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Recent Developments in Chapter 13

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CHAPTER 13 RECENT DEVELOPMENTS

PART 1: HISTORY, RESOURCES, GENERAL PRINCIPLES AND "READ FIRST!"

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C. "READ FIRST!"

§ 4.1 WARNING! You Are a Debt Relief Agency

{1} ***In re Pearson*, No. 20-30077, 2020 WL 1845048 (Bankr. N.D. Tex. Apr. 9, 2020) (Jernigan)** (Internet-based law firm doing business as Wajda & Associates, also known as Recovery Law Group, is in much trouble in the Northern District of Texas after filing a Chapter 13 case for a serial bankruptcy abuser named Jakim Edward Pearson, Sr. Attorney took $1,500 postpetition retainer without disclosure or court approval. Petition did not reveal that debtor had filed 15 bankruptcy cases in various jurisdictions, some in the name of other individuals, some with borrowed Social Security numbers. The plan filed by counsel was nonsensical and when creditors showed up with motions revealing the truth counsel voluntarily dismissed the Chapter 13 case. Court then show-caused counsel to answer for a long list of statutory and rule transgressions. Counsel sent an "appearance attorney" who knew nothing about anything. Court has now set a second show-cause hearing with an order for counsel to appear personally. Stay tuned.).

{2} ***In re Taulbee*, No. 15-52073, 2020 WL 1671551 (Bankr. E.D. Ky. Apr. 2, 2020) (Wise)** (Chapter 13 debtors' counsel violated §§ 526 and 329, Bankruptcy Rules 9011 and 2016 and several rules of professional responsibility by secretly obtaining $500 from debtors during Chapter 13 case to convert to Chapter 7 but then failing to file conversion documents. Counsel misrepresented that debtors intended to stay in Chapter 13 and misrepresented conflicts that disabled counsel to appear in person at hearings with respect to conversion. Sanctions included permanently prohibiting counsel to practice in the Bankruptcy Court for the Eastern District of Kentucky.).

{3} ***In re Santos*, No. 19-33256-SGJ13, 2020 WL 1304142 (Bankr. N.D. Tex. Mar. 17, 2020) (Jernigan)** (Filing an unauthorized Chapter 13 petition to stop foreclosure lands former husband and attorney in deep yogurt. Using lies and fake emails, Gabriel Santos convinced attorney Steve Le to file Chapter 13 petition on behalf of Gabriel's former wife, Cynthia Santos. Attorney never met real debtor, fabricated answers on statements and schedules and never satisfied DRA responsibilities under §§ 526, 527 and 528. Attorney is suspended from practice. Former husband is referred to U.S. Attorney for criminal prosecution.).

{4} ***In re Gonzalez Torres*, No. 14-09581 (ESL), 2020 WL 889347 (Bankr. D.P.R. Feb. 24, 2020) (Lamoutte)** (In a fee dispute between Chapter 13 trustee and attorneys for debtors, because scheduled debts related primarily to a failed business, debtors are not "assisted persons," attorneys are not Debt Relief Agencies and §§ 526, 527 and 528 are not applicable.).

{5} ***In re Davis*, 605 B.R. 658 (Bankr. D.N.J. Aug. 29, 2019) (Meisel)** (Debtor's counsel failed to comply with requirements imposed on Debt Relief Agencies by §§ 526–528, by failing to provide required disclosures in writing and failing to adequately define the scope of representation. Debtor elected to void the contract and receive full refund of all fees paid.).

§ 4.2 Bankruptcy Petition Preparers

{6} ***In re Bennett*, No. 18-10346, 2019 WL 4686327 (Bankr. D. Vt. Sept. 25, 2019) (Brown)** (Synergy Law, LLC's bankruptcy filing in August does not stay action by U.S. trustee to enforce § 110 against Synergy's continued violations of the bankruptcy petition preparer

rules in Chapter 13 cases in Vermont. The U.S. trustee's action fits the stay exception for police and regulatory action by a government unit in § 362(b)(4). Synergy Law, LLC, did not use attorneys to assist Chapter 13 debtors and is thus a BPP subject to § 110. Synergy failed to make required disclosures and failed to sign required documents. Synergy gave prohibited legal advice, told debtors to hide Synergy's assistance, failed to file fee disclosures and made innumerable misrepresentations to debtors. Disgorgement of fees and imposition of fines and treble fines are appropriate. Synergy violated the nationwide injunction issued by other courts by filing this case. Further injunction is warranted but stayed by Synergy's bankruptcy filing. Dave Maresca, a principal of Synergy, is personally enjoined from assisting any person in filing bankruptcy in Vermont.).

{7} ***In re Shippy*, 605 B.R. 54, 59 (Bankr. D.S.C. Aug. 6, 2019)** (Based on numerous violations of § 110, Synergy Law, LLC, is fined and enjoined from filing, assisting with or appearing in bankruptcy cases in the District of South Carolina. "The evidence in this case shows that no attorney was involved in the preparation of Ms. Shippy's bankruptcy documents and assistance provided to her. Synergy used Mr. Prescott's filing credentials without his knowledge or authorization. . . . Synergy sent Ms. Shippy to Ms. Signer, a bankruptcy petition preparer, to fill in the petition and other documents filed. Synergy then changed the page showing Ms. Signer's services and reflected that Charles Prescott was the attorney with Synergy filing the petition on behalf of the debtor. . . . [W]hile Synergy purports to be a law firm, only non-attorney individuals assisted Ms. Shippy, with negative consequences. Thus, Synergy acted as a bankruptcy petition preparer in this matter. Synergy failed to take any steps to comply with §§ 110(b)(1) and 110(c) . . . . Synergy provided legal advice to Ms. Shippy.").

{8} ***In re Weathers*, 604 B.R. 13 (Bankr. D.S.C. May 20, 2019) (Waites)** (For multiple violations of the bankruptcy petition preparer provisions in § 110—and after the nationwide injunction issued by the bankruptcy court in Kansas—Synergy Law, LLC, is enjoined from assisting debtors in the District of South Carolina, Synergy is fined $7,500 and actual damages assessed of approximately $8,000, in addition to disgorgement of fees paid by Chapter 13 debtor. Debtor lost home to foreclosure after Synergy botched the filing of a Chapter 13 case and debtor reserved the right to pursue Synergy for that loss.).

§ 4.3 Section 342: Notice What Didn't Happen
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§ 9.5 Consequences of Ineligibility: Jurisdiction; Automatic Stay; Strike, Dismiss or Excuse?

{9} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Dismissal of Chapter 13 case based on ineligibility was appropriate because noncontingent liquidated unsecured debts exceeded § 109(e) limitation.).

{10} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Dismissal of fourth Chapter 13 petition since 2016 was appropriate because debtor failed to obtain the prepetition briefing required by § 109(h) and was ineligible.).

{11} ***Nero v. Waage (In re Nero)*, 605 B.R. 242 (M.D. Fla. Aug. 26, 2019) (Merryday)** (Bankruptcy court correctly determined that debtor was not eligible and that Chapter 13 case had to be dismissed because debtor failed to obtain briefing within 180 days before the petition. Briefing in prior case more than 180 days before current petition and briefing in current case after filing the petition do not satisfy § 109(h).).

{12} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{13} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Based on finding that schedules were not prepared in good faith, if ineligible debtor choses to dismiss Chapter 13 case, dismissal will be with prejudice to refiling for 180 days under § 105(a).).

{14} ***In re Malone*, No. 19-80149-TRC, 2019 WL 4686330 (Bankr. E.D. Okla. Sept. 25, 2019) (Cornish)** (Noting that *In re Pratola*, 578 B.R. 414 (Bankr. N.D. Ill. Dec. 27, 2017) (Baer), was reversed, 589 B.R. 779 (N.D. Ill. Aug. 31, 2018) (Dow), dismissal is mandatory when student loan debt exceeds eligibility limit in § 109(e).).

{15} ***In re Littlejohn*, No. 18-71004-PMB, 2019 WL 2246146, at *2 (Bankr. N.D. Ga. May 23, 2019) (Baisier)** (On trustee's objection and motion to dismiss, briefing two years before current case does not satisfy § 109(h) and current case must be dismissed, not stricken—notwithstanding that failure to get prepetition briefing in current case was based on counsel's mistaken advice that briefing before prior case satisfied § 109(h). "Although the goal of [§ 109(h)] may have been laudable, its implementation has been less than satisfactory, and the result has been a 'briefing' that serves no useful purpose and only serves—on occasion—to trip up an unfortunate debtor (like the Debtors here) who is then required to file another case (and incur the related delay, cost, and expense) after the dismissal of the case in which he or she is found to be ineligible. . . . The fallacy on which the requirement appears to be based is that debtors normally seek advice from counsel (or otherwise consider bankruptcy) at a point in time where they have ample time to collect information and make an informed decision before some dire consequence occurs. That is, in the real world, rarely the case. Debtors much more commonly meet with counsel, or otherwise consider bankruptcy, only on the cusp of a potentially catastrophic event—a foreclosure, an eviction, a repossession, an immediate imprisonment, or some other similar event. . . . They need a bankruptcy case, and they need it now. Because of that reality, the actual briefing, which is often taken online at their lawyer's office, is necessarily perfunctory, and is thus not particularly useful. . . . Debtors clearly have not complied with the requirements of Section 109(h). . . . [T]hey received one briefing two (2) years before the case was filed, and a second five (5) months after the case was filed. This requirement is not jurisdictional, . . . such that the case would not have to be dismissed if no party in interest requested dismissal. . . . However, here the Trustee has requested dismissal. . . . [T]he fact that the debtor is 'ineligible' to be a debtor must have some meaning, and dismissing the case seems like the most logical way to give effect to that meaning.").

{16} ***In re Welling*, No. 18-30900 HCD, 2018 WL 8223570 (Bankr. N.D. Ind. May 22, 2018) (Dees)** (In fourth Chapter 13 case since 2005, debtor knows about prepetition briefing requirement and has not shown any exigent circumstances that would suspend § 109(h). Chapter 13 case is dismissed with prejudice to refiling for 180 days.).

2. WHO IS ELIGIBLE

§ 10.1 Debtor Must Be an Individual; Spouses Allowed

{17} ***In re Jones*, No. 19-31539-beh, 2019 WL7342455 (Bankr. E.D. Wis. Dec. 30, 2019) (Hanan)** (Chapter 13 petition for an individual debtor cannot be "amended" 11 days after filing to add a spouse as a joint debtor. Spouse must file separate petition and can then move for joint administration under Bankruptcy Rule 1015(b)(1).).

§ 10.2 Sole Proprietorships Are Eligible
§ 10.3 Corporations Are Not Eligible

{18} ***In re Johnson*, No. 19-3620, 2020 WL 1450751, at *1 (E.D. Pa. Mar. 25, 2020) (Robreno)** (Chapter 13 petition filed by "TARANI A. JOHNSON doing business as Silver Apple, LLC" was properly dismissed because debtor was not an eligible individual under § 109(e). "A Chapter 13 petition can only be filed by an individual. . . . [T]he bankruptcy court made no error . . . in dismissing Johnson's Chapter 13 petition without prejudice so she could refile under Chapter 11.").

{19} ***Qarni v. Vahora (In re Qarni)*, No. 19-01090-A, 2019 WL 6817106, at *1–*5 (Bankr. E.D. Cal. Dec. 11, 2019) (Clement)** (Debtors' complaint states a claim that defendants violated stay in § 362(a)(3) when defendants with judgment against debtor and debtor's wholly owned corporation filed complaint for appointment of receiver to take control of corporation. Corporate control was an asset that became property of the Chapter 13 estate and seeking appointment of a receiver was an action to exercise control over that property. "[A] creditor obtained a judgment against the debtor and his corporation. As the sole shareholder, the debtor has plenary control over corporate activities. Thereafter, the debtor filed chapter 13 bankruptcy. . . . The right to control a wholly owned entity is a property right. . . . Naeem had a right to control VDL and California law deems that right to be property. . . . [T]he violation of the stay occurred after the Qarnis filed their chapter 13 petition but before plan confirmation, which would have revested the property in the debtor. . . . Consequently, at the time of the stay violation, Naeem's right to control the affairs and direction of VDL was property of the Qarnis' estate. The act of filing suit, which includes causes of action that seek to exercise control over property of the estate, is itself a violation of § 362(a)(3). . . . Since VDL's liquidation would result in Qarnis' loss of employment, and consequent ability to fund their chapter 13 plan, Vahora's efforts to appoint a receiver over VDL, if successful, would alter Naeem's right to control that entity in a manner inconsistent with § 362(a). . . . [A] creditor who attempts, but fails, to achieve actual control over estate property does not give the creditor a safe harbor against a stay violation action.").

§ 10.4 Partnerships Are Not Eligible
§ 10.5 Partners and Corporate Owners May Be Eligible

{20} ***Qarni v. Vahora (In re Qarni)*, No. 19-01090-A, 2019 WL 6817106, at *1–*5 (Bankr. E.D. Cal. Dec. 11, 2019) (Clement)** (Debtors' complaint states a claim that defendants violated stay in § 362(a)(3) when defendants with judgment against debtor and debtor's wholly owned corporation filed complaint for appointment of receiver to take control of corporation. Corporate control was an asset that became property of the Chapter 13 estate and seeking appointment of a receiver was an action to exercise control over that property. "[A] creditor obtained a judgment against the debtor and his corporation. As the sole shareholder, the debtor has plenary control over corporate activities. Thereafter, the debtor filed chapter 13 bankruptcy. . . . The right to control a wholly owned entity is a property right. . . . Naeem had a right to control VDL and California law deems that right to be property. . . . [T]he violation of the stay occurred after the Qarnis filed their chapter 13 petition but before plan confirmation, which would have revested the property in the debtor. . . . Consequently, at the time of the stay violation, Naeem's right to control the affairs and direction of VDL was property of the Qarnis' estate. The act of filing suit, which includes causes of action that seek to exercise control over property of the estate, is itself a violation of § 362(a)(3). . . . Since VDL's liquidation would result in Qarnis' loss of employment, and consequent ability to fund their chapter 13 plan, Vahora's efforts to appoint a receiver over VDL, if successful, would alter Naeem's right to control that entity in a manner inconsistent with § 362(a). . . . [A] creditor who attempts, but fails, to achieve actual control over estate property does not give the creditor a safe harbor against a stay violation action.").

§ 10.6 Partnership and Corporate Debts and Assets May Impact Eligibility

{21} ***In re Digirolamo*, 612 B.R. 726 (Bankr. M.D. La. Jan. 6, 2020) (Dodd)** (Faulty stucco work was not personal liability of Chapter 13 debtor because contract for work was between general contractor and limited liability corporation. There was no privity of contract between the debtor individually and the injured homeowner and no proof sufficient to pierce corporate veil to find debtor was alter ego of LLC.).

{22} ***Maldonado Perez v. Banco Santander De P.R. (In re Maldonado Perez)*, No. 18-00102, 2019 WL 5799327 (Bankr. D.P.R. Nov. 6, 2019) (Tester)** (Chapter 13 debtor's complaint to determine value and extent of lien on property fails for lack of jurisdiction when property is owned by a corporation and dissolution of the corporation under Puerto Rican law does not vest ownership in the debtor as owner of the corporation.).

§ 10.7 Trust Is Not Eligible, but Trustee May Be Eligible
§ 10.8 Eligibility of a Decedent's Estate
§ 10.9 Petitions on Behalf of Others: Incompetents, Next Friends, Powers of Attorney and the Like

{23} ***In re Santos*, No. 19-33256-SGJ13, 2020 WL 1304142 (Bankr. N.D. Tex. Mar. 17, 2020) (Jernigan)** (Filing an unauthorized Chapter 13 petition to stop foreclosure lands former husband and attorney in deep yogurt. Using lies and fake emails, Gabriel Santos convinced attorney Steve Le to file Chapter 13 petition on behalf of Gabriel's former wife, Cynthia Santos. Attorney never met real

debtor, fabricated answers on statements and schedules and never satisfied DRA responsibilities under §§ 526, 527 and 528. Attorney is suspended from practice. Former husband is referred to U.S. Attorney for criminal prosecution.).

{24} ***In re Chapman*, No. 19-26731-beh, 2020 WL 1212773, at *1–*6 (Bankr. E.D. Wis. Mar. 11, 2020) (Hanan)** (Attorney sanctioned under Bankruptcy Rule 9011 for filing "emergency" Chapter 13 petition based on power of attorney and a fabricated story by the debtor's daughter. Simple investigation would have revealed two prior similar cases within a year. Debtor was not aware that daughter was filing bankruptcy petitions using a power of attorney. Daughter represented that debtor's son would fund the plan, but son was unaware of daughter's misrepresentations. "Neither Attorney Clowers nor [paralegal] spoke with Mrs. Chapman herself prior to filing the Chapter 13 bankruptcy case on her behalf . . . . [Daughter] did not disclose to Attorney Clowers and [paralegal], nor did they discover themselves, that two previous cases had been filed on behalf of Mrs. Chapman in the preceding twelve months. . . . Bankruptcy Rule 9011 includes a 21-day 'safe harbor' provision . . . . But the safe harbor provision does not apply if the challenged paper is a bankruptcy petition . . . . [T]he Clowers firm took [daughter], the power of attorney, at her word . . . . [T]he petition erroneously states 'no previous cases.' . . . [O]ne phone call to the debtor's prior counsel . . . and would have learned that [daughter] had spun the same sham story about a brother whom she claimed would save the day by paying the mortgage arrears, but never actually did so. . . . The fact that counsel filed without adequate investigation, relying on a fairly sympathetic, albeit untrue, story by the debtor's disingenuous and manipulative daughter, suggests a negligent sense of urgency . . . . [A] monetary sanction is warranted . . . . One-third of the fees and costs incurred for the instant, third case seems appropriate.").

{25} ***In re Ivers*, No. 19-20026-E-13, 2019 WL 6033198 (Bankr. E.D. Cal. Nov. 8, 2019) (Sargis)** (After an exhaustive discussion whether the Chapter 13 debtor is competent to manage the estate, bankruptcy court calls on Sacramento County Adult Protective Services to investigate, review and report to the court with respect to whether the debtor suffers from a legal incompetency. In the meantime, stay relief previously granted is modified to maintain real property within the Chapter 13 estate pending evaluation of the debtor's competency.).

{26} ***In re Ivers*, No. 19-20026-E-13, 2019 WL 6038056 (Bankr. E.D. Cal. Nov. 8, 2019) (Sargis)** (Related to other decision, bankruptcy court calls on Sacramento County Adult Protective Services to investigate the Chapter 13 debtor's legal competence in light of erratic and self-destructive behavior with respect to the sale of property.).

{27} ***In re Blige*, No. 19-40222-EJC, 2019 WL 3959982 (Bankr. S.D. Ga. Aug. 21, 2019) (Coleman)** (Fourth Chapter 13 case since 2010 is dismissed with prejudice to refiling for three years when, acting through son with power of attorney, debtor filed petition that misrepresented illness when truth was debtor was incarcerated. Meeting of creditors conducted by phone from Georgia to California. Son in California answered questions revealing that debtor was incarcerated. Debtor through son misled everyone to believe that the debtor was in ill health, not in jail.).

3. REGULAR INCOME REQUIREMENT

§ 11.1 What Is Regular Income?

{28} ***Taneja v. Preuss (In re Taneja)*, 789 F. App'x 907 (2d Cir. Dec. 2, 2019) (Walker, Lynch, Sullivan)** (Dismissal of Chapter 13 case for cause was appropriate when pro se debtor failed to prove regular or stable income that would fund any confirmable plan.).

{29} ***In re Feliciano*, No. 19-05016 (EAG), 2019 WL 7041858 (Bankr. D.P.R. Dec. 19, 2019) (Godoy)** (At conversion from Chapter 7 to Chapter 13 debtor is eligible under § 109(g) based on schedules that show regular income as a teacher and some disposable income. The sufficiency of that income to fund a plan that accounts for a potentially preferential security interest in a car is an issue of feasibility properly addressed at confirmation.).

§ 11.2 When Must Debtor Have Regular Income?

a. SOURCES OF REGULAR INCOME

§ 12.1 Self-Employment
§ 12.2 Multiple, Irregular and Seasonal Employment
§ 12.3 Farming, Crop and Land Set-Aside or Payment in Kind
§ 12.4 Retirement Income
§ 12.5 Social Security

{30} ***In re Sherman*, 600 B.R. 453 (Bankr. D.N.M. May 24, 2019) (Jacobvitz)** (Social Security income can be regular income for eligibility purposes but this debtor has insufficient income to pay $92,000 prepetition mortgage arrearage even if reconversion from Chapter 7 to Chapter 13 is permissible.).

