they have not shown that they seek reconversion in good faith for the purpose of repaying their debts, but to avoid this Court's adversary order. Debtors had an opportunity to confirm a Ch. 13 before they converted to Ch. 7. They made only a single $100 payment while in the previous Ch. 13. The Court does not deem it appropriate to allow them another chance under Ch. 13 given their conduct.

CONVERSION TO CHAPTER 13

In re Benet, 2026 Mont. B.R. 381 (October 26, 2026). Commencement of a bankruptcy case creates an "estate." The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property, subject to limited exceptions, including exemptions. 11 U.S.C. § 541(a)(1). This includes causes of action or litigation claims the Debtors had on the petition date.

In a Chapter 7 bankruptcy, the duties of a Chapter 7 trustee include, but are not limited to: "(1) to collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of the parties in interest; (2)

be accountable for all property received; (3) ensure that the debtor shall perform his intention as specified in section 521 (a)(2)(B) of this title; [and] (4) investigate the financial affairs of the debtor." 11 U.S.C. § 704(a)(1)-(4). The "trustee is obligated to gather the assets of the estate, liquidate them, and to the extent possible satisfy creditors' claims."

Converting from Chapter 7 to Chapter 13 in the Ninth Circuit involves a more complex analysis than the reverse conversion. Under 11 U.S.C. § 706(a), a Chapter 7 debtor may convert to Chapter 13 "at any time," provided the case has not been previously converted from another chapter. However, this right is not absolute. Section 706(d) expressly conditions the right to convert on the debtor's eligibility to "be a debtor" under Chapter 13. Additionally, the Supreme Court's decision in Marrama v. Citizens Bank established that this eligibility requirement encompasses not just the technical requirements of § 109(e) related to debt limits and regular income, but also the absence of bad faith that would make the debtor ineligible for Chapter 13 relief. Courts in the Ninth Circuit have applied Marrama to find bad faith where debtors seek to convert their case to preempt the Chapter 7 trustee's administration of the estate.

The Section 341 Meeting is critically important in a Chapter 7 case. Under 11 U.S.C. § 341(a), within a reasonable time after the order for relief, there shall be a meeting of creditors This meeting serves multiple essential functions: it provides the trustee and creditors an opportunity to examine the debtor under oath about their financial affairs, assets, and liabilities; it allows the trustee to assess whether there are assets to be administered for the benefit of creditors; and, it ensures the debtor understands the consequences of seeking bankruptcy discharge, including effects on credit history and the effect of receiving a discharge.

To date, the § 341 Meeting has not been completed. Originally scheduled for June 23, 2026 and continued on June 24 to July 22, 2026. On July 24, 2026, it was continued to August 11, 2026. Next, it was continued to September 9, or 16, 2026. 2026. And, finally, it has been continued to October 28, 2026. This may be indicative of a debtor that has chosen to frustrate the Trustee's administration of the case. Debtors may prefer litigation against Sunlight in another forum as an alternative to a compromise by the Chapter 7 Trustee. The Trustee has filed a notice of assets and requested a claims bar date. Having considered the issues framed by the parties briefing, both the explicit as well as implicit issues, this Court is convinced it should not hold a hearing on the Motion at this time. Instead, Debtors have a duty to cooperate with the Chapter 7 Trustee and a duty to attend the 341 Meeting. Completion of these requirements is an integral component of the Trustee's evaluation and administration of the estate.

In re Knauer, 2023 Mont. B.R. 111 (June 30, 2023). A Chapter 7 debtor may request conversion from Chapter 7 to Chapter 13 pursuant to 11 U.S.C. § 706 which provides, in relevant part: (a) The debtor may convert a case under this chapter [Chapter 7] to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable. . . . (d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter. This provision is not unlimited. 11 U.S.C. § 706(d) "acts as a limit on conversion under Section 706(a) and requires that a debtor be eligible for Chapter 13 per the eligibility requirements of Section 109(e) and also not subject to immediate dismissal or conversion under Section 1307(c) 'for cause' including 'bad faith.'"

Further, the Bankruptcy Code allows debtors to file a so-called chapter 20 case. A "chapter 20" debtor is "a chapter 13 debtor who has received a chapter 7 discharge within the four-year time period set forth in § 1328(f) prohibiting further discharge." Here, in an effort to retain his residence, Debtor now seeks to convert his Chapter 7 case to Chapter 13. Debtor previously received a discharge pursuant to 11 U.S.C. § 727 in his Chapter 7 case releasing him from personal liability from debts owed to creditors in this case. In effect, Debtor's payments to creditors will be voluntary if Debtor's Motion is granted.

However, as Debtor's counsel argued at the hearing, a confirmed plan is construed as a contract between the debtor and his creditors. To address concerns regarding the rights of creditors postconversion, Debtor's proposed plan states that creditors' claims will be provided for in full and any default in payment will result in conversion back to Chapter 7, where Debtor's residence will presumably be liquidated to satisfy any claims. These provisions have resolved the Trustee and Creditor's Objections as to the alleged bad faith nature of Debtor's requested conversion.

DISMISSAL
For Cause

In re Anderson, 2025 Mont. B.R. 85 (July 14, 2025). Despite the prior modification, Debtor has encountered additional challenges that have prevented Debtor from performing under either the initial plan, or the modified plan. Assessing when to permit a further modification of a chapter 12 plan, or dismiss a case is always difficult. In this case, Debtor has experienced unfortunate and unanticipated events. While tempting to hope this year's harvest will reflect a change in fortune, prospective modifications must be considered against the backdrop of past performance. Here it is difficult to assess the feasibility of a forthcoming modification because Debtor has not filed monthly operating reports or otherwise kept the Trustee or his counsel informed regarding the case following confirmation. Indeed, Debtor has neglected to file monthly operating reports, as required pursuant to 11 U.S.C. § 1203, since January of 2024.

The combination of Debtor's failure to file his monthly reports, past plan default and the uncertainty related to Debtor's prospective alfalfa and winter wheat harvest, weigh in favor of dismissal. This Court is not persuaded that a further modification of the plan will facilitate a successful reorganization. To the contrary, this Court harbors significant doubts regarding the feasibility of any proposed modification.

While weather and drought may ultimately be the cause of Debtor's problems, relief under the Code comes at a price and it includes:
(1) a debtor's active participation and engagement in the bankruptcy process after confirmation of the plan to ensure it is successful;
(2) performance of the plan as confirmed or modified consistent with any applicable deadlines, (e.g., when a debtor's plan includes listing and sale of real property, the Court expects a sale will be realized); and,
(3) filing monthly operating reports, or otherwise actively informing the trustee and counsel of developments that may impact performance under a plan, (e.g., updates regarding planting, weather, harvest, calving, weaning, changes in costs of inputs, etc.), so that modifications may be proposed and considered in an efficient manner that limits delay and prejudice to other

parties.

In this case, having considered the record to date, this Court can find nothing in the record tending to suggest a further modification or additional time to propose a modification would salvage this case. Accordingly, IT IS ORDERED the Trustee's Motion is granted. This case is dismissed.

In re Hazel, 2025 Mont. B.R. 134 (October 28, 2025). The Motion requests dismissal in accordance with 11 U.S.C. § 521, Fed. R. Bankr. P. 4002, and Mont. LBR 2003-5. The Motion seeks dismissal of this case for Debtor's failure to perform his duties and provide a completed Local Form 33 prior to the § 341(a) meeting of creditors scheduled for September 29, 2025. Trustee attached a "Notice" to the Motion as required by Mont. LBR 9013-1(f). The Notice explains that the time to respond or object to the Motion and schedule the matter for a hearing is fourteen (14) days. The time to respond or object has passed. No responses or objections were filed.