§ 12.6 Disability Benefits; Workers' Compensation
§ 12.7 Family Assistance, Welfare and Other Entitlements
§ 12.8 Unemployment Benefits, Strike Benefits and the Like
§ 12.9 Alimony, Maintenance and Child Support

§ 12.10 Contributions from Family, Friends, Nonfiling Spouses and Former Spouses; Grants and Awards
§ 12.11 Income from Leasing, Selling or Liquidating Assets
b. ABLE TO MAKE PAYMENTS
§ 13.1 Debtor Must Be Able to Make Payments under a Plan
4. DEBT LIMITATIONS
a. IN GENERAL
§ 14.1 Dollar Amounts
§ 14.2 Time for Determining Debt

{31} ***In re Phillips*, No. 19-00450, 2019 WL 3849245 (Bankr. D.D.C. Aug. 14, 2019) (Teel)** (Debt limitations in § 109(e) are measured as of original Chapter 7 petition date when debtor moves to convert from Chapter 7 to Chapter 13; foreclosure after Chapter 7 petition and before motion to convert that would shift some of the debt calculations is not considered.).

§ 14.3 Use of Statements and Schedules in Eligibility Calculations

{32} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Statements and schedules ordinarily control eligibility calculation but when debtor scheduled bank's claim as $1,000 and bank filed proof of claim in excess of $1,000,000, good faith was at issue and bankruptcy court appropriately considered proof of claim and note signed by debtor to conclude that debt in fact exceeded § 109(e) limitation.).

{33} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Because schedules were not prepared in good faith, bankruptcy court appropriately ignores debt characterization—"unliquidated"—and amount–"unknown"—to find debtor ineligible based on amounts stated by debtor in a brief filed in district court litigation nine days before the Chapter 13 petition.).

§ 14.4 Are Claims Split under 11 U.S.C. § 506(a)?
b. NONCONTINGENT DEBTS ARE COUNTED
§ 15.1 What Is Noncontingent Debt?

{34} ***In re Koleit*, No. 20-43377, 2020 WL 1815806, at *3 (Bankr. E.D. Mich. Mar. 31, 2020) (Tucker)** (That debtor is personally liable on note secured by a mortgage on real property owned solely by the debtor's spouse does not change the fact that the note is a prepetition unsecured debt that is counted as noncontingent for purposes of § 109(e). "There are no facts alleged . . . to suggest other than that pre-petition, all events giving rise to the Debtor's personal liability on the Huntington Mtg Group debt had occurred. The Debtor is personally liable on a mortgage loan that is secured by a mortgage on real estate owned solely by the Debtor's spouse. The fact that the loan is secured by such a mortgage does not mean that the Debtor is not yet personally liable for the debt. If that were the case, then there could never be such a thing as a 'noncontingent' *secured* debt under § 109(e).").

{35} ***In re Estrategias en Valores, S.A.*, 601 B.R. 550, 552–56 (Bankr. S.D. Fla. Feb. 12, 2019) (Isicoff)** (Because $220 million claim of Colombian government is not contingent or unliquidated in non-main proceeding against debtor under Chapter 15, debtor is not entitled to exemption in § 1517(d). "On August 31, 2016, the Colombia Superintendent of Companies began insolvency proceedings . . . against Estrategias en Valores, S.A. . . . . On July 27, 2017, the Colombia Superintendent of Companies added Tatiana Quintero Baiz . . . as an intervened debtor in the Colombian Insolvency Proceedings. . . . Section 1501(c) states that chapter 15 'does not apply to—(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) . . . .' . . . '[T]he Colombian government estimates that Estraval and its principals defrauded investors out of 600 Billion Colombian pesos ($220,000,000 US dollars) . . . .' . . . The claim of the Colombian government in this case is neither contingent nor unliquidated. At trial, Dr. Alvarado testified that the amount due and owing was $220,000,000, that the number is now fixed. . . . [U]nrebutted testimony that the value of the assets that will be liquidated will not be sufficient to pay the claim in full . . . . Under Florida law, a collateral source of payment does not reduce the liability of a tortfeasor or contract debtor if there is joint and several liability. . . . The Foreign Administrator testified that all of the intervened debtors are jointly and severally liable for the debt to the Colombian government. . . . [T]he Debtor could not qualify as a debtor under section 109(e). Consequently, the Debtor cannot claim the section 1501(c)(2) exemption from Chapter 15 eligibility.").

{36} ***In re Adams*, No. 18-04045-NPO, 2019 WL 5061168 (Bankr. S.D. Miss. Jan. 29, 2019) (Olack)** (Debtor is ineligible and case must be dismissed because student loans totaling $424,390 exceed debt limitation for Chapter 13. That student loans may be in deferment does not render the debt contingent for § 109(e) purposes.).

§ 15.2 Is Partnership Debt Contingent?
§ 15.3 Are Guaranties Contingent?

{37} ***In re Medlin*, No. 19-00298-5-DMW, 2020 WL 739262, at *3–*4 (Bankr. E.D.N.C. Feb. 13, 2020) (Warren)** (Debtor does not exceed debt limit in § 109(e) because large debt based on indemnity agreement is contingent upon an extrinsic event that has not

occurred—the failure of a corporation controlled by the debtor to pay debt that will trigger the liability that the debtor has agreed to indemnify. "If the Debtor were to pay the SBA in full, then the Indemnification Claim, which is based on the SBA debt and the Debtor's agreement to indemnify Ms. Oglesby from that debt, would not exist. . . . The Indemnification Claim may appear . . . to be noncontingent, because Ms. Oglesby's right to payment has already been established by the Agreement . . . ; however, although liability exists, the Indemnification Claim remains dependent on an extrinsic event. That event is the failure of the Debtor to pay the SBA and requiring Ms. Oglesby to pay that debt instead, resulting in requiring the Debtor to pay her rather than the SBA for the debt. . . . The Indemnification Claim is a contingent claim.").

§ 15.4 Are Contract Debts Contingent?

{38} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743, 749 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Debt is noncontingent despite fact that debtor disputes enforceability of note when all events giving rise to debtor's liability occurred years before petition. Debtor did not dispute signature on note. Mortgage that secured the note was lost and never recorded. Debtor has litigated with lender for years but debt remains noncontingent. "Debtor's liability for the debt was created when she signed the promissory note in 2006. The fact that she now disputes liability does not render the contractual obligation contingent.").

§ 15.5 Is Tort Liability Contingent?
§ 15.6 Are Claims through and against Debtor's Corporation Contingent?
§ 15.7 Are Prebankruptcy Judgments Contingent?

{39} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Debt from securities litigation in district court is noncontingent because the district court granted summary judgment with respect to liability before the Chapter 13 petition.).

c. LIQUIDATED DEBTS ARE COUNTED

§ 16.1 What Is a Liquidated Debt?

{40} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743, 749 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Debt based on note is not unliquidated notwithstanding dispute with respect to enforceability. Amount can be readily calculated based on contract terms. Debtor admitted signing the note but mortgage was lost and never recorded. "A dispute about liability does not 'necessarily render a debt unliquidated.' . . . [D]isputed contractual claims are generally liquidated. . . . Regardless of whether a debtor disputes liability, 'if the *amount* of the debt is calculable with certainty, then it is liquidated for the purposes of § 109(e).'").

{41} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Debt is liquidated for eligibility purposes because in a brief filed in district court securities litigation nine days before the Chapter 13 petition the debtor stated that the amount of the debt was $310,750 which, when added to other unsecured debts, renders the debtor ineligible.).

{42} ***In re Estrategias en Valores, S.A.*, 601 B.R. 550, 552–56 (Bankr. S.D. Fla. Feb. 12, 2019) (Isicoff)** (Because $220 million claim of Colombian government is not contingent or unliquidated in non-main proceeding against debtor under Chapter 15, debtor is not entitled to exemption in § 1517(d). "On August 31, 2016, the Colombia Superintendent of Companies began insolvency proceedings . . . against Estrategias en Valores, S.A. . . . On July 27, 2017, the Colombia Superintendent of Companies added Tatiana Quintero Baiz . . . as an intervened debtor in the Colombian Insolvency Proceedings. . . . Section 1501(c) states that chapter 15 'does not apply to—(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) . . . .' . . . '[T]he Colombian government estimates that Estraval and its principals defrauded investors out of 600 Billion Colombian pesos ($220,000,000 US dollars) . . . .' . . . The claim of the Colombian government in this case is neither contingent nor unliquidated. At trial, Dr. Alvarado testified that the amount due and owing was $220,000,000, that the number is now fixed. . . . [U]nrebutted testimony that the value of the assets that will be liquidated will not be sufficient to pay the claim in full . . . . Under Florida law, a collateral source of payment does not reduce the liability of a tortfeasor or contract debtor if there is joint and several liability. . . . The Foreign Administrator testified that all of the intervened debtors are jointly and severally liable for the debt to the Colombian government. . . . [T]he Debtor could not qualify as a debtor under section 109(e). Consequently, the Debtor cannot claim the section 1501(c)(2) exemption from Chapter 15 eligibility.").

§ 16.2 Effect of Defenses and Counterclaims

{43} ***In re Estrategias en Valores, S.A.*, 601 B.R. 550, 552–56 (Bankr. S.D. Fla. Feb. 12, 2019) (Isicoff)** (Because $220 million claim of Colombian government is not contingent or unliquidated in non-main proceeding against debtor under Chapter 15, debtor is not entitled to exemption in § 1517(d). "On August 31, 2016, the Colombia Superintendent of Companies began insolvency proceedings . . . against Estrategias en Valores, S.A. . . . On July 27, 2017, the Colombia Superintendent of Companies added Tatiana Quintero Baiz . . . as an intervened debtor in the Colombian Insolvency Proceedings. . . . Section 1501(c) states that chapter 15 'does not apply to—(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) . . . .' . . . '[T]he Colombian government estimates that Estraval and its principals defrauded investors out of 600 Billion Colombian pesos ($220,000,000 US dollars) . . . .' . . . The claim of the Colombian government in this case is neither contingent nor

unliquidated. At trial, Dr. Alvarado testified that the amount due and owing was $220,000,000, that the number is now fixed. . . . [U]nrebutted testimony that the value of the assets that will be liquidated will not be sufficient to pay the claim in full . . . . Under Florida law, a collateral source of payment does not reduce the liability of a tortfeasor or contract debtor if there is joint and several liability. . . . The Foreign Administrator testified that all of the intervened debtors are jointly and severally liable for the debt to the Colombian government. . . . [T]he Debtor could not qualify as a debtor under section 109(e). Consequently, the Debtor cannot claim the section 1501(c)(2) exemption from Chapter 15 eligibility.").

d. SPECIAL DEBT-COUNTING PROBLEMS

§ 17.1 Disputed Debts

{44} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (That Chapter 13 debtor disputes bank's claim in excess of $1,000,000 does not render debt contingent or unliquidated for eligibility purposes when debtor admitted to signing note in excess of $1,000,000.).

{45} ***In re Willner*, No. 19-13661-BFK, 2020 WL 864130 (Bankr. E.D. Va. Feb. 20, 2020) (Kenney)** (After eight years of unsuccessful litigation and no payments to mortgagee, debtor is not eligible for Chapter 13 because disputed $4,325,000 mortgage is not contingent or unliquidated. That debtor has unsuccessfully disputed the debt for years does not change the ineligibility calculation.).

§ 17.2 Taxes and Other Priority Claims
§ 17.3 Joint Obligations of Spouses and Codebtors; Collateral That Is Not Property of the Estate

{46} ***In re Koleit*, No. 20-43377, 2020 WL 1815806, at *2 (Bankr. E.D. Mich. Mar. 31, 2020) (Tucker)** (Reconsideration of dismissal based on ineligibility is denied because debtor's unsecured debts exceed limitation in § 109(e) notwithstanding that one large unsecured debt is secured by a mortgage on property that is not property of the estate. "$104,727.04 debt to 'Huntington Mtg Group' listed in Schedule D is a wholly 'unsecured' debt, within the meaning of Bankruptcy Code § 109(e), because it is wholly unsecured *as to the Debtor*. This is so because . . . the real estate that secures this debt is not owned in any part by the Debtor, but rather by his wife. There is no property *of the Debtor* that secures this debt.").

{47} ***In re Engelman*, No. 18-26174-gmh, 2020 WL 1486786 (Bankr. E.D. Wis. Mar. 25, 2020) (Halfenger)** (Debtor not eligible for Chapter 13 under § 109(e) because unsecured debt exceeds eligibility limitation. Debtor's signature on note was most likely signed by her spouse, not by the debtor, but spouse had power of attorney that rendered debtor liable on the note. Mortgage, in contrast, is not enforceable under state law because spouse did not indicate agency relationship when signing for the debtor.).

{48} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

5. 11 U.S.C. § 109(h): PREPETITION BRIEFING

§ 18.1 In General

{49} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Dismissal of fourth Chapter 13 petition since 2016 was appropriate because debtor failed to obtain the prepetition briefing required by § 109(h) and was ineligible.).

a. PREPETITION BRIEFING

§ 19.1 What is a Briefing?

{50} ***In re Harrington*, No. 19-00813, 2020 WL 259561, at *1 (Bankr. D.D.C. Jan. 14, 2020) (Teel)** (Receipt of financial analysis from NBCCA did not satisfy prepetition briefing requirement in § 109(h); debtor was required to respond to complete the prepetition briefing. "It is unfortunate that the debtor appears to have misunderstood the e-mails sent to her and mistakenly believed that she had completed credit counseling upon receiving the Financial Analysis.").

§ 19.2 Timing of Briefing

{51} ***Nero v. Waage (In re Nero)*, 605 B.R. 242 (M.D. Fla. Aug. 26, 2019) (Merryday)** (Bankruptcy court correctly determined that debtor was not eligible and that Chapter 13 case had to be dismissed because debtor failed to obtain briefing within 180 days before the petition. Briefing in prior case more than 180 days before current petition and briefing in current case after filing the petition do not satisfy § 109(h).).

{52} ***In re Harrington*, No. 19-00813, 2020 WL 259561 (Bankr. D.D.C. Jan. 14, 2020) (Teel)** (Credit counseling completed two days after the petition was filed does not satisfy § 109(h), rendering debtor ineligible.).

{53} ***In re Littlejohn*, No. 18-71004-PMB, 2019 WL 2246146, at *2 (Bankr. N.D. Ga. May 23, 2019) (Baisier)** (On trustee's objection and motion to dismiss, briefing two years before current case does not satisfy § 109(h) and current case must be dismissed, not stricken—notwithstanding that failure to get prepetition briefing in current case was based on counsel's mistaken advice that briefing before prior case satisfied § 109(h). "Although the goal of [§ 109(h)] may have been laudable, its implementation has been less than satisfactory, and the result has been a 'briefing' that serves no useful purpose and only serves—on occasion—to trip up an unfortunate debtor (like the Debtors here) who is then required to file another case (and incur the related delay, cost, and expense) after the dismissal of the case in which he or she is found to be ineligible. . . . The fallacy on which the requirement appears to be based is that debtors normally seek advice from counsel (or otherwise consider bankruptcy) at a point in time where they have ample time to collect information and make an informed decision before some dire consequence occurs. That is, in the real world, rarely the case. Debtors much more commonly meet with counsel, or otherwise consider bankruptcy, only on the cusp of a potentially catastrophic event—a foreclosure, an eviction, a repossession, an immediate imprisonment, or some other similar event. . . . They need a bankruptcy case, and they need it now. Because of that reality, the actual briefing, which is often taken online at their lawyer's office, is necessarily perfunctory, and is thus not particularly useful. . . . Debtors clearly have not complied with the requirements of Section 109(h). . . . [T]hey received one briefing two (2) years before the case was filed, and a second five (5) months after the case was filed. This requirement is not jurisdictional, . . . such that the case would not have to be dismissed if no party in interest requested dismissal. . . . However, here the Trustee has requested dismissal. . . . [T]he fact that the debtor is 'ineligible' to be a debtor must have some meaning, and dismissing the case seems like the most logical way to give effect to that meaning.").

§ 19.3 Certificate from NBCCA: 11 U.S.C. § 521(b)

{54} ***In re Harrington*, No. 19-00813, 2020 WL 259561 (Bankr. D.D.C. Jan. 14, 2020) (Teel)** (Certificate showed that credit counseling was completed two days after the petition was filed, rendering debtor ineligible under § 109(h).).

b. TEMPORARY EXEMPTION FROM PREPETITION BRIEFING

§ 20.1 In General
§ 20.2 Timing, Procedure and Form for Certification of Exigent Circumstances
§ 20.3 Which Circumstances Are Exigent and Which Exigent Circumstances Merit a Waiver?

{55} ***In re Welling*, No. 18-30900 HCD, 2018 WL 8223570 (Bankr. N.D. Ind. May 22, 2018) (Dees)** (In fourth Chapter 13 case since 2005, debtor knows about prepetition briefing requirement and has not shown any exigent circumstances that would suspend § 109(h). Chapter 13 case is dismissed with prejudice to refiling for 180 days.).

§ 20.4 Prepetition Request

{56} ***In re Diaz*, No. 19-00543, 2019 WL 7602243, at *1 (Bankr. D.D.C. Aug. 21, 2019) (Teel)** (Debtor not entitled to temporary waiver of prepetition briefing requirement and case must be dismissed for failure to comply with § 109(h) when debtor was unable to complete briefing before a foreclosure sale that was scheduled in two days but debtor does not describe inability to obtain briefing during the seven-day period before the petition. Even if foreclosure is an exigent circumstance, debtor did not satisfy the seven-day requirement in § 109(h)(3)(A). Counseling must be unavailable for the seven days after the request without regard to when the exigent circumstance occurs. "If the debtor was able to obtain credit counseling within seven days of requesting it, but not in time to stop the foreclosure, the debtor would still not qualify for the exception. The law requires that the counseling be unavailable within 7-days of requesting it, not before the exigent circumstance.").

§ 20.5 Briefing after Temporary Exemption

c. PERMANENT WAIVER OF PREPETITION BRIEFING

§ 21.1 In General
§ 21.2 Timing, Procedure and Form
§ 21.3 11 U.S.C. § 109(h)(2): Inadequate NBCCA Services
§ 21.4 11 U.S.C. § 109(h)(4): Incapacity, Disability or Active Military Duty

6. ELIGIBILITY OF REPEAT FILERS

§ 22.1 Eligibility of a Simultaneous Filer

{57} ***In re Benitez*, 611 B.R. 106, 109 (B.A.P. 8th Cir. Feb. 4, 2020) (Schermer, Nail, Shodeen)** (Chapter 13 petition filed by debtor in a Chapter 7 case violated automatic stay and was void. Debtor filed Chapter 13 petition to stop foreclosure after mortgagee obtained stay relief in pending Chapter 7 case. "By filing his Chapter 13 petition, the Debtor attempted to exercise control over his interest in the Property, which is undisputed to be property of his Chapter 7 bankruptcy estate. . . . Debtor filed his Chapter 13 case as an effort to stop the foreclosure of the Property noticed by the Creditor after it obtained stay relief in the Debtor's Chapter 7 case.").

{58} ***In re Fletcher*, 599 B.R. 282, 287–88 (Bankr. E.D. Va. Apr. 23, 2019) (Huennekens)** (Section 109(g) does not distinguish between serial filers and simultaneous bankruptcy petitions; wife is ineligible to convert Chapter 7 case to Chapter 13 notwithstanding that current case was filed before order was entered voluntarily dismissing wife's prior Chapter 13 case. Applying § 109(g)(2) and "causal relationship" theory, in joint Chapter 7 case, husband but not wife is eligible to convert to Chapter 13. Wife is not eligible because prior Chapter 13 case was voluntarily dismissed after filing of current Chapter 7 case and current case was filed to stop foreclosure by creditor that filed stay relief motion two years before dismissal of wife's prior case. "Mrs. Fletcher requested and obtained the voluntary dismissal of the Prior Chapter 13 Case approximately two years after Lakeview filed its Motion for Relief from Stay. . . . A causal connection undoubtedly exists between the Motion for Relief from Stay and Mrs. Fletcher's voluntary dismissal of the Prior Chapter 13 Case. . . . The Debtors filed the Current Case on the night before the scheduled foreclosure. . . . Debtors here readily concede that they filed the Current Case 'to get a little bit more time in the house.' . . . The timeline of events in this case and the admissions made by the Debtors establish a direct causal connection between the Motion for Relief from Stay, the impending foreclosure, the filing of the Current Case, and Mrs. Fletcher's voluntary dismissal of the Prior Chapter 13 Case. This connection is precisely what section 109(g)(2) was enacted to prevent.").