Section 521 and Fed. R. Bankr. P. 4002 imposes duties on debtors to cooperate and provide certain information to the trustee to facilitate the progression of their case. Mont. LBR 2003-5 requires debtors to provide a completed Mont. LBF 33 to the trustee prior to the § 341(a) meeting of creditors. Failure to provide "all the documents requested by the trustee" may be grounds for dismissal.

Notably, Mont. LBF 33 requires debtors to provide tax returns to the trustee. Failure to provide tax returns results in the dismissal of a case pursuant to the strict requirement under § 521(e)(2)(B). Dispositively, "the court shall dismiss the case unless the debtor demonstrates that the failure to comply is due to circumstances beyond the control of the debtor." Here, Debtor filed an amended petition on October 17, 2025, at ECF No. 20 listing the corrected mailing address. However, Debtor having listed the improper mailing address at ECF No. 1 and subsequently correcting the issue, demonstrates that the circumstances causing his failure to comply were not beyond his control. "Interested parties should be entitled to rely on the information provided in the course of the bankruptcy case." Therefore, Debtor does not fall within the exception to dismiss pursuant to § 521(e)(2)(B).

In re Brown, 2026 Mont. B.R. 304 (August 18, 2026). The record before this Court is limited because neither party introduced evidence at the hearing. Ordinarily, prior to a contested hearing parties are required to file witness and exhibit lists pursuant to Mont. LBR 5074-1(f). Through the introduction of admissible evidence parties establish adjudicative facts. In the Ninth Circuit, adjudicative facts are defined as the facts of a particular case that relate to the parties, their activities, their properties, and their businesses. adjudicative facts are those to which the law is applied in the process of adjudication and are roughly the kind of facts that normally go to the factfinder in a bench trial. Importantly, attorney argument is not evidence.

Under Fed. R. Evid. 201(b), a court may take judicial notice of an "adjudicative fact that is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction or it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Judicial notice efficiently satisfies the need for formal authentication of indisputable facts. While courts may take judicial notice of certain public records, including

their own records, this does not unilaterally establish that all of the underlying information contained in those records is subject to judicial notice. However, "a court cannot take judicial notice of disputed facts contained in such public records."

Under 11 U.S.C. § 1307(c), a bankruptcy court has broad, permissive discretion to convert a Chapter 13 case to Chapter 7 or dismiss the case for "cause" upon the request of a party in interest or the United States trustee, after notice and a hearing, whichever is in the best interests of creditors and the estate. Cases construing 11 U.S.C. § 1307 explain that the Court must employ a two-step analysis. First, the movant must establish cause exists. Section 1307 enumerates eleven non-exclusive statutory grounds that constitute cause. In addition to these statutory grounds, a debtor's bad faith or lack of good faith when filing a Chapter 13 petition or plan serves as an independent, non-statutory cause for dismissal or conversion. On this record, the Court concludes the immediate problems with Debtor's filing and the history of filings and dismissals weigh in favor of finding cause to dismiss or convert this case to Chapter 7. Repeatedly filing bankruptcy without a corresponding attempt to reorganize may be considered bad faith. This is Debtor's third bankruptcy filing in eighteen months and nothing in the record suggests Debtor is committed to confirming a plan or otherwise shouldering the burdens imposed by the Bankruptcy Code.

To address abuse of the bankruptcy process, a bankruptcy court may impose a bar on refiling. . The Trustee relies on this Court's decision in *In re Sleater*, 2024 Mont. B.R. 78, 81 (March 18, 2024), where this Court recognized that 11 U.S.C. § 349 was intended to provide courts with the authority to control abusive filings beyond the limits of 11 U.S.C. § 109(g). This case is distinguishable from *Sleater*. The debtor's conduct in *Sleater* was more egregious than the facts in this case. *In Sleater*, Debtor (or entities he controlled) filed five separate petitions over a five-year period. Although this case is factually distinguishable from *Sleater*, the record of Debtor's collective filings establishes a pattern of abuse. Like the debtor in *Kulick*, Debtor's prior and immediate filings demonstrate he never seriously attempted to confirm a plan. This pattern of successive filings and dismissal following failures to cure the deficiencies, combined with a plan that indicates payment is "TBD," along with answering questions on the petition and schedules falsely, constitutes abuse of the bankruptcy process.