§ 23.1 Eligibility of a Serial Filer: "Chapter 20" and Beyond

{59} ***In re Rumbin*, No. 18-31424 (AMN), 2019 WL 3890317, at *6–*7 (Bankr. D. Conn. Aug. 16, 2019) (Nevins)** (Embracing *Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris), and *In re Rosa*, 521 B.R. 337 (Bankr. N.D. Cal. Dec. 10, 2014) (Novack), unsecured portions of liens that survived discharge in prior Chapter 7 case are nonrecourse debts that are not counted for eligibility purposes in subsequent Chapter 13 case. "When a secured claim is non-recourse, although the lien holder may have a claim against the debtor's property, . . . the individual debtor, as opposed to his or her property, does not have any liability on the underlying debt and has no unsecured 'debt' to the creditor as defined by § 101(12). . . . To the extent the Chapter 13 Trustee adopts the reasoning of several courts that conclude that a Chapter 13 debtor must treat the unsecured amount of a lien for which *in personam* liability was discharged in a prior Chapter 7 case as an unsecured claim for Chapter 13 plan purposes, I disagree. While many courts would resurrect *in personam* liability and require such treatment, I find a rationale recently articulated by the Bankruptcy Appellate Panel for the Ninth Circuit . . . to be more persuasive. . . . I will follow the *Rosa* decision and depart from contrary authority within this Circuit and elsewhere, recognizing there are many courts that disagree. As the *Rosa* court articulated, to hold otherwise would be to impose liability on a Chapter 13 estate when none exists for the Chapter 13 debtor.").

{60} ***In re Taylor*, No. 19-30351-tmb13, 2019 WL 3713666, at *1 (Bankr. D. Or. Aug. 6, 2019) (not for publication) (Brown)** (Applying *Free v. Malaier (In re Free)*, 542 B.R. 492 (B.A.P. 9th Cir. Dec. 17, 2015) (Jury, Kirscher, Faris), debtor is eligible for Chapter 13 because unsecured portion of lien claims with respect to which debtor discharged personal liability in prior bankruptcy case are not counted for purposes of § 109(e). "[A]ny unsecured liens for which Ms. Taylor's personal liability has already been discharged do not count as unsecured debt for purposes of the limits in § 109(e).").

§ 23.2 [RESERVED]
§ 24.1 Court-Imposed Restrictions on Eligibility to Refile

{61} ***In re Clifton*, No. 19-01722-NPO, 2019 WL 5061161 (Bankr. S.D. Miss. June 14, 2019) (Olack)** (Dismissal appropriate when Chapter 13 case was filed in violation of order in prior case that barred debtor from refiling for 180 days. Debtor's attorney violated Bankruptcy Rule 9011 and is sanctioned with payment of $500 for filing Chapter 13 case without investigating dismissal of prior case in which debtor was prohibited to refile for 180 days.).

§ 25.1 180-Day Bar to Eligibility in 11 U.S.C. § 109(g)—In General
§ 25.2 11 U.S.C. § 109(g)(1)—Willful Failure to Abide by Court Order or to Appear in Proper Prosecution

{62} ***Koyle v. Jenkins (In re Koyle)*, No. UT-18-101, 2019 WL 2403104 (B.A.P. 10th Cir. June 7, 2019) (not for publication) (Romero, Jacobvitz, McNamara)** (Appeal of dismissal with 180-day bar to refiling under § 109(g) is moot when 180 days expired before hearing by BAP. Chapter 13 trustee moved to dismiss for lack of good faith and debtor failed to appear at the hearing. Bankruptcy court imposed a 180-day bar to refiling under § 109(g) and debtor appealed only the 180-day bar. BAP dismisses the appeal as moot because 180-day prohibition expired a month before the BAP hearing.).

{63} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962, at *1–*3 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Fourth petition since 2016 was filed in violation of 180-day bar imposed at dismissal of third case under § 109(g)(1). In prior case, debtor failed to file required documents and order dismissing third case prohibited debtor to file another petition for 180 days. "Cody violated this order by filing her fourth bankruptcy petition . . . three days before the court's 180-day bar expired . . . . [T]he bankruptcy court did not abuse its discretion in dismissing Cody's fourth petition for violating its earlier Order barring her from filing another petition within 180-days.").

{64} ***Bunyan v. Remick*, No. 8:18-cv-1519-T-36, 2019 WL 4805428 (M.D. Fla. Oct. 1, 2019) (Honeywell)** (Dismissal with 180-day bar to refiling is appropriate under § 109(g)(1) when debtor with six prior bankruptcies failed to obtain a prepetition briefing, failed to file required documents, failed to comply with several orders about deficiencies in documents and failed to appear at the hearing on dismissal.).

{65} ***In re Ward*, 610 B.R. 804 (Bankr. W.D. Pa. Jan. 15, 2020) (Deller)** (Chapter 13 debtor's seventh motion for additional time to file basic documents to commence case is denied for lack of cause; hearing is set to determine whether dismissal should be with prejudice under § 109(g).).

{66} ***In re Johnson*, No. 19-57871-WLH, 2020 WL 61827, at *2–*4 (Bankr. N.D. Ga. Jan. 6, 2020) (Hagenau)** (Not appropriate to dismiss sixth bankruptcy case with bar to refiling under § 109(g)(1) because default in payments in current case was not alone sufficient to prove willful failure to abide by court order. Conduct in a particular case is at issue under § 109(g), not debtor's history of filings. "The dismissal of the case was not a mistake or a surprise. Debtor's payment was returned for insufficient funds and she knew it. She took no action to remedy the situation despite written notice from the Trustee, so her actions were not inadvertent. . . . Section 109(g)(1) prohibits refiling by a debtor who has 'willfully' failed to abide by order of the court or to appear before the court to prosecute the case. The court must look to the circumstances of the particular case to determine willfulness. A mere failure to make a payment under a chapter 13 plan or failure to appear at the first meeting or a court hearing, will not, in itself, be sufficient to sustain a finding of willful conduct under this subsection. . . . [I]t appears that dismissal was based on the Debtor's failure to pay rather than on her failure to prosecute the chapter 13 case as a whole. Debtor failed to make the required plan payments to the Chapter 13 Trustee, but she did not otherwise willfully fail to abide by the Court's orders. While the Debtor has a long history of bankruptcy filings, the Trustee sought dismissal with prejudice pursuant to [§]109(g), under which the Court must consider the Debtor's conduct in a particular case rather than the debtor's history of filings and dismissals. Therefore, the Court finds grounds exist to modify the Dismissal Order prohibiting the Debtor from refiling the case within 180 days of its dismissal.").

{67} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Debtor's failure to attend four rescheduled meetings of creditors in prior case was not a bar to eligibility under § 109(g)(1) because the missed meetings were explained. Explanation included that debtor's employer threatened to fire the debtor if she attended the fourth rescheduled meeting. Evidence eliminated creditor's argument that no stay was in effect in subsequent case because of ineligibility under § 109(g)(1).).

§ 25.3 11 U.S.C. § 109(g)(2)—Voluntary Dismissal after Request for Relief from Stay

{68} ***In re Lewis*, No. 19-10999, 2019 WL 4691044, at *1–*2 (Bankr. S.D. Ga. Sept. 24, 2019) (Barrett)** (By any interpretation of § 109(g)(2), debtors are ineligible and current case must be dismissed. Debtors voluntarily dismissed prior Chapter 13 case after consenting to stay relief then refiled three days after dismissal to stop foreclosure sale. "There is a split of authority interpreting § 109(g)(2). One line of cases strictly and broadly applies § 109(g)(2) finding the language clearly and unambiguously requires dismissal whenever a debtor refiles for bankruptcy within 180 days after voluntarily dismissing a prior case where a motion for relief had been filed. . . . Other courts adopt various tests. Some follow the strict approach, but find the court has discretion to consider other factors when the application of the strict approach results in unjust or absurd outcomes. . . . Other courts hinge the outcome upon the definition of the word 'following.' . . . Debtors here previously consented to relief. On the eve of foreclosure, Debtors dismissed and refiled in an effort to forestall the foreclosure . . . . [T]his is the exact conduct § 109(g)(2) prevents.").

{69} ***In re Fletcher*, 599 B.R. 282, 287–88 (Bankr. E.D. Va. Apr. 23, 2019) (Huennekens)** (Section 109(g) does not distinguish between serial filers and simultaneous bankruptcy petitions; wife is ineligible to convert Chapter 7 case to Chapter 13 notwithstanding that current case was filed before order was entered voluntarily dismissing wife's prior Chapter 13 case. Applying § 109(g)(2) and "causal relationship" theory, in joint Chapter 7 case, husband but not wife is eligible to convert to Chapter 13. Wife is not eligible because prior Chapter 13 case was voluntarily dismissed after filing of current Chapter 7 case and current case was filed to stop foreclosure by creditor that filed stay relief motion two years before dismissal of wife's prior case. "Mrs. Fletcher requested and obtained the voluntary dismissal of the Prior Chapter 13 Case approximately two years after Lakeview filed its Motion for Relief from Stay. . . . A causal connection undoubtedly exists between the Motion for Relief from Stay and Mrs. Fletcher's voluntary dismissal of the Prior Chapter 13 Case. . . . The Debtors filed the Current Case on the night before the scheduled foreclosure. . . . Debtors here readily concede that they filed the Current Case 'to get a little bit more time in the house.' . . . The timeline of events in this case and the admissions made by the Debtors establish a direct causal connection between the Motion for Relief from Stay, the impending foreclosure, the filing of the Current Case, and Mrs. Fletcher's voluntary dismissal of the Prior Chapter 13 Case. This connection is precisely what section 109(g)(2) was enacted to prevent.").

{70} ***Deighan Law, LLC v. Daugherty*, No. 4:19-CV-02506-SNLJ, 2020 WL 1862671, at *1–*7 (E.D. Mo. Apr. 14, 2020) (Limbaugh)** (Reversing bankruptcy court, Deighan Law, LLC, d/b/a UpRight Law, is an integrated law firm with general and limited partners that did not violate § 504 when part of the fee paid by a Chapter 13 debtor was retained by UpRight in Illinois and part was paid to Deighan in Missouri to handle specifics of the case. UpRight was not just a "referral service" and the legal relationship between the Illinois and Missouri components was not prohibited by any statute or rule. "[T]he case turns on the narrow question of whether Deighan Law and the local lawyers are members of the same professional association, corporation or partnership—in other words, whether they are members of the same law firm. . . . Deighan Law is an Illinois limited liability company . . . . Deighan Law does business in Missouri under the registered name UpRight Law LLC. . . . [T]hree St. Louis limited partners . . . each operates their own law firm in addition to, and independently of, their association with UpRight Law. . . . Initial fees are collected by Upright Law . . . . [I]n Chapter 13 cases, the limited partner 'receive[s] one hundred percent (100%) of all post-petition fees distributed, provided that [they] perform[ ] all of the post-petition work as is required on the respective case.' . . . [T]his Court is of the opinion that Doyel, Caraker and Magdy are indeed partners in a law firm with UpRight Law so that section 504(b)(1)'s exception to section 504(a)'s fee-sharing prohibition applies. . . . [T]he limited partners identify UpRight Law as their law firm in the bankruptcy petitions . . . . UpRight Law is a firm specializing in bankruptcy law that has three general partners and approximately 300 limited partners, all of whom are lawyers. . . . UpRight law and its limited partners do constitute a law firm. Although the structure and operation of the firm is [*sic*] unconventional, this Court finds no authority that precludes it. . . . [T]he Chicago office continues to monitor the cases, supervises as necessary, and also provides legal assistance from staff lawyers and other partners as necessary. This alone makes UpRight Law more than a lawyer referral agency. . . . There is no citation . . . , nor does this Court find any authority precluding lawyers from representing clients through two separate practices—one in which they hold themselves out as part of the same firm and one in which they represent clients individually or through a separate firm with other attorneys. . . . Deighan Law's limited partners are partners in a professional association, corporation or partnership who may share compensation under Section 504(b)(1)."), *rev'g and remanding sub nom., In re Richard*, No. 16-42080-659, 2018 WL 5733508, at *5–*8 (Bankr. E.D. Mo. Oct. 10, 2018) (Surratt-States) (Upright Law violated § 504 by sharing fees with three attorneys to whom it referred debtors to file Chapter 13 cases. The three attorneys did not form a single firm with Upright Law for purposes of Missouri law and § 504. "This is a case about the status of three attorneys and a company with whom each attorney signed Partnership Agreements for purposes of fee-splitting. . . . This Court finds that each attorney has contracted with separate entity, Upright Law, to share fees in violation of Bankruptcy Code Section 504. This violation of Section 504 requires the disgorgement of fees paid to Upright Law. . . . Upright Law is nothing more than a lawyer referral agency that completes administrative screening work, then refers the case to attorneys to take on the legal work. . . . [T]he Local Attorneys' status as members of separate legal entities and not a single law firm with Upright Law also means the Local Attorneys are not members, partners, or regular associates in a professional association, corporation, or partnership with Upright Law within meaning of Section 504. Violation of Section 504 requires disgorgement of fees.").

{71} ***In re Pearson*, No. 20-30077, 2020 WL 1845048 (Bankr. N.D. Tex. Apr. 9, 2020) (Jernigan)** (Internet-based law firm doing business as Wajda & Associates, also known as Recovery Law Group, is in much trouble in the Northern District of Texas after filing a Chapter 13 case for a serial bankruptcy abuser named Jakim Edward Pearson, Sr. Attorney took $1,500 postpetition retainer without disclosure or court approval. Petition did not reveal that debtor had filed 15 bankruptcy cases in various jurisdictions, some in the name of other individuals, some with borrowed Social Security numbers. The plan filed by counsel was nonsensical and when creditors showed up with motions revealing the truth counsel voluntarily dismissed the Chapter 13 case. Court then show-caused counsel to answer for a long list of statutory and rule transgressions. Counsel sent an "appearance attorney" who knew nothing about anything. Court has now set a second show-cause hearing with an order for counsel to appear personally. Stay tuned.).

{72} ***In re Taulbee*, No. 15-52073, 2020 WL 1671551 (Bankr. E.D. Ky. Apr. 2, 2020) (Wise)** (Chapter 13 debtors' counsel violated §§ 526 and 329, Bankruptcy Rules 9011 and 2016 and several rules of professional responsibility by secretly obtaining $500 from debtors during Chapter 13 case to convert to Chapter 7 but then failing to file conversion documents. Counsel misrepresented that debtors intended to stay in Chapter 13 and misrepresented conflicts that disabled counsel to appear in person at hearings with respect to conversion. Sanctions included permanently prohibiting counsel to practice in the Bankruptcy Court for the Eastern District of Kentucky.).

{73} ***In re Cervantes*, No. 18-10306-B-13, 2020 WL 1580277, at *1 (Bankr. E.D. Cal. Mar. 31, 2020) (Sargis, Clement, Lastreto)** (Bankruptcy court publishes formula for Chapter 13 trustees to use to determine portion of no-look fees that were earned and/or must be refunded by suspended attorney with 481 pending Chapter 13 cases. "In this District, counsel for a chapter 13 debtor can elect to be compensated by a flat fee . . . . Debtor's counsel in these cases elected that option and received the full fee. Since the State Bar of California has suspended counsel for two years, counsel cannot complete the work necessary to earn the fee. The chapter 13 Trustee objected to the fee in each case. We SUSTAIN the objections, present a formula to determine the proper fee, and after applying the formula, order counsel to refund certain amounts to the Chapter 13 Trustee for the benefit of the respective estates.").

{74} ***In re Santos*, No. 19-33256-SGJ13, 2020 WL 1304142 (Bankr. N.D. Tex. Mar. 17, 2020) (Jernigan)** (Filing an unauthorized Chapter 13 petition to stop foreclosure lands former husband and attorney in deep yogurt. Using lies and fake emails, Gabriel Santos convinced attorney Steve Le to file Chapter 13 petition on behalf of Gabriel's former wife, Cynthia Santos. Attorney never met real debtor, fabricated answers on statements and schedules and never satisfied DRA responsibilities under §§ 526, 527 and 528. Attorney is suspended from practice. Former husband is referred to U.S. Attorney for criminal prosecution.).

{75} ***In re Chapman*, No. 19-26731-beh, 2020 WL 1212773, at *1–*6 (Bankr. E.D. Wis. Mar. 11, 2020) (Hanan)** (Attorney sanctioned under Bankruptcy Rule 9011 for filing "emergency" Chapter 13 petition based on power of attorney and a fabricated story by the debtor's daughter. Simple investigation would have revealed two prior similar cases within a year. Debtor was not aware that daughter was filing bankruptcy petitions using a power of attorney. Daughter represented that debtor's son would fund the plan, but son was unaware of daughter's misrepresentations. "Neither Attorney Clowers nor [paralegal] spoke with Mrs. Chapman herself prior to filing the Chapter 13 bankruptcy case on her behalf . . . . [Daughter] did not disclose to Attorney Clowers and [paralegal], nor did they discover themselves, that two previous cases had been filed on behalf of Mrs. Chapman in the preceding twelve months. . . . Bankruptcy Rule 9011 includes a 21-day 'safe harbor' provision . . . . But the safe harbor provision does not apply if the challenged paper is a bankruptcy petition . . . . [T]he Clowers firm took [daughter], the power of attorney, at her word . . . . [T]he petition erroneously states 'no previous cases.' . . . [O]ne phone call to the debtor's prior counsel . . . and would have learned that [daughter] had spun the same sham story about a brother whom she claimed would save the day by paying the mortgage arrears, but never actually did so. . . . The fact that counsel filed without adequate investigation, relying on a fairly sympathetic, albeit untrue, story by the debtor's disingenuous and manipulative daughter, suggests a negligent sense of urgency . . . . [A] monetary sanction is warranted . . . . One-third of the fees and costs incurred for the instant, third case seems appropriate.").

{76} ***In re Gillis*, No. 20-101-A/B, 2020 WL 970320 (Bankr. E.D. Cal. Feb. 25, 2020) (Clement)** (On motion of Chapter 13 trustees in 481 Chapter 13 cases pending in the district in which debtor's counsel has been suspended from practice by state bar, standing trustees are ordered to cease distributing "no-look" fees to suspended counsel pending more comprehensive solution to how fees will be paid to complete the pending cases.).

{77} ***Walker v. UpRight Law (In re Walker)*, No. 18-80075-HB, 2020 WL 864128 (Bankr. D.S.C. Feb. 20, 2020) (Burris)** (Further hearing necessary to determine appropriate sanction under § 105(a) after findings that UpRight Law failed to adequately represent a Chapter 13 debtor, failed to have adequate procedures for conflict checks, failed to properly refund fees on demand and violated various canons of professional responsibility along the way. Attorney's fees not awarded based on settlement agreement between UpRight and debtors with respect to other claims of misconduct.).

{78} ***In re Gillis*, No. 20-101, 2020 WL 768827, at *7 (Bankr. E.D. Cal. Feb. 14, 2020) (not for publication) (Sargis)** (The United States Bankruptcy Court for the Eastern District of California struggles with a suspended attorney's broken efforts to complete 603 pending bankruptcy cases, including many Chapter 13 cases. "[T]here is substantial pre- and post-confirmation work remaining to be done by an attorney . . . . Because of the Suspension, Mr. Gillis cannot do such work, cannot be allowed fees for such work, and cannot assign such fees for future work. Whomever [*sic*] substitutes in as counsel for the debtor in the future will make the fee arrangement with his or her new client, which fee arrangement is subject to approval by the court before such counsel can assert the right to be paid such fees.").

{79} ***In re Blume*, 610 B.R. 829 (Bankr. E.D. Mich. Dec. 23, 2019) (Tucker)** (Chapter 13 debtors' application to incur postpetition debt to hire nonbankruptcy counsel to pursue state court litigation is granted with conditions on amount and method of payment from postpetition income. Application to employ nonbankruptcy counsel was denied as unnecessary—Chapter 13 debtors can hire any nonbankruptcy counsel they wish to pursue state court litigation; only postpetition payment of nonbankruptcy counsel is subject to bankruptcy court review and approval.).

{80} ***In re Hopkins*, No. 18-28111-ABA, 2019 WL 6357249 (Bankr. D.N.J. Nov. 19, 2019) (Altenburg)** (Chapter 13 debtor and attorney are sanctioned for bad-faith abuse of bankruptcy process including sale of property without court authorization, failure to properly conduct Chapter 13 case, failure to file documents and failure to adequately represent the debtor. Sanctions included ordering the Chapter 13 trustee to use funds on hand in unconfirmed case to pay unsecured creditors in full, dismissal with two-year bar to refiling and denial of fees to counsel.).