To ensure this pattern of serial filing without any corresponding commitment to completion of a case is halted, the Court will bar Debtor from filing a new bankruptcy case without leave of this Court. This Court would likely grant leave for Debtor to file a new bankruptcy case if Debtor were represented by counsel. While debtors occasionally complete Chapter 13 cases in this district without the assistance of counsel, it is difficult, and the Court has no confidence Debtor in this case will be the exception that does so.

In re Sollid, 2024 Mont. B.R. 111 (April 9, 2024). Case No. 24-40010. Carol and Norman have filed a number of bankruptcy cases in this district. On its face, Carol's petition is invalid. 11 U.S.C. § 303(b) requires, in essence, that an involuntary petition be commenced by creditors with a claim against a debtor under very specific circumstances. 11 U.S.C. § 303 does not contemplate an individual filing an involuntary petition against herself. Setting aside the irreconcilable nature of voluntarily filing an involuntary petition against herself, to allow Carol to do so would lead to various absurdities, including requiring her to serve the petition and a summons upon herself pursuant to Fed. R. Bankr. P. 1010(a).

Carol orally moved the Court that she wished to submit "Highly Sensitive Documents" and requested that a manilla envelope containing the documents only be opened in chambers. Carol stated that the Submitted Documents would address the Court's Show Cause Order. The Submitted Documents can be categorized into three nearly identical batches related to Carol, Norman, and their daughter, Jessica Carrie Solid ("Jessica"). These batches contain: 1) a "Notice Concerning Fiduciary Relationship" (IRS Form 56); 2) a general judgment of change of name for each individual; 3) a document purportedly signed by the Secretary of State, Anthony Blinken, 4) an Apostille, and 5) the birth certificates of Carol, Norman, and Jessica. Nothing in the submission indicates that its subject matter renders it of potential value to malicious nation-state actors. As a result, Carol's oral Motion to Submit HSDs is denied.

The Submitted Documents highlight that Carol, at best, has a deeply misguided understanding of the law. In essence, the Court has been given a tax form and a birth certificate and asked to construe them in a way that would allow Carol to maintain an involuntary petition against herself. The Submitted Documents are "the sort of 'magic word' sovereign citizen filings that do not address the facts of this case or the substance of the pending motion."

11 U.S.C. § 105(a) makes "crystal clear" the court's power to act sua sponte where no party in interest or the United States trustee has filed a motion to dismiss a bankruptcy case, particularly in cases where a debtor has not complied with applicable bankruptcy rules related to the filing of a petition.). Further, 11 U.S.C. § 707(b)(3) allows a court to dismiss a case on its own motion if it finds a debtor filed a Chapter 7 in bad faith. Here, Carol has not paid a filing fee as required by Fed. R. Bankr. P. 1006. She has not filed "a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms." She has not filed a master mailing list pursuant to Mont. LBR 1007-2(a)(2). Instead, she has only submitted a barebones petition. Accordingly, even withstanding the peculiarities involved with the involuntary petition, dismissal is appropriate. Dismissal is also appropriate under 11 U.S.C. § 707(b)(3)(a). The dockets of the Prior Bankruptcies show that neither Carol nor Norman, have made a good faith effort to reorganize. Further, the dockets in the Prior Bankruptcies reflect a history of nonsensical filings that the Court is forced to expend time and effort to address. Accordingly, the Court determines that Carol's involuntary petition was filed in bad faith under 11 U.S.C. § 707(b)(3)(a).

The bankruptcy court's finding of bad faith as grounds for dismissal under 11 U.S.C. § 707(b)(3)(A) alone is sufficient cause under 11 U.S.C. § 349(a) to impose a bar to refiling. As such, because the Court determined that Carol's petition was filed in bad faith pursuant to 11 U.S.C. § 707(b)(3)(A), it will impose a one-year bar on any further filings by Carol without leave of the Court.