{81} ***In re Schemelia*, 607 B.R. 455 (Bankr. D.N.J. Sept. 25, 2019) (Poslusny)** (Citing Bankruptcy Rule 9011 and inherent authority under § 105(a), bankruptcy court sanctions debtor's attorney for filing Chapter 13 petition without reasonable investigation of debtor's claim of ownership of real property. Foreclosure had transferred title before the petition and redemption was not available under state law. Writ of possession had issued and petition appeared to have been filed to stop eviction. Recovery of ownership of the property was beyond the debtor's power under the Bankruptcy Code and beyond the debtor's financial ability. Attorney's fees were assessed as a sanction.).

{82} ***In re Frillman*, No. 3:18-bk-04334-JAF, 2019 WL 4412272 (Bankr. M.D. Fla. Sept. 13, 2019) (Funk)** (Court approves settlement of U.S. trustee's motion for sanctions against debtor's attorney including suspension of practice for 180 days, 15 hours of

CLE and refund of attorney's fees in multiple cases. Attorney failed to get wet signature from Chapter 13 debtors, allowed multiple cases to be dismissed for filing deficiencies and made multiple motions to set aside dismissals without correcting deficiencies. Attorney failed to file fee disclosures and rarely completed Chapter 13 cases.).

{83} ***In re Bennett*, No. 17-31697 (AMN), 2019 WL 3805975, at *2–*3 (Bankr. D. Conn. Aug. 13, 2019) (Nevins)** (Use of "appearance counsel" in Chapter 13 cases violated bankruptcy rules and state rules of professional responsibility, delayed the cases and disserved the debtors. Some fee disgorgement was ordered and CLE required and a modest monetary sanction imposed. "While Attorney Brown's role is referenced as that of 'appearance counsel,' what that meant is that he appeared on the debtor's behalf at judicial proceedings but failed to file a notice of appearance in either case, in violation of Local Bankruptcy Rule 9010-1. . . . [T]he use of Attorney Brown as appearance counsel at best caused delay and confusion, and at worst was prejudicial to the client. . . . [T]he practice also violated some of the Connecticut Rules of Professional Responsibility and the Federal Rules of Bankruptcy Procedure . . . .").

{84} ***Walker v. UpRight Law (In re Walker)*, 604 B.R. 10 (Bankr. D.S.C. June 21, 2019) (Burris)** (UpRight Law, LLC, denied summary judgment in action by Chapter 13 debtors challenging charges for "questionable" and "valueless" services in Chapter 13 cases administered through "partners" who are South Carolina licensed attorneys.).

§ 26.2 Use of Paralegals and Representatives
§ 26.3 Prefiling Role of Chapter 13 Trustee

2. DEBTORS' COUNSEL

§ 27.1 Explaining Chapter 13 to a Debtor
§ 27.2 Explaining Chapter 13 to an Employer
§ 27.3 Exemption Planning
§ 27.4 Getting Paid: Attorneys' Fees for Representing Debtors

{85} ***McBride v. Riley (In re Riley)*, 923 F.3d 433, 435–43 (5th Cir. May 13, 2019) (Reavley, Elrod, Willett)** (Local no-look fee order did not permit Chapter 13 debtor's attorney to recover filing fees, briefing fees or credit report fees in addition to no-look amount. Bankruptcy court is permitted but not required to allow Chapter 13 debtor's attorneys to recover filing fees, credit report fees and prepetition briefing fees as reimbursable expenses—part of "reasonable compensation" under § 330(a)(4)(B) and § 503(b). "[This] dispute involves no-money-down business models, wherein the debtor's attorney agrees to advance the costs of filing fees, credit counseling course fees, and credit report fees on behalf of the debtor. . . . The Bankruptcy Court for the Western District of Louisiana has a standing order . . . that any advances made by debtor's counsel for pre-filing expenses were accounted for in the no-look fee amount and therefore not separately reimbursable. . . . The no-look fee option is an administrative creation of the bankruptcy court designed to quickly identify a level of debtor's counsel compensation that is presumptively reasonable and easy to administer. . . . [T]he advances of the filing fee, credit counseling fee, and credit report fee by debtor's counsel in this case were not necessary expenses to preserve the estate under 11 U.S.C. § 503(b)(1). . . . [W]e conclude that § 330(a)(4)(B) permits bankruptcy courts to reimburse debtor's counsel for the costs of advancing such fees as reasonable compensation, but it does not require them to do so. . . . '[C]ompensation' is broad enough that it would generally be understood to include reimbursement. . . . § 330(a)(4)(B) says courts may allow compensation 'for representing the interests of the debtor in connection with the bankruptcy case[.]' A filing fee (and the other two fees) are, by any ordinary understanding of the words, 'interests of the debtor in connection with the bankruptcy case.' As such, this section grants bankruptcy courts the discretion to authorize compensation to a Chapter 13 debtor's counsel even when the underlying activity fulfills a personal obligation of the debtor . . . so long as that obligation is an interest of the debtor connected with the bankruptcy case. . . . [W]e hold that 11 U.S.C. §§ 503(b) and 330 provide bankruptcy courts with the discretion to compensate debtor's counsel for advancing the costs of filing fees, credit counseling fees, and credit report fees if they choose to do so . . . .").

3. CREDITORS' COUNSEL

§ 28.1 Prefiling Considerations for Creditors' Counsel
§ 28.2 Getting Paid: Attorneys' Fees for Representing Creditors

4. COLLECTING INFORMATION FROM THE DEBTOR

§ 29.1 Use of Preinterview Forms

a. PERSONAL INFORMATION

§ 30.1 Names, Social Security Numbers, Prior Cases
§ 30.2 Addresses, Friends and Relatives
§ 30.3 Health and Health Insurance
§ 30.4 Marital Status and Stability
§ 30.5 Income and Expenses

b. DEBT INFORMATION

§ 31.1 Debt Information—In General
§ 31.2 Use of Credit Reporting Agencies
§ 31.3 Bills and Coupon Books
§ 31.4 Loan Documents, Security Instruments and Mortgages
§ 31.5 Collection Agencies

§ 31.6 Taxes
§ 31.7 Leases and Rental Agreements
§ 31.8 Guaranties and Other Secondary Liabilities
§ 31.9 Wage Assignments and Payroll Deductions
§ 31.10 Lawsuits

c. ASSETS

§ 32.1 Assets—In General
§ 32.2 Contracts, Mortgages and Bank Accounts
§ 32.3 Investment Information
§ 32.4 Business Involvements
§ 32.5 Foreclosures, Repossessions and Surrenders
§ 32.6 Theft or Casualty Losses
§ 32.7 Insurance Policies
§ 32.8 Other Property

d. DEBTOR ENGAGED IN BUSINESS

§ 33.1 Special Information Needs In Business Cases

PART 3: COMMENCEMENT OF A CHAPTER 13 CASE

§ 34.1 Summary of Part 3
§ 34.2 In General—Effects of BAPCPA

A. STATUTES AND RULES DISCUSSED IN PART 3

§ 35.1 11 U.S.C. § 109(a): Who May Be a Debtor?
§ 35.2 11 U.S.C. § 521(a): Duty to File Schedules and Statements
§ 35.3 28 U.S.C. § 1408: Venue
§ 35.4 28 U.S.C. § 1412: Change of Venue
§ 35.5 28 U.S.C. § 1930: Filing Fees
§ 35.6 Bankruptcy Rule 1002: Commencement of Case
§ 35.7 Bankruptcy Rule 1005: Caption of Petition
§ 35.8 Bankruptcy Rule 1006: Filing Fee and Installments
§ 35.9 Bankruptcy Rule 1007: Lists, Statements and Schedules
§ 35.10 Bankruptcy Rule 1008: Verification
§ 35.11 Bankruptcy Rule 1014: Dismissal and Change of Venue
§ 35.12 Bankruptcy Rule 2016: Disclosure of Compensation
§ 35.13 Bankruptcy Rule 4003: Exemptions
§ 35.14 Bankruptcy Rule 9009: Official Forms

B. DOCUMENT CHECKLIST AND EXPLANATION OF FORMS

§ 36.1 Commercial Forms
§ 36.2 Petition, Signed by Debtor—"Wet" Signature Issues

{86} ***In re Willis*, 604 B.R. 206 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases in which an attorney collected $500 that included filing fees that weren't paid, attorney misrepresented that he had retained wet signatures on all relevant documents. Sanctions included refunding $100 in each case in which the attorney failed to obtain and preserve a wet signature.).

§ 36.3 Caption for Petition
§ 36.4 List of Creditors and Addresses

{87} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

§ 36.5 [RESERVED]
§ 36.6 Statement of Social Security Number
§ 36.7 Schedules—In General
§ 36.8 Schedule A—Real Property
§ 36.9 Schedule B—Personal Property
§ 36.10 Schedule C—Exemptions
§ 36.11 Schedule D—Secured Claims
§ 36.12 Schedule E—Priority Claims
§ 36.13 Schedule F—Unsecured Claims

§ 36.14 Schedule G—Executory Contracts and Leases
§ 36.15 Schedule H—Codebtors
§ 36.16 Schedules I and J—Income and Expenditures
§ 36.17 Statement of Monthly Net Income
§ 36.18 Statement of Anticipated Increase in Income or Expenditures
§ 36.19 Form 122C-1: Statement of Current Monthly Income
§ 36.20 Form 122C-1: Commitment Period Calculation
§ 36.21 Form 122C-2: Disposable Income Calculation
§ 36.22 Statement of Financial Affairs
§ 36.23 Statement of Financial Affairs after BAPCPA
§ 36.24 Plan
§ 36.25 Briefing Requirement and Certificate
§ 36.26 Attorney's Disclosure of Compensation
§ 36.27 Matrix of Creditors
§ 36.28 Cover Sheet
§ 36.29 Application to Pay Filing Fee in Installments

{88} ***In re Willis*, 604 B.R. 206, 207–09 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases, attorney is sanctioned for collecting a $500 "expense retainer" that included filing fees, then filing installment fee applications with respect to which no fees were paid. Attorney kept the $500 as attorney's fees. Installment filing fee applications misrepresented debtors' abilities to pay fees. Sanctions included that attorney develop a one-hour CLE program on best practices in consumer bankruptcy cases. "Willis received an advance expense retainer of $500 from each of his clients. Included as part of the expenses incurred in bankruptcy cases are the filing fees . . . . Willis caused the 32 bankruptcy cases to be filed without the payment of the requisite filing fees . . . . Instead, Willis filed motions asking that his clients be permitted to pay the filing fees over time . . . . Willis made no mention in his pleadings of the expense retainers previously paid to Willis by his clients. . . . In the cases which were closed or dismissed it appears that not only were the fees unpaid, it is undisputed that Willis did not return the unused funds to either his client or remit them to the Court. Instead, Willis kept the funds. . . . [T]hrough the course of administration of some of the cases . . . Willis received payment of further attorney fees from certain bankruptcy estates. . . . Such payments violate Fed.R.Bankr.P. 1006(b)(3) . . . . The Chapter 13 Trustee . . . filed the Disgorgement Motions to compel the payment of the filing fees, which for the first time made the Court aware of this problem with Willis' practices.").

§ 36.30 Order to Pay Trustee
§ 36.31 Statement of Financial Affairs for Debtor Engaged in Business
§ 36.32 Section 342(b) Certificate
§ 36.33 Certificate of § 342(b) Notice after BAPCPA
§ 36.34 Record of Education Individual Retirement Account
§ 36.35 Certification About Eviction Judgment and Rent Deposit

{89} ***In re Arrieta*, 612 B.R. 342, 346–49 (Bankr. D.S.C. Jan. 23, 2020) (Waites)** (Upon objection by landlord, Chapter 13 debtor's certification under § 362(*l*)(1) is not true and the stay exception in § 362(b)(22) applies because no provision of lease contract or of South Carolina law permits debtor to cure lease defaults after state court issued writ of ejectment. Debtor's tender of one month's rent is not enough. "In an effort to stay the eviction proceedings, Debtor filed the Certification which indicated that she had deposited with the Clerk of Court the rent to be due during the first 30 days after the petition and that under South Carolina law, she has the right to stay in Residence after the entry of the Writ of Ejectment upon the payment of the entire amount of unpaid prepetition rent owed to Landlord. . . . [S]ection 362(b)(22) provides an exception to the automatic stay . . . . [T]he Bankruptcy Code provides an 'exception to the exception' of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(*l*). . . . Under § 362(*l*)(2), the exception to the automatic stay under § 362(b)(22) shall not apply for the entirety of the case . . . . [T]he landlord may file an objection to the debtor's initial certification, and the Court must hold a hearing to determine if the certification filed by the debtor is true. . . . Debtor has not alleged any circumstances that would permit her at this stage in the eviction process and over the objection of the Landlord to cure the unpaid rent on the Lease. . . . Debtor is not permitted to cure the missed rent payments to Landlord after the issuance of the Writ of Ejectment. As the Court finds that the Certification filed by Debtor with her petition is not true, the objection is sustained and the exception to the automatic stay under § 362(b)(22) is immediately applicable so that Landlord may be permitted to complete the process of obtaining full possession of the Residence.").

§ 36.36 Notice by Bankruptcy Petition Preparer
§ 36.37 Local Documents

C. TIME AND PLACE FOR FILING

§ 37.1 Jurisdiction, Venue and Change of Venue

{90} ***Nichols v. Marana Stockyard & Livestock Mkt. Inc. (In re Nichols)*, No. CV-19-04658-PHX-SMB, 2020 WL 1244569 (D. Ariz. Mar. 16, 2020) (Brnovich)** (Applying balancing considerations from *Federal Savings & Loan Insurance Corp. v. Molinaro*, 889

F.2d 899 (9th Cir. Nov. 16, 1989) (Schroeder, Boochever, Beezer), bankruptcy court did not abuse its discretion by refusing to stay, suspend or abstain in a Chapter 13 case involving debtors with pending parallel criminal proceedings and Fifth Amendment considerations.).

§ 37.2 When to File Petition
§ 37.3 Timing Considerations after BAPCPA
§ 37.4 Time for Filing Schedules, Statement of Financial Affairs, Plan and Other Documents
§ 37.5 Filing Fee and Option to Pay in Installments

{91} ***In re Willis*, 604 B.R. 206, 207–09 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases, attorney is sanctioned for collecting a $500 "expense retainer" that included filing fees, then filing installment fee applications with respect to which no fees were paid. Attorney kept the $500 as attorney's fees. Installment filing fee applications misrepresented debtors' abilities to pay fees. Sanctions included that attorney develop a one-hour CLE program on best practices in consumer bankruptcy cases. "Willis received an advance expense retainer of $500 from each of his clients. Included as part of the expenses incurred in bankruptcy cases are the filing fees . . . . Willis caused the 32 bankruptcy cases to be filed without the payment of the requisite filing fees . . . . Instead, Willis filed motions asking that his clients be permitted to pay the filing fees over time . . . . Willis made no mention in his pleadings of the expense retainers previously paid to Willis by his clients. . . . In the cases which were closed or dismissed it appears that not only were the fees unpaid, it is undisputed that Willis did not return the unused funds to either his client or remit them to the Court. Instead, Willis kept the funds. . . . [T]hrough the course of administration of some of the cases . . . Willis received payment of further attorney fees from certain bankruptcy estates. . . . Such payments violate Fed.R.Bankr.P. 1006(b)(3) . . . . The Chapter 13 Trustee . . . filed the Disgorgement Motions to compel the payment of the filing fees, which for the first time made the Court aware of this problem with Willis' practices.").

§ 37.6 Filing Fees, Installments and Waiver after BAPCPA

{92} ***McBride v. Riley (In re Riley)*, 923 F.3d 433, 435–43 (5th Cir. May 13, 2019) (Reavley, Elrod, Willett)** (Local no-look fee order did not permit Chapter 13 debtor's attorney to recover filing fees, briefing fees or credit report fees in addition to no-look amount. Bankruptcy court is permitted but not required to allow Chapter 13 debtor's attorneys to recover filing fees, credit report fees and prepetition briefing fees as reimbursable expenses—part of "reasonable compensation" under § 330(a)(4)(B) and § 503(b). "[This] dispute involves no-money-down business models, wherein the debtor's attorney agrees to advance the costs of filing fees, credit counseling course fees, and credit report fees on behalf of the debtor. . . . The Bankruptcy Court for the Western District of Louisiana has a standing order . . . that any advances made by debtor's counsel for pre-filing expenses were accounted for in the no-look fee amount and therefore not separately reimbursable. . . . The no-look fee option is an administrative creation of the bankruptcy court designed to quickly identify a level of debtor's counsel compensation that is presumptively reasonable and easy to administer. . . . [T]he advances of the filing fee, credit counseling fee, and credit report fee by debtor's counsel in this case were not necessary expenses to preserve the estate under 11 U.S.C. § 503(b)(1). . . . [W]e conclude that § 330(a)(4)(B) permits bankruptcy courts to reimburse debtor's counsel for the costs of advancing such fees as reasonable compensation, but it does not require them to do so. . . . '[C]ompensation' is broad enough that it would generally be understood to include reimbursement. . . . § 330(a)(4)(B) says courts may allow compensation 'for representing the interests of the debtor in connection with the bankruptcy case[.]' A filing fee (and the other two fees) are, by any ordinary understanding of the words, 'interests of the debtor in connection with the bankruptcy case.' As such, this section grants bankruptcy courts the discretion to authorize compensation to a Chapter 13 debtor's counsel even when the underlying activity fulfills a personal obligation of the debtor . . . so long as that obligation is an interest of the debtor connected with the bankruptcy case. . . . [W]e hold that 11 U.S.C. §§ 503(b) and 330 provide bankruptcy courts with the discretion to compensate debtor's counsel for advancing the costs of filing fees, credit counseling fees, and credit report fees if they choose to do so . . . ."), *aff'g in part, vacating in part,* No. 1:17-01302, 2018 WL 1768602, at *5–*7 (W.D. La. Apr. 12, 2018) (Trimble) (Filing fees, credit counseling fees and credit report fees are not reimbursable to debtor's counsel under 11 U.S.C. § 503(b)(1)(A) or § 503(b)(2) or under 11 U.S.C. § 330(a) because they are not administrative expenses of the Chapter 13 estate. "This court agrees with Judge Kolwe and finds that he (1) did not err in holding that the filing fee for a Chapter 13 case is not a post-petition expense (2) did not err in holding that the filing fee for a Chapter 13 case accrues pre-petition (3) did not err in holding that advances of filing fees, credit counseling fees, and credit report fees by debtor's counsel in Chapter 13 are not reimbursable under 22 U.S.C. § 503 (b)(1)(A). . . . [A]llowing debtor's counsel to advance that fee and then subsequently seek reimbursement of that fee through the plan, would take away the discretion of the Court to allow the fee to be paid in installments because of necessity, eviscerate Rule 1006(b) and divert available funds from unsecured creditors to the debtors' counsel.").

PART 4: PRECONFIRMATION PRACTICE

§ 38.1 Summary of Part 4

A. STATUTES AND RULES DISCUSSED IN PART 4

§ 39.1 11 U.S.C. § 343: Appearance and Examination at Meeting of Creditors
§ 39.2 11 U.S.C. § 521(1): Debtor's Duties
§ 39.3 11 U.S.C. § 1301: Codebtor Stay
§ 39.4 11 U.S.C. § 1302: Powers and Duties of Trustee

§ 39.5 11 U.S.C. § 1303: Rights and Powers of Debtor
§ 39.6 11 U.S.C. § 1304: Debtor Engaged in Business
§ 39.7 11 U.S.C. § 1321: Filing of Plan
§ 39.8 11 U.S.C. § 1323: Modification of Plan before Confirmation
§ 39.9 11 U.S.C. § 1326: Payments into Plan
§ 39.10 Bankruptcy Rule 1007(h): Mandatory Amendments
§ 39.11 Bankruptcy Rule 1009: Amendments to Petition, Lists, Statements and Schedules
§ 39.12 Bankruptcy Rule 2003: Meeting of Creditors
§ 39.13 Bankruptcy Rule 2004: Examinations
§ 39.14 Bankruptcy Rule 2015: Record-Keeping and Reporting Requirements
§ 39.15 Bankruptcy Rule 3004: Filing of Claims by Debtor
§ 39.16 Bankruptcy Rule 3010: Small Dividends
§ 39.17 Bankruptcy Rule 3012: Valuation of Security
§ 39.18 Bankruptcy Rule 3013: Classification of Claims
§ 39.19 Bankruptcy Rule 3015: Filing of Plan
§ 39.20 Bankruptcy Rule 4001: Stay Relief Practice and Procedure
§ 39.21 Bankruptcy Rule 4002: Duties of Debtor
§ 39.22 Bankruptcy Rule 6004: Use, Sale or Lease of Property
§ 39.23 Bankruptcy Rule 6006: Assumption and Rejection of Executory Contracts
B. POWERS AND DUTIES OF DEBTOR
§ 40.1 Duty to Cooperate
1. STATEMENTS AND SCHEDULES
§ 41.1 Duty to File Statements and Schedules
§ 41.2 Preconfirmation Amendment of Petition, Statements, Schedules and Lists
2. FILING AND PROVIDING DUTIES ADDED BY BAPCPA
§ 42.1 Filing Requirements and Other Duties: A List
§ 42.2 Consequences of Failure to File Required Information, Including "Automatic Dismissal"

{93} ***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)** (Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. In any case, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's failure to file schedules and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.).

{94} ***In re Davis*, No. 19-36077-KLP, 2020 WL 581505 (Bankr. E.D. Va. Feb. 5, 2020) (Phillips)** (In fourth bankruptcy case in 10 years, motion to reconsider order denying further extension of time to file necessary documents and dismissing Chapter 13 case is denied because debtor offered no ground for reconsideration and court committed no error.).

{95} ***In re Ward*, 610 B.R. 804 (Bankr. W.D. Pa. Jan. 15, 2020) (Deller)** (Chapter 13 debtor's seventh motion for additional time to file basic documents to commence case is denied for lack of cause; hearing is set to determine whether dismissal should be with prejudice under § 109(g).).

{96} ***In re Mansaray*, No. 19-00302, 2019 WL 3987695 (Bankr. D.D.C. Aug. 22, 2019) (Teel)** (Motion to vacate order of dismissal denied when debtors did not provide required tax returns seven days before meeting of creditors for purposes of § 521(e)(2)(A) and failed to provide 60 days of pay advices for purposes of § 521(a)(1)(B)(iv). Dismissal is automatic and mandatory under § 521(i) so vacating dismissal would be futile.).

§ 42.3 Payment Advices

{97} ***In re Whaley*, 772 F. App'x 346, 348 (7th Cir. June 24, 2019) (Kanne, Barrett, Brennan)** (When dismissal of Chapter 13 petition was based in part on debtor's failure to file proof of income and failure to provide tax returns to trustee, court of appeals rejects argument that debtor sent proof of income and proof of exemption from filing tax returns to the trustee based on Code provision that required debtor to "file" that information, not send it to the trustee. "Whaley . . . asserts that the bankruptcy judge incorrectly stated that Whaley failed to file pay stubs and an affidavit stating that he was exempt from filing tax returns because he had mailed them to the trustee's office. But Whaley's argument is unavailing . . . . [T]he bankruptcy code required Whaley to file these documents with the court, not mail them to the trustee. *See*11 U.S.C. §§ 521(a), 1308.").

{98} ***In re Mansaray*, No. 19-00302, 2019 WL 3987695 (Bankr. D.D.C. Aug. 22, 2019) (Teel)** (Motion to vacate order of dismissal denied when debtors did not provide required tax returns seven days before meeting of creditors for purposes of § 521(e)(2)(A) and failed to provide 60 days of pay advices for purposes of § 521(a)(1)(B)(iv). Dismissal is automatic and mandatory under § 521(i) so vacating dismissal would be futile.).

§ 42.4 Tax Return Duties—In General
§ 42.5 Tax Return Duties Seven Days before First Scheduled Meeting of Creditors

{99} ***In re Mansaray*, No. 19-00302, 2019 WL 3987695 (Bankr. D.D.C. Aug. 22, 2019) (Teel)** (Motion to vacate order of dismissal denied when debtors did not provide required tax returns seven days before meeting of creditors for purposes of § 521(e)(2)(A) and failed to provide 60 days of pay advices for purposes of § 521(a)(1)(B)(iv). Dismissal is automatic and mandatory under § 521(i) so vacating dismissal would be futile.).

§ 42.6 Tax Return Duties One Day before First Scheduled Meeting of Creditors

{100} ***In re Long*, 603 B.R. 812, 815–21 (Bankr. E.D. Wis. July 22, 2019) (Halfenger)** (Rejecting *In re French*, 354 B.R. 258 (Bankr. E.D. Wis. Mar. 21, 2006) (Pepper), in a Chapter 13 case filed in January in which meeting of creditors was first scheduled in February, because tax return for prior year was not due for § 1308(a) purposes, § 1325(a)(9) did not preclude confirmation. "[Section] 1308(a)'s past-tense use of 'file' in its middle clause suggests that it covers only those returns that the debtor was required to file before the date on which the meeting of creditors was first scheduled to be held . . . . [T]he best reading of § 1308(a), as informed by federal-tax-law usage, is that it requires a debtor in a chapter 13 case to file only those returns that are due to be filed before the date on which the meeting of creditors is first scheduled to be held, whether the returns at issue are federal, state, or local returns. . . . Section 1308(b)(1)(B)(i) applies where a debtor fails to file a tax return that becomes due after the petition is filed but before the first date on which the meeting of creditors is scheduled to be held. . . . This reading . . . may render § 1308(b)(1)(B)(ii) superfluous. . . . That clause is not superfluous, however, if an automatic extension is understood to simply permit the late filing of a return that nonbankruptcy law requires the debtor to file by the ordinary statutory deadline. . . . If *French*'s reading of § 1308(a) were correct, then debtors in circumstances like those here could never satisfy § 1325(a)(9), which would preclude plan confirmation. The debtors in this case filed their petition in January 2019, but they did not file their 2018 federal income-tax returns with the Internal Revenue Service before the date on which the meeting of creditors was first scheduled to be held. The trustee did not hold open that meeting to allow them any additional time to file those returns, so the court could not extend the filing period. . . . [I]f § 1308(a) requires chapter 13 debtors to file tax returns that are not yet due under nonbankruptcy law, as *French* holds and the trustee insists, then the chapter 13 trustee has unchecked authority to scuttle a debt-adjustment case filed early in the year by declining to hold open the meeting of creditors to afford a debtor additional time to meet a supposed Bankruptcy Code deadline to file with taxing authorities tax returns not yet due under the tax laws that govern timely filing of those returns with those taxing authorities. . . . *French*'s reading of § 1308(a) places debtors who file chapter 13 petitions early in the year at the mercy of the trustee and leaves them with no recourse where the trustee, by action or omission, requires them to file tax returns . . . before those returns are due under applicable nonbankruptcy law.").

§ 42.7 Tax Return Duties—On Request

{101} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351, at *5–*6 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Distinguishing *Anderson v. Satterlee (In re Anderson)*, 21 F.3d 355 (9th Cir. Apr. 12, 1994) (Browning, Norris, O'Scannlain), challenge to local plan form requirement that debtors provide tax returns to trustee every year was not properly before bankruptcy appellate panel; but if it were, § 521(f)(1) and § 521(f)(4)(B) fully support the requirement to aid the trustee in determining whether there is a need for modification of the plan. "*Anderson* did not absolve chapter 13 debtors from providing additional financial information to trustees during their plan terms. . . . [U]pon request debtors are required to file with the court copies of each federal tax return for each tax year ending while the case is pending. [11 U.S.C.] § 521(f)(1). And chapter 13 debtors, also upon request, are required after confirmation to file annually 'a statement . . . of the income and expenditures of the debtor during the tax year . . . most recently concluded . . . .' [11 U.S.C.] § 521(f)(4)(B). . . . These requirements are designed to facilitate a chapter 13 trustee's ability to monitor a debtor's postconfirmation financial condition for purposes of . . . evaluating the need for potential plan modifications under § 1329(a)—for either increases or decreases in plan payments.").

{102} ***In re Sherwood*, No. 19-10509, 2020 WL 609603, at *1 (Bankr. D. Me. Jan. 7, 2020) (Fagone)** (Chapter 13 trustee's motion to require debtors to file tax returns, pay taxes and provide copies of future tax returns is denied because the Code and Rules comprehensively manage the filing and provision of tax returns and orders supplemental to those Code and Rule provisions are not appropriate. "There is no question that the trustee is entitled to the tax information he seeks. Similarly, there is no doubt that chapter 13 debtors must pay their postpetition tax obligations as and when they come due. That said, the Court will not impose additional requirements for the filing and provision of tax returns and other information where Congress has already created a detailed scheme governing the subject while a bankruptcy case is pending, particularly where that scheme contemplates serious consequences for failure to comply.").

{103} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Trustee is entitled to postconfirmation tax returns every year under § 521(f) in light of possibility that debtor will receive future bonus income; in addition, under § 521(f)(4) and (g), debtor must report whether he received a bonus and, if so, how much.).

§ 42.8 Consequences of Failure to File or Provide Tax Returns

{104} ***In re Whaley*, 772 F. App'x 346, 348 (7th Cir. June 24, 2019) (Kanne, Barrett, Brennan)** (When dismissal of Chapter 13 petition was based in part on debtor's failure to file proof of income and failure to provide tax returns to trustee, court of appeals rejects argument that debtor sent proof of income and proof of exemption from filing tax returns to the trustee based on Code provision that required debtor to "file" that information, not send it to the trustee. "Whaley . . . asserts that the bankruptcy judge incorrectly stated that Whaley failed to file pay stubs and an affidavit stating that he was exempt from filing tax returns because he had mailed them to the trustee's office. But Whaley's argument is unavailing . . . . [T]he bankruptcy code required Whaley to file these documents with the court, not mail them to the trustee. *See*11 U.S.C. §§ 521(a), 1308.").

{105} ***In re Souter*, No. 19-21582-gmh, 2019 WL 5887174, at *1–*2 (Bankr. E.D. Wis. Sept. 17, 2019) (Halfenger)** (The requirement in § 1325(a)(9) is mandatory—the court cannot confirm a Chapter 13 unless the debtor affirmatively proves that all required tax returns have been filed consistent with § 1308. "The debtors contend that, unless someone objects, the court can confirm a plan in this case even though they did not (and cannot now) satisfy § 1325(a)(9) because they failed to file all of their applicable tax returns as required by § 1308. . . . The Supreme Court has repeatedly read § 1325(a) to permit confirmation only if all of the subsection's requirements are met.").

§ 42.9 Tax Return Confidentiality Issues
§ 42.10 Annual Income and Expense Statement—On Request

{106} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351, at *5–*6 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Distinguishing *Anderson v. Satterlee (In re Anderson)*, 21 F.3d 355 (9th Cir. Apr. 12, 1994) (Browning, Norris, O'Scannlian), challenge to local plan form requirement that debtors provide tax returns to trustee every year was not properly before bankruptcy appellate panel; but if it were, § 521(f)(1) and § 521(f)(4)(B) fully support the requirement to aid the trustee in determining whether there is a need for modification of the plan. "*Anderson* did not absolve chapter 13 debtors from providing additional financial information to trustees during their plan terms. . . . [U]pon request debtors are required to file with the court copies of each federal tax return for each tax year ending while the case is pending. [11 U.S.C.] § 521(f)(1). And chapter 13 debtors, also upon request, are required after confirmation to file annually 'a statement . . . of the income and expenditures of the debtor during the tax year . . . most recently concluded . . . .' [11 U.S.C.] § 521(f)(4)(B). . . . These requirements are designed to facilitate a chapter 13 trustee's ability to monitor a debtor's postconfirmation financial condition for purposes of . . . evaluating the need for potential plan modifications under § 1329(a)—for either increases or decreases in plan payments.").

{107} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Trustee is entitled to postconfirmation tax returns every year under § 521(f) in light of possibility that debtor will receive future bonus income; in addition, under § 521(f)(4) and (g), debtor must report whether he received a bonus and, if so, how much.).

§ 42.11 Audits by U.S. Trustee

3. MEETING OF CREDITORS

§ 43.1 Timing and Procedure
§ 43.2 Debtor Duties at Meeting of Creditors after BAPCPA
§ 43.3 Personal Appearance by Debtor

{108} ***In re Blige*, No. 19-40222-EJC, 2019 WL 3959982 (Bankr. S.D. Ga. Aug. 21, 2019) (Coleman)** (Fourth Chapter 13 case since 2010 is dismissed with prejudice to refiling for three years when, acting through son with power of attorney, debtor filed petition that misrepresented illness when truth was debtor was incarcerated. Meeting of creditors conducted by phone from Georgia to California. Son in California answered questions revealing that debtor was incarcerated. Debtor through son misled everyone to believe that the debtor was in ill health, not in jail.).

§ 43.4 What to Do If Debtor Is Not Able to Attend in Person

{109} ***In re Blige*, No. 19-40222-EJC, 2019 WL 3959982 (Bankr. S.D. Ga. Aug. 21, 2019) (Coleman)** (Fourth Chapter 13 case since 2010 is dismissed with prejudice to refiling for three years when, acting through son with power of attorney, debtor filed petition that misrepresented illness when truth was debtor was incarcerated. Meeting of creditors conducted by phone from Georgia to California. Son in California answered questions revealing that debtor was incarcerated. Debtor through son misled everyone to believe that the debtor was in ill health, not in jail.).

§ 43.5 Consequences of Failure to Attend Meeting of Creditors

§ 43.6 Option Not to Convene Meeting of Creditors?
§ 43.7 Holding Open the Meeting of Creditors
§ 43.8 Representing Creditors at the Meeting of Creditors
4. DEBTOR MUST COMMENCE MAKING PAYMENTS
§ 44.1 First Test of Debtor's Good Intentions

{110} ***Bauman v. Skelton (In re Bauman)*, No. SC-18-1190-SLG, 2020 WL 1899557, at *8–*9 (B.A.P. 9th Cir. Apr. 16, 2020) (not for publication) (Spraker, Lafferty, Gan)** (Chapter 13 debtor cannot avoid the requirement to commence payments under § 1326(a)(1) by proposing to make all payments directly to creditors. Debtors can make some payments directly to creditors but typically not to unsecured creditors and certainly not all payments. "Bauman points to no case that has permitted a chapter 13 debtor to excise the trustee and make *all* payments directly to creditors. . . . Bauman may not usurp the chapter 13 trustee's statutory role. . . . Permitting a debtor to make all chapter 13 payments outside of the plan would undermine the trustee's ability to carry out these duties or render them impracticable. . . . Courts have rejected interpretations of § 1326(a)(1) that would permit debtors to avoid or condition the commencement of their payments under § 1326(a)(1). . . . Her proposed plans did not absolve her of the duty to commence plan payments under § 1326(a)(1).").

§ 44.2 Timing and Form of Payment
§ 44.3 Employer Problems
§ 44.4 Consequences of Failure to Commence Payments

{111} ***Bristol v. Branigan*, No. PJM 18-02957, 2019 WL 4600304 (D. Md. Sept. 20, 2019) (Messitte)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c) when debtor failed to commence payments within 30 days as required by § 1326. That debtor claims her attorney told her not to begin making payments until a motion for stay relief was filed does not change result.).

{112} ***De Galofre v. US Bank Nat'l Ass'n*, No. 0:18-cv-60511-UU, 2018 WL 9458260 (S.D. Fla. Oct. 2, 2018) (Ungaro)** (Bankruptcy court did not abuse discretion when it dismissed Chapter 13 case based on debtor's failure to commence payments under § 1326 and other procedural deficiencies including a missed meeting of creditors and incomplete motions.).

§ 44.5 Return of Payments to Debtor

{113} ***In re Bair*, No. 15-61403, 2019 WL 6045481, at *3 (Bankr. N.D. Ohio Nov. 14, 2019) (not for publication) (Kendig)** (Applying § 347, Chapter 13 debtor's objection to claim of Citi is not proper procedure for debtor to obtain funds paid by Chapter 13 trustee to Citi pursuant to confirmed plan but returned to trustee when creditor was not found. Instead, funds are properly paid into the court registry and held for Citi to claim. Failing that, money will be paid to Treasury after five years. "[Section] 347(a) would be rendered meaningless[] if a trustee or a debtor could simply ask the court to disallow a claim every time the trustee was unable to locate a creditor during a case. . . . [T]he funds on hand for the Claim belong to Citi—not Debtor. And if the funds remain unpaid 90 days after the Trustee's final distribution under 11 U.S.C. § 1326, they must be paid into the court for disposition as unclaimed funds pursuant to § 347(a).").

§ 44.6 Preconfirmation Payments after BAPCPA
§ 44.7 Disposition of Preconfirmation Payments after BAPCPA

{114} ***In re Evans*, No. 19-40193-JMM, 2020 WL 739258, at *5–*9 (Bankr. D. Idaho Feb. 13, 2020) (Meier)** (Applying § 1326(a)(2), in derogation of 28 U.S.C. § 586(e), in Chapter 13 case dismissed before confirmation, Chapter 13 trustee must regurgitate compensation and reimbursement of expenses collected from payments by debtor. "Section 1326(b) requires the trustee to pay the trustee's percentage fee before or at the time of each payment to creditors under the plan. . . . Section 1326(a)(2) only allows the trustee to pay creditors after a plan is confirmed. . . . If the trustee cannot pay creditors until a plan is confirmed pursuant to § 1326(a)(2), then § 1326(b) is not operative until a plan is in effect. . . . Because § 1226(b)(2) and § 1326(b)(2) contain almost identical language, but § 1226(a)(2) expressly allows a trustee to deduct a percentage fee in unconfirmed cases, and § 1326(b)(2) is inoperative until a plan is in effect, the Court does not find § 1326(b)(2) permits trustee fees to be paid regardless of whether a plan is confirmed. . . . Just as § 586(e) does not contemplate that once a fee is collected, any part of it should be refunded to the debtor, it also does not contemplate that any portion of the fee is irrevocable. . . . [T]his Court concludes it must rely on the text of the statute, and its interpretation thereof, and not decide the matter based on conflicting public policy arguments.").

{115} ***McKinney v. 2nd Chance Auto Sales, Inc.*, 611 B.R. 894, 898–905 (Bankr. N.D. Ala. Jan. 30, 2020) (Sawyer)** (*Barton* doctrine bars state court action against Chapter 13 trustee to collect judgment against Wells Fargo from trust funds held by trustee. In addition, funds held by trustee are *in custodia legis* and cannot be levied upon or attached by state court process. 2nd Chance Auto Sales, Inc., obtained a money judgment against a car buyer. In an effort to collect that judgment, 2nd Chance garnished the buyer's bank account at Wells Fargo. Wells Fargo failed to respond, which resulted in an $8,000 judgment against Wells Fargo. 2nd Chance then brought state court action against Chapter 13 trustee as garnishee to collect money held for payment to Wells Fargo in Chapter 13 cases. "As this proceeding involves a garnishment action brought against the Chapter 13 Trustee, who is appointed to serve this Court, this Court has

exclusive jurisdiction to hear this matter. 28 U.S.C. § 1334; *Barton v. Barbour*, [104 U.S. (14 Otto) 126, 26 L. Ed. 672 (Oct. 1, 1881)]. . . . [I]t is undisputed that Second Chance did not first seek leave from this Court to bring a garnishment action against the Trustee . . . . In addition to the Eleventh Circuit, 10 other circuits have likewise held that *Barton* applies to suits brought against a trustee in bankruptcy. . . . ' . . . [T]he *Barton* Doctrine requires a party to obtain leave of the bankruptcy court before initiating an action in any non-bankruptcy courts against a bankruptcy trustee for acts done in the trustee's official capacity.' . . . As garnishment actions against a trustee are civil actions, it follows that *Barton* withdraws subject matter jurisdiction from any court other than the court in which the trustee serves where, as here, someone attempts to garnish funds in the hands of a trustee. . . . While the Trustee enjoys protection from unauthorized lawsuits under the *Barton* doctrine, the property in her charge is protected under the doctrine of *in custodia legis* while it remains in her charge. . . . As such, the funds, independent of the *Barton* doctrine, are beyond the reach of any 'levy or attachment in any form.'").

{116} ***In re Crespin*, No. 17-11234 ta13, 2019 WL 2246540, at *2–*6 (Bankr. D.N.M. May 23, 2019) (Thuma)** (At dismissal before confirmation, allowed attorney's fees are paid from the funds held by the trustee and no trustee compensation can be deducted from funds paid to the attorney. "The rule in this district is that if a chapter 13 plan is not confirmed, all payments made by the debtor to the trustee must be refunded to the debtor without deducting the trustee's percentage fee. . . . This rule was not adopted because of perceived fairness to the trustee . . . . Were the Court drafting the law, it would pay the trustee her percentage fee in cases that fail pre-confirmation. . . . The trustee does a lot of work in failed cases and deserves to be paid for that work. Furthermore, the trustee's percentage fee is calculated in such a way that debtors in successful cases are forced to shoulder the expense of failed cases. . . . [T]he trustee may not make payments under unconfirmed plans. . . . The trustee begins earning her percentage fees when the post-confirmation distributions begin. § 1326(b)(2). . . . § 1326(a)(1)(C) allows *debtors* to make pre-confirmation adequate protection payments and requires them to report the payments to the trustee. The payments are not made 'under' the debtor's unconfirmed plan. Rather, they are made pursuant to §§ 361, 362(d)(1), and 1325(a)(1)(C). . . . There is no mention in chapter 13 of trustees making pre-confirmation adequate protection payments. . . . The better reading of the local rule is that it allows debtors to assign the trustee the task of making pre-confirmation adequate protection payments, in exchange for her normal fee. . . . The local rule does not transform adequate protection payments into plan payments . . . . When a chapter 13 is dismissed, the trustee must return held funds to the debtor after paying § 503(b) claims. § 1326(a)(2) . . . . The deduction from debtor's refund for administrative expenses is not a 'plan' payment. Rather, the payment is in lieu of a proposed plan payment that will never be made.").