In re Gowan, 2021 Mont. B.R. 490 (November 22, 2021). In this Chapter 13 case, the Debtor filed a Motion to Dismiss seeking the dismissal of this case under 11 U.S.C. § 1307(b). Debtor did not attach a "Notice" to its Motion as required by Mont. LBR 1017-1(a)(3) and 9013-1. However, the Motion cites *In re Nichols* for the proposition that notice is not necessary when a debtor moves to dismiss a chapter 13 bankruptcy. The Court recognizes this precedent, while noting that the Court maintains authority under 11 U.S.C. §§ 349(a) and 109(g) to issue remedial orders in addition to granting a debtor's motion to dismiss if a debtor acts in bad faith or abuses the bankruptcy process. Pursuant to 11 U.S.C. § 1307(b) the Court shall dismiss a case "[o]n

request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title[.]" Here, the case has not been previously converted. Accordingly, IT IS ORDERED the Debtor's Motion is granted and this case is dismissed.

On Motion of the Debtor

In re Deherera, 2022 Mont. B.R. 65 (April 21, 2022). Pursuant to 11 U.S.C. § 1307(b) the Court shall dismiss a case "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title[.]" The debtor has an "absolute right to dismiss a Chapter 13 bankruptcy case, subject to the single exception [of previous conversion,] noted expressly in the statute itself." *In re Nichols*, 10 F.4th 956, 964 (9th Cir. 2021). The Court is able to determine, based on filings and orders in the docket, whether a case has been previously converted. As such, a voluntary dismissal of a chapter 13 case does not require notice to creditors or other parties in interest. Fed. R. Bankr. P. 1017 clearly excepts motions to dismiss under 11 U.S.C. § 1307(b) from the notice and hearing requirements of that rule. Our local rule Mont. LBR 1017-1(a)(3) reflects an historical practice of providing notice and opportunity for a hearing, now obsolete under the *In re Nichols* precedent. Here, the case has not been previously converted. Accordingly, IT IS ORDERED the Debtor's Motion is granted and this case is dismissed.

DISCHARGE - DECEASED DEBTOR

***In re Garner*,** 2022 Mont. B.R. 59 (March 31, 2022). 11 U.S.C. § 1328(g)(1) precludes a debtor from obtaining a Chapter 13 discharge "unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111." 11 U.S.C. § 1328(g)(2), however, provides that subsection (g)(1) does not apply to a debtor who fits the description set forth in 11 U.S.C. § 109(h)(4), which excludes a debtor "whom the court determines…is unable to complete [the personal financial management course] because of incapacity, disability, or active military duty in a military combat zone." Courts faced with the issue have determined that the death of a debtor excepts them from the personal financial management course requirement. 11 U.S.C. § 1328(a) requires "a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation" to file a certification with the Court affirming that all domestic support obligations have been paid. Upon review of the record, there is no evidence that Christopher "is required by a judicial or administrative order, or by statute" to pay any domestic support obligations. Accordingly, 11 U.S.C. § 1328(a)'s requirement is inapplicable. IT IS ORDERED that the Motion is granted. The requirements that Christopher submit a certificate of completion of a personal financial management course and certify that he does not have any domestic support obligations are waived.

In re Adamson, 2022 Mont. B.R. 38, (March 4, 2022). Debtor filed a "Motion to Waive Requirement for Financial Management Course and Certification as to Domestic Support Obligations. The Motion seeks an Order waiving the requirement that Debtor submit a certificate of completion of a Financial Management Course and certify that he does not have any domestic support obligations, as required by 11 U.S.C. §§ 1328(a) and (g) because Debtor passed away. 11 U.S.C. § 1328(g)(l) precludes a debtor from obtaining a Chapter 13 discharge "unless after

filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111." 11 U.S.C. § 1328(g)(2), however, provides that subsection (g)(l) does not apply to a debtor who fits the description set forth in 11 U.S.C. §109(h)(h), which excludes a debtor "whom the court determines ... is unable to complete [thepersonal financial management course] because of incapacity, disability, or active military duty in a military combat zone." This Court agrees and waives the requirement of 11 U.S.C. § 1328(g)(l) with respect to Debtor in this case. 11 U.S.C. § 1328(a) requires "a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation " to file a certification with the Court affirming that all domestic support obligations have been paid. Upon review of the record, there is no evidence that Debtor "is required by a judicial or administrative order, or by statute" to pay any domestic support obligations. Accordingly, 11 U.S.C. § 1328(a)'s requirement is inapplicable.

DISMISSAL ON REQUEST OF PARTY IN INTEREST

In re Deherera, 2022 Mont. B.R. 65 (April 21, 2022). Pursuant to 11 U.S.C. § 1307(b) the Court shall dismiss a case "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title[.]" The debtor has an "absolute right to dismiss a Chapter 13 bankruptcy case, subject to the single exception [of previous conversion,] noted expressly in the statute itself." *In re Nichols*, 10 F.4th 956, 964 (9th Cir. 2021). The Court is able to determine, based on filings and orders in the docket, whether a case has been previously converted. As such, a voluntary dismissal of a chapter 13 case does not require notice to creditors or other parties in interest. Fed. R. Bankr. P. 1017 clearly excepts motions to dismiss under 11 U.S.C. § 1307(b) from the notice and hearing requirements of that rule. Our local rule Mont. LBR 1017-1(a)(3) reflects an historical practice of providing notice and opportunity for a hearing, now obsolete under the *In re Nichols* precedent. Here, the case has not been previously converted. Accordingly, IT IS ORDERED the Debtor's Motion is granted and this case is dismissed.

MISCELLANEOUS CASES

In re Phillips, 2024 Mont. B.R. 236 (October 10, 2024) Case No. 23-20177. The Motion alleges that Creditor has repeatedly pursued collection of its stayed, now discharged, debt in violation of 11 U.S.C. §§ 362(a) and 524(a), despite fruitless efforts by Debtor and her counsel to inform Creditor of the injunctions. Debtor requests this Court to find Creditor in contempt of court and award Debtor's compensatory damages, a coercive fine, attorney fees and costs pursuant to 11 U.S.C. §§ 362(k) and 524(a)(2), and punitive damages for contempt of Court under 11 U.S.C. § 105(a). Creditor received notice of both the bankruptcy and the automatic stay. Upon receiving notice, each intentional act by the Creditor constituted a separate willful violation of the automatic stay. Creditor sent the Debtor three separate statements, which continued for months after it received notice. Creditor continued efforts to collect the amount due from Debtor was intentional. Consequently, each of these actions was a willful violation of the stay. Therefore, Creditor has willfully violated the stay three times.

Section 524 of the bankruptcy code provides that discharge "operates as an injunction against the commencement or continuation of an action . . . to collect, recover or offset any [discharged]

debt as a personal liability of the debtor." A party who knowingly violates the discharge injunction can be held in civil contempt under 11 U.S.C. § 105(a). A court may impose civil contempt sanctions pursuant to 11 U.S.C. § 105(a) when there is "no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order." "Civil contempt sanctions are designed to coerce compliance and to compensate for losses, including costs and attorneys' fees, stemming from noncompliance with the injunction." Section 105(a) contains no explicit grant of authority to award punitive damages. Rather, "the language of § 105(a) authorizes only those remedies necessary to enforce the bankruptcy code.

Compensatory damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Emotional distress damages are a form of compensatory damages and are not punitive. To recover for emotional distress, the individual must suffer a significant harm, must clearly establish the significant harm, and must establish a causal connection to the conduct. Emotional distress may be "readily apparent" without need for medical evidence or corroborating testimony, such as when a creditor engages in egregious conduct or the circumstances may make it obvious that a reasonable person would suffer significant emotional harm.