{117} ***In re Baldwin*, No. 14-23702, 2018 WL 8223412, at *3 (Bankr. N.D. Ind. Aug. 31, 2018) (Ahler)** (Judgment creditor's motion to reopen dismissed Chapter 13 case—treated as a motion for relief from dismissal order under Rule 60(b)(6)—is denied when purpose of motion is to recover unclaimed funds that belong to the debtor. When Chapter 13 case was dismissed, trustee attempted to return funds on hand to the debtor but was unable to locate debtor. Trustee eventually paid funds to clerk of the bankruptcy court. "The court has a duty to 'to disburse unclaimed funds to the "rightful owners," 28 U.S.C. § 2041, upon "full proof of the right thereto." 28 U.S.C. § 2042.' . . . Pursuant to 11 U.S.C. § 1326(a)(2), money held by a chapter 13 trustee at dismissal before confirmation is ordinarily returned to the debtor, less any § 503(b) administrative expenses. . . . Debtor's case was dismissed prior to confirmation and the trustee made no distributions to any creditors. As such, the trustee rightfully attempted to return the funds held to Debtor—the owner of the funds. When Debtor did not claim the funds, they were deposited with the clerk. While on deposit with the clerk, Claimant has failed to show this Court any enforceable right to those funds.").

5. DEBTOR MAY USE, SELL AND LEASE ESTATE PROPERTY

§ 45.1 Debtor Has Exclusive Possession and Control of Estate Property

{118} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley)** (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.), *reconsideration denied*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley).

{119} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

{120} ***In re Revels*, No. 19-01583-5-SWH, 2020 WL 1456502, at *4–*6 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Nonstandard provision of plan that absolves Chapter 13 debtor of any requirement to file a Rule 9019 motion to approve settlement of pending employment action is consistent with §§ 1303 and 363(b) and Bankruptcy Rule 9019 because Chapter 13 debtor owns and controls the litigation and its settlement, exclusive of the trustee, and Rule 9019 applies only to trustees. In contrast, nonstandard provision that would absolve debtor of any obligation to report settlement of employment action is inconsistent with disclosure requirements of Code and Rules and would impede ability of trustee and others to monitor income and assets of the debtor. Nonstandard provision that would require the trustee to inform the parties to the employment action that the trustee has no role in settlement is "unacceptable, demeaning, retributory." "A chapter 13 debtor assumes 'exclusive of the trustee, the rights and powers of a trustee under section[ ] 363(b) . . . . Under section 363(b), the debtor ' . . . may use, sell, or lease . . . property of the estate.' . . . Thus, implicit within the chapter 13 debtor's exclusive authority to use property of the estate is the power of the debtor to maintain a cause of action that is part of the bankruptcy estate. . . . Rule 9019 authorizes a 'trustee' to seek a court order approving a compromise or settlement. . . . Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . [T]he settlement of the cause of action is controlled by the chapter 13 debtor. . . . Although the court can see reasons why a debtor would want court approval of a settlement, on its face, Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . Even though a chapter 13 debtor is not required to file a motion to approve settlement or compromise under Rule 9019, the debtor still has a duty to disclose assets, including the settlement of claims against third parties. . . . An objective check on settlements must exist to ensure that chapter 13 trustees have full disclosure of estate assets. . . . [T]he act of settling a claim . . . equates to a 'substantial change' in the financial circumstances of the debtor that would warrant disclosure to the trustee, even if the amount of the settlement is not substantially different than the amount scheduled.").

{121} ***In re Sexton*, No. 1:16-bk-14785-SDR, 2019 WL 5586581 (Bankr. E.D. Tenn. Oct. 25, 2019) (Rucker)** (Although notice was sloppy and motion not altogether clear, bankruptcy court grants Chapter 13 debtor authority to sell property of the estate with conditions that protect lienholder.).

{122} ***Duckworth Dev. II, LLC v. Lindsey (In re Lindsey)*, No. 3:18-ap-43-JAF, 2019 WL 5078630 (Bankr. M.D. Fla. Oct. 9, 2019) (Funk)** (Debtor cannot sell real property in Chapter 13 case because prepetition sale of the property divested the debtor of all interest. Deed to buyer of the property is reformed by the bankruptcy court to reflect that Chapter 13 debtor and nondebtor corporation transferred their interests notwithstanding a mistake in the deed. Court rejects debtor's effort to squeeze additional value from that transaction.).

a. PROPERTY OF THE ESTATE

§ 46.1 What Is Property of the Chapter 13 Estate?
§ 46.2 Property of the Chapter 13 Estate—Changes by BAPCPA
§ 46.3 Postpetition Earnings
§ 46.4 Prepetition Repossession, Levy, Sale or Conveyance

{123} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Purchaser at prepetition tax sale violated Pennsylvania consumer protection statutes by demanding rent to which there was no entitlement, demanding possession when possession belonged to debtor, and intimidating debtor in effort to force debtor to vacate property. Purchaser at prepetition tax sale demanded rent and otherwise acted like owner of property after debtor exercised redemption right by proposing plan that would pay redemption amount over life of plan. Exercise of redemption right through plan before it expired cut off vesting of title in purchaser. Chapter 13 debtor satisfied redemption right by proposing plan that paid redemption amount over life of plan as permitted by Bankruptcy Code. Exercise of redemption right does not require completion of payment of redemption amount to stop title from vesting in purchaser. Debtor recovers nominal actual damages, not including emotional distress damages, and is awarded attorney's fees.).

{124} ***In re Lagares Santana*, No. 18-07127 (ESL), 2020 WL 412185 (Bankr. D.P.R. Jan. 24, 2020) (Lamoutte)** (Applying Puerto Rico law, because judicial transfer deed was executed after foreclosure sale and before the Chapter 13 petition, no interest came into the Chapter 13 estate and foreclosing creditor did not violate the stay by obtaining confirmation of the sale after the petition.).

{125} ***In re Thompson*, No. 19 BK 06176, 2020 WL 728605 (Bankr. N.D. Ill. Jan. 15, 2020) (Schmetterer)** (Applying *In re LaMont*, 740 F.3d 397 (7th Cir. Jan. 7, 2014) (Manion, Kanne, Sykes), Chapter 13 debtor can modify claim of prepetition tax purchaser through plan under § 1322(b)(2) when petition is filed before expiration of redemption period under state law; however, no provision of the Bankruptcy Code tolls redemption period and that period expired during the Chapter 13 case. Plan cannot be confirmed that fails to pay tax purchaser's claim but dismissal is delayed to allow debtor another chance to propose confirmable plan.).

{126} ***In re Thompson*, No. 18-32609-BPC, 2019 WL 5485218 (Bankr. M.D. Ala. Oct. 24, 2019) (Creswell)** (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when redemption period in title pawn contract expired before the petition or the debtor failed to redeem within the redemption period as extended by § 108, no interest in the car came into the Chapter 13 estate or the estate's interest fell out of the estate and Title Max is entitled to stay relief or to a declaration that no stay applies. Title Max sufficiently complied with Alabama law by notation of its lien on the car title and use of electronic signatures for the debtor on the pawn tickets.).

{127} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Circularly, Ford Motor Credit's refusal to return funds garnished before the petition does not violate automatic stay in § 362(a)(3) because garnished funds were removed from the estate before the petition. That garnished funds are recoverable as a preference under §§ 547 and 522(h) does not change this conclusion.).

{128} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Car repossessed before second filing became property of Chapter 13 estate and debtor was entitled to turnover once bankruptcy court determined that § 109(g)(1) did not apply and debtor was eligible in the second case.).

{129} ***In re Baldwin*, 605 B.R. 453, 457–59 (Bankr. E.D. Ky. Aug. 26, 2019) (Schaaf)** (Judgment creditor violated stay by refusing to deliver or to allow delivery of garnished funds and settlement proceeds held by others when the garnished funds and settlement proceeds became property of the Chapter 13 estate. "[S]ervice of the order of garnishment in Kentucky only initiates the procedure by which a creditor can apply non-exempt property to pay a judgment. . . . The procedure is not complete until the state court rules on the claimed exemptions. The Madison Circuit Court has not ruled, so the Debtor still has an interest in the garnished funds that became property of the estate on the petition date. . . . A creditor is required to return any property of the estate that it possesses when the petition is filed. . . . Passive retention is no defense. The burden of requesting adequate protection is on the creditor. . . . PBK Bank's continued possession of the garnished funds and failure to allow Ford to deliver funds to the Debtor's estate violate the automatic stay.").

{130} ***In re Barrett*, No. 18-21501-GLT, 2019 WL 3890147 (Bankr. W.D. Pa. Aug. 16, 2019) (Taddonio)** (Because prepetition distributive award vested ownership of one-half of proceeds from sale of debtor's business in former spouse, only bare legal title to that half of the funds came into Chapter 13 estate; former spouse is entitled to stay relief to cause the transfer of funds from domestic relations attorney to the former spouse.).

{131} ***In re Christiano*, 605 B.R. 1, 6–9 (Bankr. D. Conn. Aug. 2, 2019) (Nevins)** (Applying Connecticut law, because tax sale purchaser takes title to property at tax sale, subject to six-month right of redemption in taxpayer, when Chapter 13 case was filed at end of redemption period, right of redemption came into Chapter 13 estate and was extended for 60 days by § 108(b) but right expired when not exercised during case and no interest remained to be modified by Chapter 13 plan. Purchaser does not have a claim in the Chapter 13 case and cannot be compelled to accept full payment of the redemption amount over life of Chapter 13 plan. "[T]he Debtor lost her fee simple interest in the Property when the Tax Sale occurred, subject only to her right to redeem. On the Petition Date, the Debtor's bankruptcy estate included the Debtor's personal right to redeem the Property, not the title to the Property itself. The Town, as the successful bidder at the Tax Sale, held title to the Property on the Petition Date, subject to the Debtor's right to redeem the Property by paying the Redemption Amount. . . . Debtor's right to redeem was not stayed by the filing of the bankruptcy petition, although it was extended until sixty (60) days after the Petition Date. . . . Courts in states in which the tax sale purchaser has a lien against the property on the petition date, generally find that the debtor may modify the 'claim' of the tax purchaser through a Chapter 13 plan pursuant to § 1322, since the property sold at a tax sale becomes a lien on property of the bankruptcy estate. . . . Courts in states where the tax purchaser acquires title to the property, similar to the procedure here . . . , generally determine that a tax sale purchaser did not hold a 'claim' on the petition date, but instead held title to the property subject to the relinquishment of title upon the payment of the redemption price.").

{132} ***In re Haynes*, No. 19-20601-PRW, 2019 WL 7945834 (Bankr. W.D.N.Y. Aug. 1, 2019) (Warren)** (Entry of default judgment and filing of foreclosure tax deed vested property in county before the petition and left no legal or equitable interest in the Chapter 13 debtor. Automatic stay did not apply to the county because prepetition default judgment and filing of foreclosure tax deed divested debtor of all legal and equitable interests in the property.).

{133} ***Dougherty v. Security Credit Union (In re Dougherty)*, No. 11-33926-dof, 2019 WL 2529362, at *1–*6 (Bankr. E.D. Mich. June 17, 2019) (Opperman)** (Wages garnished between dismissal and reinstatement of Chapter 13 case are not property of the estate and are not subject to turnover under § 542(a). "[T]he case was dismissed on March 28, 2018 for failure to timely complete a case under 11 U.S.C. § 1307(c). . . . [T]he case was reopened on October 29, 2018. . . . Between the dismissal and the reinstatement of the Debtor's bankruptcy case, Defendant received disbursements from the Debtor's earnings . . . for wages earned from May 12, 2018 through October 26, 2018. . . . A debtor's interest in garnished funds is 'terminated with finality' upon the garnishing creditor's pre-petition receipt. . . . [S]ince dismissal of a bankruptcy petition revests property of the bankruptcy estate in the party that owned it prior to the filing of the bankruptcy petition, there is no longer a bankruptcy estate after a petition has been dismissed. . . . Debtor did not cite, nor could the Court find, any authority holding that reinstating a bankruptcy case has a retroactive impact on what is deemed property of the estate. . . . The wages were not property of the estate when they were garnished in the gap period. . . . As such, the garnished wages have never been property of the bankruptcy estate, and 11 U.S.C. § 542 is therefore inapplicable.").

{134} ***In re Woodruff*, 600 B.R. 616 (Bankr. N.D. Ill. Apr. 30, 2019) (Barnes)** (Deciding the issue reserved in *In re Robinson*, 577 B.R. 294 (Bankr. N.D. Ill. Dec. 4, 2017) (Barnes), prepetition tax sale purchaser has a claim secured by a statutory lien for the redemption amount and an unsecured contingent claim for the equitable right to seek a tax deed if stay relief is granted. Prior to expiration of the redemption period, value of the equitable contingent claim is likely $0 because payment of the redemption amount would eliminate the unsecured contingent right to seek a tax deed. After expiration of the redemption period, the contingent equitable claim would increase

dramatically to the value of the property less the amount of the redemption right—to avoid double recovery by the tax sale purchaser. Result is that the tax sale purchaser, after expiration of the redemption period, has two claims in the Chapter 13 case: a secured claim for the redemption amount, an unsecured claim for the full value of the property less the exemption amount. Neither of these claims is a personal liability of the debtor.).

{135} ***In re Cass*, No. 18-3703, 2019 WL 7667445, at *2–*3 (Bankr. S.D. Ala. Feb. 4, 2019) (Callaway)** (Because debtors are still in possession of home, right of redemption from tax sale has not expired under Alabama law and debtors can pay redemption amount through Chapter 13 plan; however, tax sale purchasers are entitled to stay relief to pursue possession and debtors' opportunity to redeem from the tax sale may be short lived. "The debtor lives in the house and has been in possession of the property in question at all relevant times, continuing to date. In fact, the tax purchasers are seeking relief from stay from this court in order to eject her from possession of the property. . . . [T]he debtor's right of redemption has not expired and [ ] she can redeem until the tax purchasers have continuously adversely possessed the property for three years. The court notes the debtor's right to redeem may not do her much practical good if she cannot do so very quickly because the court is granting relief from stay on the ejectment claim and she may lose possession of her home shortly.").

§ 46.5 Proceeds, Rents or Profits from Property of the Estate
§ 46.6 Gifts, Loans and Windfalls

{136} ***In re Moore*, 602 B.R. 40, 45–48 (Bankr. E.D. Tenn. Apr. 25, 2019) (Rucker)** (Inheritance more than 180 days after the petition is property of Chapter 13 estate subject to partial exemption. "There is a spilt [*sic*] in the authorities interpreting whether property inherited outside the 180-day period should be included in a chapter 13 estate. . . . [T]his Court is ultimately persuaded by the majority position that § 541 is a general statute whose definition of property of the estate is expanded by § 1306 and that the temporal time constraints in § 541(a)(5) are omitted. If there was a reason to include an inheritance received within 180 days after filing in a chapter 7, then extending that period of inclusion to the end of a chapter 13 case is consistent with § 1306's inclusion of property acquired after the commencement of the case for the duration of the plan.").

§ 46.7 Pension Benefits
§ 46.8 Entitlements Programs
§ 46.9 Leases and Other Contract Rights

{137} ***In re Atchley*, 604 B.R. 255 (Bankr. D.S.C. July 30, 2019) (Waites)** (Equity of redemption under installment land sale contract was a sufficient property interest to permit Chapter 13 debtor to assume land sale contract and cure default through the plan. Stay relief denied when equity of redemption remained in Chapter 13 debtor at time of petition because state court eviction action was not completed and proposed plan assumed the contract and made provision for curing all defaults in payments.).

§ 46.10 Insurance Policies and Proceeds

{138} ***Johnson v. Apex Mortg. (In re Johnson)*, No. 18-00178-TOM, 2020 WL 961892 (Bankr. N.D. Ala. Feb. 27, 2020) (Mitchell)** (Mortgagee did not violate automatic stay when it received and kept insurance proceeds paid to it when car crashed into debtor's business property. Mortgage clause in insurance contract was not property of Chapter 13 estate but belonged to mortgagee and proceeds of that insurance policy never became property of the Chapter 13 estate.).

{139} ***In re Scholl*, 605 B.R. 163 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (Insurance proceeds are property of Chapter 13 estate when rental property is destroyed in last month of Chapter 13 case and insurance company tenders $150,000 to debtors.).

§ 46.11 Causes of Action—Including Judicial Estoppel Issues

{140} ***Wal-Mart Stores, Inc. v. Parker (In re Parker)*, 789 F. App'x 462 (5th Cir. Jan. 8, 2020) (Owen, Wiener, Dennis)** (Citing *Reed v. City of Arlington*, 650 F.3d 571 (5th Cir. Aug. 11, 2011) (en banc), and *Flugence v. Axis Surplus Insurance Co. (In re Flugence)*, 738 F.3d 126 (5th Cir. Nov. 22, 2013) (Smith, Dennis, Higginson), though "odd" and not the route preferred by the Fifth Circuit, not an abuse of discretion for the bankruptcy court to find that the Chapter 13 debtor's failure to amend schedules to reveal a postpetition slip-and-fall action justified imposing judicial estoppel but equitable principles allowed debtor to maintain the tort action with any recovery payable to the Chapter 13 trustee.).

{141} ***Smith v. Haynes & Haynes P.C.*, 940 F.3d 635 (11th Cir. Oct. 15, 2019) (Tjoflat, Newsom, Antoon)** (Applying *Slater v. United States Steel Corp.*, 871 F.3d 1174 (11th Cir. Sept. 18, 2017) (en banc) (*Slater II*), remand necessary to determine whether judicial estoppel precludes FLSA action. District court employed inference that was later overruled by the Eleventh Circuit in *Slater II*. Without that inference, evidence is necessary with respect to intent and motive to make a mockery of the judicial system when a Chapter 13 debtor fails to schedule a cause of action and the defendant later asserts judicial estoppel as a defense.), *aff'g*, No. 2:14-cv-01334-RDP, 2017 WL 3613045 (N.D. Ala. Aug. 22, 2017) (Proctor) (Part of Chapter 13 debtor's Fair Labor Standards Act complaint was dismissed

based on judicial estoppel when debtor failed to schedule the cause of action; retaliation claims are dismissed because not supported by facts.).

{142} ***Castillo v. E.M. Dimitri, D.O. Prof'l Med. Corp.*, No. 19-10888, 2020 WL 1689871 (E.D. La. Apr. 7, 2020) (Guidry)** (Wrongful discharge action that arose when Chapter 13 debtor was terminated from employment after confirmation and one month before conversion to Chapter 7 is barred by judicial estoppel notwithstanding that action did not become property of Chapter 7 estate. District court does not reveal nature of reliance by bankruptcy court on nondisclosure one month before conversion.).

{143} ***Nowling v. SN Servicing Corp.*, No. 19-CV-1605 (PJS/TNL), 2020 WL 1244809 (D. Minn. Mar. 16, 2020) (Schiltz)** (Although factors under *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (May 29, 2001), are all present with respect to Chapter 13 debtors' undisclosed RESPA action against mortgage servicer, judicial estoppel is not appropriate because debtors had no motive to conceal the action. The likelihood of any substantial recovery was very low. Even if revealed, debtors could have amended exemptions to cover any likely damage award. And once revealed in Chapter 13 case—albeit after completion of payments and discharge—Chapter 13 trustee showed no interest in pursuing any potential recovery on behalf of unsecured creditors.).

{144} ***Kelly v. Land O'Frost, Inc.*, No. 4:19CV-00103-JHM, 2020 WL 1812220, at *5 (W.D. Ky. Jan. 8, 2020) (McKinley)** (Applying rule in Sixth Circuit that a Chapter 13 debtor "always" has a motive to conceal assets and income, debtor is judicially estopped to maintain Family and Medical Leave Act action because it was not revealed to bankruptcy court until after motion to dismiss by defendant. District court rejects debtor's claims of inadvertence. "A motive to conceal can be inferred from the sole fact that a plaintiff knew of a claim and did not disclose it . . . . This result does not change despite Kelly's additional statements that she had no knowledge or reason to believe that her termination was a claim that had to be disclosed in the bankruptcy petition or that she had a duty to disclose these claims.").