The record is devoid of any explanation for Creditor's conduct. Absent any explanation, and having considered the evidence presented by Debtor, the Court can neither conclude that Creditor's conduct was lawful nor discern any reasonably objective basis for the conduct. 11 U.S.C. § 105(a) allows the award of compensatory damages in the event of a discharge violation. Here, Debtor employed the services of counsel after Creditor continued to pursue its now discharged debt. Counsel's affidavit of fees and costs state that he incurred fees and costs in the amount of $4,842.02, and Debtor is entitled to an award in that amount. The Report further indicates that Debtor missed approximately twenty hours of work in connection with this matter. Debtor is entitled to compensation in the amount of twenty hours x her hourly rate of $19.51 ($390.20 in sum). Here, Debtor has presented no evidence that her distress has culminated in any physical manifestation. While Creditor's disregard of the protections of the stay are egregious, it is not clear to the Court that the receipt of the statements has caused more than "fleeting or trivial anxiety or distress." Accordingly, the Debtor is not entitled to emotional distress damages.

Creditor has attempted to contact Debtor five separate times since she filed bankruptcy. Debtor and her counsel's attempts to dissuade Creditor were fruitless. Creditor submitted a proof of claim after receiving notice of the claim filing deadline. Overall, Creditor's receipt of notices at its address and compliance with deadlines that benefit it, such as claim filing, make its failure to comply with either the stay or Debtor's discharge after receiving notice at precisely the same address even more egregious. To encourage Creditor's compliance with the Bankruptcy Code, the automatic stay, and the discharge injunction, this Court will award Debtor $500.00 for each of the five times Creditor contacted her during the administration of this case, along with an additional $1,000.

In re Willis, 2024 Mont. B.R. 283 (December 20, 2024). Case No. 23-90104. The filing of a petition "effects an immediate freeze of the status quo by precluding and nullifying post-petition actions, judicial or nonjudicial, in nonbankruptcy fora against the debtor or affecting the property of the estate." A party willfully violates the stay if they knew of the automatic stay and its

actions in violation were intentional. Once there has been notice, proof of specific intent to violate the stay and even good faith is irrelevant. Specific actions taken by Missoula County in a prosecutorial capacity, such as the letter it sent Debtor, did not violate the stay. Commencement of a criminal action against a debtor is not stayed. However, this exception only refers to prosecutorial immunity from the automatic stay. Through misunderstanding or cavalier disregard, Creditor ignored the import of the stay after receiving notice of it, an explanation of actions that were prohibited by the stay (i.e., collection), and the consequences of violating the stay.

Creditor's decision to pursue collection through prosecution and restitution, circumventing the binding confirmed Plan, violated the stay. In this case, Creditor did not object to the Plan, did not appeal the order confirming the plan, and was bound by the Plan and its treatment of its Claim. In a chapter 13 case, a confirmed plan is new contract that "is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to res judicata effect." Additionally, Creditor did not object to entry of Debtor's discharge, despite alleging that its Claim was based on fraud. Creditor's decision not to object to discharge despite conduct that is allegedly fraudulent—and possibly criminal—is inexplicable.
Actual damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. Actual damages are broad and include attorneys' fees. Similarly, debtor should be compensated for any loss of income due to time spent remedying violations.

Emotional distress damages are a form of actual damages and are not punitive. Pecuniary loss is not required for emotional distress damages, but "[f]leeting or trivial anxiety or distress does not suffice . . . ." Emotional distress damages may be awarded if debtor "(1) suffers significant harm, (2) clearly establishes the significant harm, and (3) demonstrates a causal connection between that significant harm and the violation of the automatic stay . . . ." In addition, courts awarding emotional distress damages should consider the severity of the violation of the automatic stay. Creditor accused Debtors of fraud, but failed to assert the debt was subject to exception from discharge. Creditor's failure to prosecute an objection to discharge under § 523(a)(2) or (4) causes this Court to doubt its allegations. Further, the stress associated with a threat of criminal prosecution is neither trivial nor fleeting. Indeed, Debtors attributed the increased stress to an increase in seizures. As a result of Creditor's actions, Debtors have suffered real and direct harm. Consistent with other courts and its own past decisions, this Court will award emotional distress damages based on the urgency and severity of the violations. Accordingly, the Court awards $2,000 for the fraud letter, $1,000 for the claim letter, and $2,500 for the referral to prosecution.

Punitive damages are available under § 362(k)(1) and may be awarded when the creditor demonstrates "a reckless and callous disregard for the law or the rights of others. . . ." Punitive damages are often acceptable as a "single-digit ratio" to compensatory damages. Here, Creditor demonstrated a "reckless and callous disregard for the law" when it continued to send Debtors notices after receiving Notice of the bankruptcy and an admonition explaining conduct that violated the stay. Its conduct is even more egregious considering two stay violations occurred after Debtors' counsel reminded Creditor the stay was in effect.

A court may impose civil contempt sanctions pursuant to § 105(a) when there is "no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the . . . order."

"Civil contempt sanctions are designed to coerce compliance and to compensate for losses, including costs and attorneys' fees, stemming from noncompliance with the injunction." Over the last six months, this Court has been tasked with assessing whether the Department of Labor has violated the stay in other cases. In this case and In re Phillips, the pattern is similar. In both cases, Creditor complied with the deadlines that benefitted it (proof of claim deadline), while at the same time disregarding the stay. This pattern suggests Creditor has failed to adopt internal guidelines that ensure receipt of a Notice of Bankruptcy Case filing triggers procedures that comply with the stay. As a result, it violates the stay.

Twice in less than a year, this Creditor has demonstrated a pattern of complying with the Code and deadlines when it serves their interest, while at the same time cavalierly disregarding process when it does not. This pattern must end, and an award in excess of $134,000 would likely ensure this result. Such an award would not be an outrageous sum for a violation of the automatic stay. In past cases, this Court has awarded debtors their actual damages along with a punitive award that was calculated by taking the total amount creditor attempted to collect in violation of the stay and multiplying it by a factor of two or three. Application of that approach would result in the following award to Debtors:

Description	Amount
Actual Damages	$9,132.99
Emotional Damages	$5,500.00
Punitive/Contempt	$20,925.00
Total:	$35,558.00

The bankruptcy code provides a process for fair, orderly reorganization or liquidation of a debtor's property for the benefit of all parties. When parties decide to ignore that process, it can significantly impact the debtor and their creditors. Creditor has failed to provide any explanation or factual contentions for its violation or to dispute the harm caused. Debtors provided credible testimony about the impact that these violations have caused. The Court must award damages accordingly. For the reasons stated above, Debtors are entitled to an award of damages in the amount of $35,558.

In re Uylaki, 2009 Mont. B.R. 46 (September 14, 2009). Debtor's ex-spouse (Rita) moves for relief from the stay based upon 11 U.S.C. § 362(d)(1), which allows for granting of relief from the automatic stay for cause including lack of adequate protection of an interest in property of such party in interest. Section 362 vests the court with wide latitude in granting appropriate relief from the automatic stay. The party seeking relief must first establish that cause exists for relief under Section 362(d)(1). Once a prima facie case has been established, the burden shifts to the Debtor to show that relief from the stay is not warranted. Rits's contention that her property settlement claim is nondischargeable in Chapter 13 is not completely accurate. Section 523(a)(15) excepts property settlement agreement claims from discharge in a Chapter 7, and under 11 U.S.C. § 1328(b), per the language in the beginning clause of Section 523(a). In the instant case, there is not yet an issue involving a hardship discharge. Section 523(a)(15) is not included in the discharge exceptions listed in Section 1328(a)(2). Therefore, Rita's PSA debt is dischargeable unless the Debtor fails to complete payments under the Plan and request a hardship discharge under Section 1328(b), or unless the case is converted to Chapter 7. Neither of those circumstances is present. Furthermore, Rita is bound by the confirmed Plan which

provided for surrender and satisfaction of her allowed secured claim and requires Rita to file a claim for any unsecured deficiency.