{145} ***Browne v. P.A.M. Transp., Inc.*, No. 16-CV-5366, 2019 WL 7373362 (W.D. Ark. Dec. 31, 2019) (Brooks)** (Judicial estoppel does not bar postpetition wage and hour claim when Chapter 13 debtor has not received a discharge, schedules were amended—admittedly after defendant moved to dismiss—to disclose cause of action and there is no other evidence of misconduct or abuse by debtor. Plan can yet be amended to account for any recovery. Bankruptcy Code and Rules do not set specific timeline for amending schedules to reveal a postpetition cause of action. Only discharge would constitute judicial acceptance and 18-month delay in amending schedules did not allow the debtor an unfair advantage.).

{146} ***Scott v. American Airlines, Inc.*, No. 4:19-CV-688-A, 2019 WL 7371851 (N.D. Tex. Dec. 31, 2019) (McBryde)** (Judicial estoppel bars Chapter 13 debtor's sexual assault claim that arose four months before the petition and was not disclosed during the Chapter 13 case or at conversion to Chapter 7 case in which debtor received a discharge.).

{147} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley)** (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.), *reconsideration denied*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley).

{148} ***Lee v. Walgreens Co.*, No. 4:19-CV-1792 CAS, 2019 WL 5550544 (E.D. Mo. Oct. 28, 2019) (Shaw)** (Chapter 13 debtor's race discrimination action is barred by judicial estoppel when lawsuit was added by amendment to schedules after motion to dismiss by defendant.).

{149} ***El-Scari v. Comprehensive Mental Health Servs.*, No. 4:19-00179-CV-RK, 2019 WL 5386489, at *3 (W.D. Mo. Oct. 21, 2019) (Ketchmark)** (Judicial estoppel has no application when race discrimination and retaliation claims arose during Chapter 13 case that was immediately converted to Chapter 7. In absence of bad faith allegation, cause of action is not property of the Chapter 7 estate and judicial estoppel is not implicated. "Assets acquired post-petition are only included in the estate of a case converted from Chapter 13 under § 348 as a penalty for converting in bad faith. § 348(f)(2). . . . [T]he alleged discrimination occurred after Plaintiff filed her original bankruptcy petition. As a result, her potential claims would not have been included in the converted Chapter 7 bankruptcy estate even if she had disclosed them to the bankruptcy court[.]").

{150} ***Young v. Popeye's Chicken*, No. 7:18-cv-00207-LSC, 2019 WL 3817644 (N.D. Ala. Aug. 14, 2019) (Coogler)** (Chapter 13 debtor is judicially estopped to maintain employment discrimination action that was not revealed in prior or current Chapter 13 case. Debtor received protection of Chapter 13 including the automatic stay then failed to make payments while not revealing known employment action—all indicative of abuse of bankruptcy.).

{151} ***Snider v. Wells Fargo Bank, N.A.*, No. 18-cv-06353-RS, 2019 WL 3457854 (N.D. Cal. July 31, 2019) (Seeborg)** (Chapter 13 debtors' effort to stop foreclosure by Wells Fargo is barred by judicial estoppel because debtors did not reveal cause of action against Wells Fargo in prior Chapter 13 case and confirmed plan in prior case allowed that nondisclosure to benefit the debtors.).

{152} ***Miles v. City of Birmingham*, No. 2:17-CV-1156-RDP, 2019 WL 2616307 (N.D. Ala. June 26, 2019) (Proctor)** (Chapter 13 debtor's unscheduled employment discrimination lawsuit is not barred by judicial estoppel because lawsuit was filed after dismissal of Chapter 13 case, which negates presumption of manipulation that would have supported judicial estoppel argument.).

{153} ***Freitas v. McCabe, Hamilton & Renny Co.*, No. 17-00359 ACK-RT, 2019 WL 2236074 (D. Haw. May 23, 2019) (Kay)** (Judicial estoppel does not bar employment discrimination lawsuit when first Chapter 13 case in which action was not revealed was dismissed after confirmation and second Chapter 13 case in which action was revealed was confirmed with plan that commits any recovery to creditors.).

{154} ***Jones v. Savage Servs. Corp.*, No. 2:17-CV-01570-AKK, 2019 WL 2058715 (N.D. Ala. May 9, 2019) (Kallon)** (Chapter 13 debtor is judicially estopped to seek monetary damages in employment discrimination action that was not revealed to bankruptcy court until after motion to dismiss by defendant.).

{155} ***Weatherholt v. Wal-Mart Stores E., LP*, No. 3:18-0353, 2019 WL 2606885 (S.D. W. Va. Mar. 14, 2019) (Chambers)** (Judicial estoppel does not bar wrongful discharge action that accrued during last month of Chapter 13 plan when debtor reopened the case to reveal the asset, debtor kept making all plan payments in spite of alleged wrongful discharge and bankruptcy court can sort out whether creditors are entitled to any recovery when/if there is a recovery.).

{156} ***EEOC v. Foodcrafters Distribution Co.*, No. 03-2796 (RBK), 2005 WL 8176024 (D.N.J. Jan. 28, 2005) (Kugler)** (Judicial estoppel does not bar Chapter 13 debtor's employment action because debtor told trustee about the action at the meeting of creditors and confirmed plan included reference to nonexempt proceeds of the action.).

{157} ***In re Revels*, No. 19-01583-5-SWH, 2020 WL 1456502, at *4–*6 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Nonstandard provision of plan that absolves Chapter 13 debtor of any requirement to file a Rule 9019 motion to approve settlement of pending employment action is consistent with §§ 1303 and 363(b) and Bankruptcy Rule 9019 because Chapter 13 debtor owns and controls the litigation and its settlement, exclusive of the trustee, and Rule 9019 applies only to trustees. In contrast, nonstandard provision that would absolve debtor of any obligation to report settlement of employment action is inconsistent with disclosure requirements of Code and Rules and would impede ability of trustee and others to monitor income and assets of the debtor. Nonstandard provision that would require the trustee to inform the parties to the employment action that the trustee has no role in settlement is "unacceptable, demeaning, retributory." "A chapter 13 debtor assumes 'exclusive of the trustee, the rights and powers of a trustee under section[ ] 363(b) . . . . Under section 363(b), the debtor ' . . . may use, sell, or lease . . . property of the estate.' . . . Thus, implicit within the chapter 13 debtor's exclusive authority to use property of the estate is the power of the debtor to maintain a cause of action that is part of the bankruptcy estate. . . . Rule 9019 authorizes a 'trustee' to seek a court order approving a compromise or settlement. . . . Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . [T]he settlement of the cause of action is controlled by the chapter 13 debtor. . . . Although the court can see reasons why a debtor would want court approval of a settlement, on its face, Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . Even though a chapter 13 debtor is not required to file a motion to approve settlement or compromise under Rule 9019, the debtor still has a duty to disclose assets, including the settlement of claims against third parties. . . . An objective check on settlements must exist to ensure that chapter 13 trustees have full disclosure of estate assets. . . . [T]he act of settling a claim . . . equates to a 'substantial change' in the financial circumstances of the debtor that would warrant disclosure to the trustee, even if the amount of the settlement is not substantially different than the amount scheduled.").

{158} ***Carmona v. Osnet Wireless Corp.*, No. 19-00015 (ESL), 2020 WL 1237919 (Bankr. D.P.R. Mar. 13, 2020) (Lamoutte)** (Judicial estoppel does not bar Chapter 13 debtor's employment action when only two months passed between filing of employment action in state court and disclosure of action to the bankruptcy court. Debtor earlier revealed the action in an application to hire counsel in the bankruptcy court, further indicating the absence of motive to conceal. Bankruptcy court abstains and remands in favor of state court resolution of purely state law employment claims.).

{159} ***Llanos v. Cascade Funding Mortg. Tr. 2017-1 (In re Llanos)*, No. 1:19-ap-01036-MT, 2019 WL 4024949 (Bankr. C.D. Cal. Aug. 26, 2019) (Tighe)** (Unscheduled actions against mortgage holder and servicer are not precluded by judicial estoppel because debtor revealed dispute with lender and servicer and debtor realized no advantage by nondisclosure of the specifics.).

{160} ***In re Bullock*, 603 B.R. 411 (Bankr. S.D. Ill. June 12, 2019) (Grandy)** (Stay pending appeal denied (absent posting a bond) of bankruptcy court order requiring Chapter 13 debtor to turn over funds and/or to amend plan to pay creditors unscheduled workers' compensation settlement received and spent by the debtor postpetition.).

§ 46.12 Miscellaneous Real and Personal Property

{161} ***Budorick v. Budorick*, No. 19 C 3957, 2019 WL 5393819 (N.D. Ill. Oct. 22, 2019) (Leinenweber)** (Bankruptcy court appropriately rejected Chapter 13 debtor's challenges to state court divorce decree with respect to ownership of stock and a money judgment against the debtor. Debtor has no exemption in whatever interest he has in stock owned by former spouse.).

{162} ***Kessler-Maue v. Maue (In re Maue)*, 611 B.R. 367 (Bankr. W.D. Wash. Dec. 23, 2019) (Barreca)** (Property of Chapter 13 estate did not include trust property but did include beneficial interest of debtor in trust and powers that debtor could exercise as trustee of the trust.).

{163} ***In re Carballo*, No. 19-11266-LMI, 2019 WL 6340220 (Bankr. S.D. Fla. Nov. 26, 2019) (Isicoff)** (For purpose of best-interests-of-creditors test, debtor held only bare legal title and no equitable interest in real property owned jointly with mother and grandparent. Debtor's name was on titles to accommodate his mother and grandparent but debtor exercised no responsibility for or control over the properties. In contrast, joint bank account with grandparent that debtor occasionally used to pay personal loan for a boat was property of Chapter 13 estate and had to be accounted for in an amended plan.).

b. ADEQUATE PROTECTION BEFORE CONFIRMATION

§ 47.1 Adequate Protection of Lienholders before Confirmation

§ 47.2 Preconfirmation Adequate Protection after BAPCPA

{164} ***In re Taylor*, No. 19-30351-tmb13, 2019 WL 3713666, at *1 (Bankr. D. Or. Aug. 6, 2019) (not for publication) (Brown)** (Lien creditor is adequately protected and not entitled to periodic payments pending confirmation and sale of property because of substantial equity cushion.).

6. EXEMPTIONS

a. IN GENERAL

§ 48.1 Available and Important in Chapter 13 Cases

{165} ***Advance Credit, Inc. v. Gamboa (In re Gamboa)*, 778 F. App'x 829 (11th Cir. Aug. 19, 2019) (Jordan, Fay, Hull)** (Homestead exemption under Florida law is allowed notwithstanding that land is zoned agricultural and mobile home on land is not legal residence. Debtor intends to reside in and is living in mobile home on land he owns and details can be addressed by rezoning request and plan to build house.), *aff'g* No. 18-20031-CIV-KMW, 2018 WL 9340067 (S.D. Fla. Sept. 27, 2018) (Williams) (Bankruptcy court correctly determined that Chapter 13 debtor could claim Florida homestead exemption in property classified as agricultural on which the debtor lived in a trailer in violation of county housing ordinance.), *aff'g* 578 B.R. 661 (Bankr. S.D. Fla. Dec. 21, 2017) (Mark) (Debtor is entitled to Florida homestead exemption notwithstanding that land is classified as agricultural and debtor lives in trailer on land in violation of municipal ordinances.).

{166} ***Oliveras Rivera v. Oterno Nazario*, 610 B.R. 414 (D.P.R. Jan. 10, 2020) (Gelpí)** (Homestead exemption under Puerto Rico law does not extend to portion of property that is leased and not occupied by the debtor.), *amending and superseding* No. 15-2035CCC, 2019 WL 1502470 (D.P.R. Apr. 2, 2019) (Cerezo) (Under Commonwealth law, Chapter 13 debtor can claim homestead exemption only in portion of structure that is actually used as a principal residence; portion of building leased to a tenant is not available for homestead exemption.), *aff'g in part, rev'g in part*, 533 B.R. 1 (Bankr. D.P.R. July 15, 2015) (Flores) (Lease of lower level of two-story home in which debtor resides did not defeat homestead exemption under the law of Puerto Rico.).

{167} ***Budorick v. Budorick*, No. 19 C 3957, 2019 WL 5393819 (N.D. Ill. Oct. 22, 2019) (Leinenweber)** (Bankruptcy court appropriately rejected Chapter 13 debtor's challenges to state court divorce decree with respect to ownership of stock and a money judgment against the debtor. Debtor has no exemption in whatever interest he has in stock owned by former spouse.).

{168} ***In re Holley*, No. 18-13140-t13, 2019 WL 4934856 (Bankr. D.N.M. Oct. 4, 2019) (Thuma)** (Chapter 13 debtor not entitled to various exemption claims in $1.6 million proceeds from personal injury settlement when debtor did not schedule the lawsuit in prior Chapter 7 case, lawsuit was not debtor's to deal with personally because of § 554(c), proceeds did not fit the personal injury exemption and debtor's zero value for exempted assets was not accurate.).

{169} ***In re Harris*, No. 19-02083-NPO, 2019 WL 4267567 (Bankr. S.D. Miss. Sept. 9, 2019) (Olack)** (Applying Mississippi homestead exemption law, Chapter 13 debtor is entitled to exemption in a duplex in which the debtor uses one side as a residence and intends to renovate and lease the other side. Business use of part of property does not defeat homestead exemption.).

{170} ***In re Suggs*, No. 19-00323-5-SWH, 2019 WL 3365876 (Bankr. E.D.N.C. July 25, 2019) (Humrickhouse)** (Chapter 13 debtor cannot claim homestead exemption in residence occupied by former spouse because former spouse is not a "dependent" of debtor for purposes of state homestead law.).

{171} ***In re Moore*, No. 3:18-bk-13222-DPC, 2019 WL 2487638 (Bankr. D. Ariz. June 13, 2019) (Collins)** (Trustee's objection to homestead exemption in one-third interest in former marital residence is sustained when 10-year-old divorce decree granted exclusive use and possession to former spouse.).

{172} ***In re Voisine*, No. 19-20005, 2019 WL 2153337 (Bankr. D. Me. May 15, 2019) (Cary)** (Health savings account is not exempt property under Maine law because it is not a substitute for wages or other income.).

{173} ***In re Hychko*, No. 16-20055, 2019 WL 2142954 (Bankr. D. Me. May 14, 2019) (Cary)** (Trustee did not carry burden of proof to overcome exemption claim by debtor in personal injury settlement.).

§ 48.2 BAPCPA and Exemptions

{174} ***Bush v. Nathan (In re Bush)*, No. 19-11425, 2019 WL 4416313 (E.D. Mich. Sept. 16, 2019) (Cox)** (At attempted conversion from Chapter 7 to Chapter 13, debtor not entitled to exemption in proceeds of settlement of employment discrimination lawsuit under § 522(d)(11)(E) because debtor did not seek recovery for loss of future earnings.).

{175} ***In re Connell*, No. 19-43726, 2020 WL 863622 (Bankr. W.D. Wash. Feb. 18, 2020) (Heston)** (Trustee's objection to homestead exemption is rejected: debtor does not reside in property but has expressed a not implausible intent to return to property when financially able. Exemption claim without actually residing in property is permitted under Washington state law.).

§ 48.3 Exemptions and Exemption Limitations Added by BAPCPA
§ 48.4 Timing and Procedure

{176} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

§ 48.5 Timing and Procedure Considerations Added by BAPCPA
§ 48.6 Domicile Rules after BAPCPA

b. LIEN AVOIDANCE UNDER 11 U.S.C. § 522(f)

§ 49.1 Available in Chapter 13 Cases

{177} ***In re Colon Vidal*, No. 15-02030 (ESL), 2020 WL 1650908 (Bankr. D.P.R. Mar. 23, 2020) (Lamoutte)** (Bank's unrecorded mortgage is secured only by a judicial lien that is entirely avoidable under § 522(f) because it impairs the Chapter 13 debtors' homestead exemption.).

§ 49.2 Procedure for Lien Avoidance
§ 49.3 Limitations on Lien Avoidance

{178} ***In re Berger*, No. 2:19-cv-00417, 2019 WL 5310145, at *3–*4 (W.D. Pa. Oct. 21, 2019) (Conti)** (Stripping a wholly unsecured tax lien under §§ 506(a) and 1322(b)(2) is an *in rem* proceeding with respect to which the state has no sovereign immunity. Citing *Central Virginia Community College v. Katz*, 546 U.S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945 (Jan. 23, 2006), and *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (May 17, 2004): "The Supreme Court explained that state sovereign immunity is not implicated by proceedings that are 'ancillary to' the bankruptcy court's *in rem* jurisdiction, even when they arguably could be characterized as a suit against the state . . . . Lien stripping falls within the bankruptcy court's *in rem* jurisdiction. . . . [T]he State had no sovereign immunity to raise under the circumstances of this case.").

{179} ***In re Ober*, 613 B.R. 631 (Bankr. E.D. Pa. Apr. 8, 2020) (Chan)** (Judgment creditor failed to overcome presumption under Arizona law that Chapter 13 debtors now residing in Pennsylvania intended to return to Arizona homestead; debtors can avoid judgment creditor's lien under § 522(f) because the exemption claim will support lien avoidance.).

{180} ***In re Adkins*, No. 19-50936-KMS, 2020 WL 1670257 (Bankr. S.D. Miss. Mar. 30, 2020) (Samson)** (After resolving conflicting appraisals, judgment creditor is partially secured by value in home in excess of mortgage and exemptions, and plan cannot be confirmed that treats the judgment lien as avoidable in full.).

{181} ***Potts v. Potts (In re Potts)*, No. 18-01052, 2020 WL 476592 (Bankr. N.D. Miss. Jan. 29, 2020) (Maddox)** (Applying *Farrey v. Sanderfoot*, 500 U.S. 291, 111 S. Ct. 1825, 114 L. Ed. 2d 337 (May 23, 1991), judicial lien securing state court award to former spouse cannot be avoided under § 522(f) because debtor's interest in property to which lien attached was created by the same judgment that created the lien.).

{182} ***In re Coats-Califf*, No. 19-04310-JW, 2020 WL 257315, at *8 (Bankr. D.S.C. Jan. 8, 2020) (Waites)** (Citing independent duty to review Chapter 13 plans under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and notwithstanding that lienholder did not appear at confirmation hearing, judicial lien is only partially avoidable under 522(f) after doing math based on values offered by the debtor. "Debtor's proposed chapter 13 plan incorrectly provides for the avoidance of Creditor's entire judicial lien encumbering the Marion Property. Debtor . . . asserts that the value of her interest in the Marion Property is $15,000 with no liens other than Creditor's $48,200 judicial lien. Debtor's schedules assert an exemption in the Marion Property of $3,185. . . . Based on the arithmetic test of § 522(f), Debtor's exemption and the judicial lien equal $51,385, which exceeds the $15,000 value of Marion Property by $36,385. Therefore, . . . Debtor may only partially avoid Creditor's judicial lien up to the impairment in the amount of $36,385, with $11,815 of the judicial lien remaining as a lien on the Marion Property.").

{183} ***In re Wigfall*, 606 B.R. 784, 786–90 (Bankr. N.D. Ill. Oct. 29, 2019) (Doyle)** (Possessory lien that arises after impoundment of car for accumulated parking tickets is a judicial lien, not a statutory lien, that can be avoided under § 522(f) when it impairs an exemption. "[S]tatutory lien must arise 'solely' by virtue of the statutory provision creating it whereas a judicial lien arises after some kind of process—judicial, quasi-judicial, or administrative. . . . The City's lien arises from Chicago Municipal Code provisions that create an administrative process that must be followed before the City can seize the car and create a lien. . . . The administrative process and resulting judgment make the City's lien judicial . . . . The City's lien did not arise solely by operation of the ordinance but only after completion of the mandatory administrative processes required by the ordinances. The lien is judicial, not statutory. . . . The City's lien . . . can be avoided under § 522(f).").

{184} ***In re Gancedo*, 608 B.R. 771 (Bankr. S.D. Fla. Oct. 28, 2019) (Mark)** (Chapter 13 debtor can use § 522(f) to avoid judgment lien on homestead when the property was acquired two years after the judgment lien was recorded.).

{185} ***In re Burge*, No. 19-10795-JDL, 2019 WL 5198911 (Bankr. W.D. Okla. Oct. 14, 2019) (Loyd)** (Federal tax lien is a statutory lien, not a judicial lien; statutory lien cannot be avoided under § 522(f). Section 522(c)(2)(B) confirms this conclusion.).

{186} ***Lopez v. Specialized Loan Servicing LLC (In re Lopez)*, No. 19-03046-KRH, 2019 WL 4935661, at *3 (Bankr. E.D. Va. Oct. 7, 2019) (Huennekens)** (Chapter 13 debtor owning real property as joint tenant with nonfiling brother can void wholly unsecured second lien under § 506(d). "[T]he entirety of the Claim is an allowed unsecured claim, not an allowed secured claim. . . . By operation of Section 506(d) of the Bankruptcy Code, the Second Priority Lien is void, as no portion of the Claim is an allowed secured claim. . . . The Second Priority Lien is void and may be stripped off the Property without regard to whether the joint tenant has filed bankruptcy.").

{187} ***In re Dolfi*, 607 B.R. 243, 247–48 (Bankr. W.D. Pa. Oct. 3, 2019) (Böhm)** (Applying math in § 522(f)(2)(A), judgment lien is avoidable in full because it impairs homestead exemption notwithstanding possibility that lien is in first position ahead of first mortgage. "*[E]ven if* [lienholder] established that he obtained a first priority lien on the residence, he failed to establish that the alleged priority prevents avoidance under § 522(f). Section 522(f)(2)(A) sets forth the method for determining whether a lien impairs an exemption such that avoidance under § 522(f)(1)(A) is appropriate. . . . [T]he plain language of the statute does not appear to condition avoidance on whether a judgment lien is junior to unavoidable liens on the property. . . . [E]ven unavoidable junior mortgages are considered in the analysis.").

{188} ***In re Boykins*, No. 17-08957-JMC-13, 2019 WL 4686563 (Bankr. S.D. Ind. Sept. 17, 2019) (Carr)** (Lien avoidance under § 522(f) is not available with respect to homeowners' association lien because lien was created consensually when debtor signed covenants before the petition. Enforcement of HOA lien by recording may be statutory process but does not change nature of lien.).

§ 49.4 Section 522(f) after BAPCPA: Household Goods Corrupted
§ 49.5 Protecting Lienholder after Lien Avoidance
7. AVOIDANCE AND RECOVERY POWERS
§ 50.1 Turnover of Property

{189} ***In re Fulton*, 926 F.3d 916, 923–31 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder)** (Declining to overrule *Thompson v. General Motors Acceptance Corp., LLC*, 566 F.3d 699 (7th Cir. May 27, 2009) (Cudahy, Williams, Tinder), city of Chicago violated § 362(a)(3) by retaining possession of impounded vehicles and refusing turnover to Chapter 13 debtors. Surrendering possession to Chapter 13 debtor does not defeat perfection of city's possessory lien therefore § 362(b)(3) does not provide city with exception to automatic stay. On balance, neither pecuniary interest test nor public policy test weighs in favor of city for § 362(b)(4) purposes: revenue collection, not police power, is at issue in city's policy of refusing turnover of cars to Chapter 13 debtors based on unpaid traffic tickets. "Congress amended § 362(a)(3) in 1984 to prohibit conduct that 'exercise[d] control' over estate assets. . . . We therefore held that in

retaining possession of the car, the creditor violated the automatic stay in § 362(a)(3). . . . § 542(a) 'indicates that turnover of a seized asset is compulsory.' . . . Because '[t]he right of possession is incident to the automatic stay,' . . . the creditor must first return the asset to the bankruptcy estate. Only then is 'the bankruptcy court [ ] empowered to condition the right of the estate to keep possession of the asset on the provision of certain specified adequate protections to the creditor.' . . . The Supreme Court indicated as much in *Whiting Pools* . . . . Applying *Thompson* to the facts before us, we conclude . . . that the City violated the automatic stay pursuant to § 362(a)(3) by retaining possession of the debtors' vehicles after they declared bankruptcy. . . . [T]he position we took in *Thompson* brought our Circuit in line with the majority rule, held by the Second, Eighth, and Ninth Circuits. . . . Although the Tenth Circuit recently adopted the City's view, *see* [*WD Equipment, LLC v. Cowen (In re Cowen)*, 849 F.3d 943 (10th Cir. Feb. 27, 2017) (Kelly, McKay, McHugh)], that position is still the minority rule. . . . At any point the City could have sought adequate protection of its interests, but it chose not to avail itself of the Code's available procedures. . . . [T]he City can also perfect its lien by filing notice of its interest in the vehicle . . . the City does not need to retain possession of the vehicle to maintain perfection of its lien. . . . [T]he City's possessory lien is not destroyed by its involuntary loss of possession due to forced compliance with the Bankruptcy Code's automatic stay. . . . Because the City does not lose its perfected lien via the involuntary loss of possession of the debtors' vehicles to the bankruptcy estates, § 362(b)(3) does not apply to except it from the stay. . . . [O]n balance, this is an exercise of revenue collection more so than police power. . . . [A] not insignificant portion of the City's annual operating fund comes from its collection of parking and traffic tickets. . . . [T]he City imposes the monetary penalty on the owner of the vehicle, not the driver, which signals a seeming disconnect if the City actually has safety concerns about the offending driver. . . . [E]ven if we assume that the adjudication of these violations is the result of the City's exercise of police and regulatory power, the City cannot enforce these final determinations of liability if they are 'money judgment[s]' as the term is used in § 362(b)(4).").

{190} ***In re Duff*, No. 19-00500, 2020 WL 119685 (Bankr. D.D.C. Jan. 9, 2020) (Teel)** (Chapter 13 debtor is not entitled to turnover under § 542 of money paid for loan modification services not yet performed when action was brought by motion instead of adversary complaint.).

{191} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Car repossessed before second filing became property of Chapter 13 estate and debtor was entitled to turnover once bankruptcy court determined that § 109(g)(1) did not apply and debtor was eligible in the second case.).

{192} ***Dougherty v. Security Credit Union (In re Dougherty)*, No. 11-33926-dof, 2019 WL 2529362, at *1–*6 (Bankr. E.D. Mich. June 17, 2019) (Opperman)** (Wages garnished between dismissal and reinstatement of Chapter 13 case are not property of the estate and are not subject to turnover under § 542(a). "[T]he case was dismissed on March 28, 2018 for failure to timely complete a case under 11 U.S.C. § 1307(c). . . . [T]he case was reopened on October 29, 2018. . . . Between the dismissal and the reinstatement of the Debtor's bankruptcy case, Defendant received disbursements from the Debtor's earnings . . . for wages earned from May 12, 2018 through October 26, 2018. . . . A debtor's interest in garnished funds is 'terminated with finality' upon the garnishing creditor's pre-petition receipt. . . . [S]ince dismissal of a bankruptcy petition revests property of the bankruptcy estate in the party that owned it prior to the filing of the bankruptcy petition, there is no longer a bankruptcy estate after a petition has been dismissed. . . . Debtor did not cite, nor could the Court find, any authority holding that reinstating a bankruptcy case has a retroactive impact on what is deemed property of the estate. . . . The wages were not property of the estate when they were garnished in the gap period. . . . As such, the garnished wages have never been property of the bankruptcy estate, and 11 U.S.C. § 542 is therefore inapplicable.").

{193} ***In re Bullock*, 603 B.R. 411 (Bankr. S.D. Ill. June 12, 2019) (Grandy)** (Stay pending appeal denied (absent posting a bond) of bankruptcy court order requiring Chapter 13 debtor to turn over funds and/or to amend plan to pay creditors unscheduled workers' compensation settlement received and spent by the debtor postpetition.).

{194} ***Salcedo Oquendo v. Triple-S Salud, Inc. (In re Salcedo Oquendo)*, No. 19-0011, 2019 WL 2323646, at *2 (Bankr. D.P.R. May 30, 2019) (Tester)** (Summary judgment granted defendant in Chapter 13 debtor's adversary proceeding seeking turnover of money withheld before petition. "The amount . . . withheld prior to the petition date . . . are [*sic*] not part of the bankruptcy estate and therefore not subject to the automatic stay or to turnover.").

§ 50.2 Relief from Garnishments
§ 50.3 Strong-Arm Powers, Statutory Liens, Preferences and Fraudulent Conveyances

{195} ***Carden v. Ditech Fin., LLC (In re Carden)*, No. 19-40012-JJR, 2020 WL 768585, at *3–*9 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson)** (Applying superseded version of Alabama law, Ditech as successor to Green Tree has a perfected security interest in debtor's mobile home that defeats avoidance action by debtor and Chapter 13 trustee under § 544(a). "[A]lthough the Trustee is the nominal party in interest and asserts she has standing to bring this avoidance action, the benefit of avoiding Ditech's lien would inure not to unsecured creditors—there appear to be none holding allowable claims—but entirely to the Debtor who, if the Plaintiffs are successful in this proceeding, will own the Mobile Home free and clear of Ditech's security interest without any obligation to account for its value through her chapter 13 plan. . . . The court concludes that Ditech's security interest in the Mobile Home continues to be perfected and that a judgment lien creditor on the petition date of the Debtor's bankruptcy case would not take priority over Ditech's security interest.").

{196} ***In re Terrell*, 609 B.R. 719 (Bankr. S.D. Ohio July 26, 2019) (Preston)** (Chapter 13 debtor cannot use strong arm power in § 544(a)(3) to avoid lien of homeowners' association because a BFP would be on notice of the lien created by the deed restrictions. HOA's lien for unpaid assessment created by deed restrictions recorded in 2004 perfected HOA's lien without recording a separate certificate of lien as required by subsequent statutes in Ohio.).

{197} ***Davidson v. Barstad (In re Barstad)*, No. 17-00027-TLM, 2019 WL 2479311 (Bankr. D. Mont. June 12, 2019) (Myers)** (Judgment for specific performance of buy-sell agreement after prepetition auction of real property cannot be satisfied with a money alternative and is not a "claim" for purposes of preference avoidance under § 547(b)(1).).

{198} ***Peters v. Libert Land Holdings 16, LLC (In re Peters)*, No. A18-8327, 2019 WL 1958660 (Bankr. D. Neb. Apr. 23, 2019) (Saladino)** (Citing § 522(h), Chapter 13 debtor has standing to challenge tax deed transfer as a fraudulent conveyance. Citing *BFP v. Resolution Trust Corp*., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (May 23, 1994), *reh'g denied*, 512 U.S. 1247, 114 S. Ct. 2771, 129 L. Ed. 2d 884 (June 27, 1994), fraudulent conveyance action against purchaser at prepetition tax sale fails because only challenge made by debtor was to reasonably equivalent value and properly conducted prepetition tax sale is conclusively reasonable with respect to value.).

§ 50.4 Avoidance Powers after BAPCPA
§ 50.5 Preferences after BAPCPA

{199} ***Hackler v. Arianna Holdings Co., LLC (In re Hackler)*, 938 F.3d 473, 479 (3d Cir. Sept. 12, 2019) (McKee, Porter, Roth)** (Distinguishing *BFP v. Resolution Trust Corp*., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (May 23, 1994), and finding that Tax Injunction Act does not apply, Chapter 13 debtor can avoid a New Jersey tax sale foreclosure as a preferential transfer under § 547. "[A]t New Jersey tax sales the public bids only on the rate of interest on the unpaid taxes. The main conclusion of *BFP*—that the price reached via a foreclosure conducted according to state law should be considered to be the 'reasonably equivalent value' of the property—is not pertinent here, because in New Jersey, the relationship between the winning bid and the value of the underlying property is not merely attenuated but nonexistent.").

{200} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Chapter 13 debtor has standing to maintain preference action against Ford Motor Credit with respect to prepetition garnishment because debtor satisfies conditions in § 522(h).).

§ 50.6 Fraudulent Transfers after BAPCPA

{201} ***Gunsalus v. Ontario Cnty., N.Y. (In re Gunsalus)*, 613 B.R. 1 (Bankr. W.D.N.Y. Feb. 19, 2020) (Warren)** (Applying §§ 522(h) and 548(a)(1)(B), Chapter 13 debtor can avoid prepetition tax foreclosure sale as a fraudulent conveyance when county sold property worth $28,000 in payment of taxes of $1,290.29.).

{202} ***Hampton v. Ontario Cnty., N.Y. (In re Hampton)*, No. 17-2009-PRW, 2020 WL 833045 (Bankr. W.D.N.Y. Feb. 19, 2020) (Warren)** (Applying §§ 522(h) and 548(a)(1)(B), Chapter 13 debtor can avoid prepetition tax foreclosure sale as a fraudulent conveyance when county sold property worth $27,000 in payment of taxes of $5,157.73.).

{203} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Although presumption of reasonably equivalent value in *BFP v. Resolution Trust Corp*., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (May 23, 1994),does not apply to prepetition tax sale that was not conducted in accordance with Pennsylvania law, Chapter 13 debtor failed to prove that a properly conducted sale would have brought a higher price—defeating debtor's action to avoid the tax sale under § 548.).

§ 50.7 Postpetition Transfers
8. MISCELLANEOUS POWERS AND DUTIES
§ 51.1 Can Debtor Sue and Be Sued?

{204} ***Freitas v. McCabe, Hamilton & Renny Co.*, No. 17-00359 ACK-RT, 2019 WL 2236074 (D. Haw. May 23, 2019) (Kay)** (Chapter 13 debtor has standing to maintain employment discrimination action on behalf of the estate and action is not barred by judicial estoppel when action was revealed in second Chapter 13 case and confirmed plan commits recovery to creditors.).

{205} ***Miller v. Mercer Cnty. State Bank (In re Miller)*, No. 18-01009-JAD, 2020 WL 1522402 (Bankr. W.D. Pa. Mar. 30, 2020) (Deller)** (For lack of a case or controversy, bankruptcy court is without jurisdiction to take any action with respect to letter from disgruntled counsel for the defendant in a lawsuit brought by Chapter 13 debtor that was withdrawn to the district court for a jury trial and then dismissed by the debtor.).

{206} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *2 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 debtors can maintain tort action based on postconfirmation events but plan is modified on Chapter 13 trustee's motion to require nonexempt proceeds to be paid to increase payments to creditors without regard to whether proceeds are received within 60-month term of plan. "As debtors in a chapter 13 case, the Lugos are allowed to administer an asset on behalf of the estate and collect funds to be distributed to their creditors. But it is, in fact, the trustee who generally serves as the representative of the estate, with the capacity to sue and be sued, and to prosecute an action by or against the debtor for the benefit of creditors. *See* 11 U.S.C. § 323 (capacity to sue and be sued); Fed. R. Bankr. P. 6009 (capacity to prosecute). So, the Lugos are essentially standing in the shoes of the Trustee when they are pursuing their personal injury claim.").

§ 51.2 Debtor Must File a Plan
§ 51.3 Assume, Reject or Assign Leases, Rental Agreements and Executory Contracts
§ 51.4 Preconfirmation Assumption and Rejection of Leases and Executory Contracts after BAPCPA
§ 51.5 Review Claims, Object to Claims and File Proofs of Claim
9. SPECIAL POWERS AND DUTIES OF A DEBTOR ENGAGED IN BUSINESS
§ 52.1 Operating a Chapter 13 Debtor Engaged in Business
§ 52.2 Additional Filing and Reporting Requirements
§ 52.3 Debtors Engaged in Business after BAPCPA
C. POWERS, DUTIES AND COMPENSATION OF CHAPTER 13 TRUSTEE
1. POWERS AND DUTIES
§ 53.1 Know the Trustee's Operating Procedures
§ 53.2 Who Will Be the Trustee?
§ 53.3 Removal and Liability of Trustee

{207} ***Woodroffe v. Waage*, No. 8:18-cv-1437-T-36, 2019 WL 4644425, at *5 (M.D. Fla. Sept. 24, 2019) (Honeywell)** (Debtor inappropriately named the Chapter 13 trustee personally as a party to debtor's appeal of order denying confirmation and dismissing case. Chapter 13 trustee acted in official capacity, not personally, and enjoyed derived judicial immunity when acting within the scope of authority. "Bankruptcy trustees act in their official capacity, and not personally, and trustees are not personally liable for performing their duties. . . . [T]he Trustee enjoys quasi-judicial immunity[.]").

{208} ***McKinney v. 2nd Chance Auto Sales, Inc.*, 611 B.R. 894, 898–905 (Bankr. N.D. Ala. Jan. 30, 2020) (Sawyer)** (*Barton* doctrine bars state court action against Chapter 13 trustee to collect judgment against Wells Fargo from trust funds held by trustee. In addition, funds held by trustee are *in custodia legis* and cannot be levied upon or attached by state court process. 2nd Chance Auto Sales, Inc., obtained a money judgment against a car buyer. In an effort to collect that judgment, 2nd Chance garnished the buyer's bank account at Wells Fargo. Wells Fargo failed to respond, which resulted in an $8,000 judgment against Wells Fargo. 2nd Chance then brought state court action against Chapter 13 trustee as garnishee to collect money held for payment to Wells Fargo in Chapter 13 cases. "As this proceeding involves a garnishment action brought against the Chapter 13 Trustee, who is appointed to serve this Court, this Court has exclusive jurisdiction to hear this matter. 28 U.S.C. § 1334; *Barton v. Barbour*, [104 U.S. (14 Otto) 126, 26 L. Ed. 672 (Oct. 1, 1881)]. . . . [I]t is undisputed that Second Chance did not first seek leave from this Court to bring a garnishment action against the Trustee . . . . In addition to the Eleventh Circuit, 10 other circuits have likewise held that *Barton* applies to suits brought against a trustee in bankruptcy. . . . ' . . . [T]he *Barton* Doctrine requires a party to obtain leave of the bankruptcy court before initiating an action in any non-bankruptcy courts against a bankruptcy trustee for acts done in the trustee's official capacity.' . . . As garnishment actions against a trustee are civil actions, it follows that *Barton* withdraws subject matter jurisdiction from any court other than the court in which the trustee serves where, as here, someone attempts to garnish funds in the hands of a trustee. . . . While the Trustee enjoys protection from unauthorized lawsuits under the *Barton* doctrine, the property in her charge is protected under the doctrine of *in custodia legis* while it remains in her charge. . . . As such, the funds, independent of the *Barton* doctrine, are beyond the reach of any 'levy or attachment in any form.'").

§ 53.4 Procedure for Removal after BAPCPA
§ 53.5 Advise and Assist Debtor
§ 53.6 Appear and Be Heard with Respect to Confirmation of a Plan
§ 53.7 Appear and Be Heard with Respect to the Value of Collateral
§ 53.8 Appear and Be Heard with Respect to Modification of Plans after Confirmation
§ 53.9 Ensure Debtor Commences Making Timely Payments
§ 53.10 Make Payments to Creditors Unless Plan or Confirmation Order Provides Otherwise

{209} ***Bauman v. Skelton (In re Bauman)*, No. SC-18-1190-SLG, 2020 WL 1899557, at *8–*9 (B.A.P. 9th Cir. Apr. 16, 2020) (not for publication) (Spraker, Lafferty, Gan)** (Chapter 13 debtor cannot avoid the requirement to commence payments under

§ 1326(a)(1) by proposing to make all payments directly to creditors. Debtors can make some payments directly to creditors but typically not to unsecured creditors and certainly not all payments. "Bauman points to no case that has permitted a chapter 13 debtor to excise the trustee and make *all* payments directly to creditors. . . . Bauman may not usurp the chapter 13 trustee's statutory role. . . . Permitting a debtor to make all chapter 13 payments outside of the plan would undermine the trustee's ability to carry out these duties or render them impracticable. . . . Courts have rejected interpretations of § 1326(a)(1) that would permit debtors to avoid or condition the commencement of their payments under § 1326(a)(1). . . . Her proposed plans did not absolve her of the duty to commence plan payments under § 1326(a)(1).").

§ 53.11 Payments to Creditors before Confirmation
§ 53.12 Avoidance and Recovery Powers

{210} ***Coulson v. Kane*, 773 F. App'x 893 (9th Cir. June 13, 2019) (not for publication) (Thomas, Callahan, Christen)** (Affirming Chapter 13 trustee's recovery of preferential transfer within 90 days of Chapter 13 petition.).

{211} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley)** (On reconsideration, bankruptcy court correctly determined that Chapter 13 trustee had no obligation to attempt to collect funds that may or may not have been fraudulently removed from a separate Chapter 7 estate. That recovery, if possible, was the debtor's responsibility.), *denying reconsideration of* No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley) (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.).

{212} ***Carden v. Ditech Fin., LLC (In re Carden)*, No. 19-40012-JJR, 2020 WL 768585, at *3–*9 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson)** (Applying superseded version of Alabama law, Ditech as successor to Green Tree has a perfected security interest in debtor's mobile home that defeats avoidance action by debtor and Chapter 13 trustee under § 544(a). "[A]lthough the Trustee is the nominal party in interest and asserts she has standing to bring this avoidance action, the benefit of avoiding Ditech's lien would inure not to unsecured creditors—there appear to be none holding allowable claims—but entirely to the Debtor who, if the Plaintiffs are successful in this proceeding, will own the Mobile Home free and clear of Ditech's security interest without any obligation to account for its value through her chapter 13 plan. . . . The court concludes that Ditech's security interest in the Mobile Home continues to be perfected and that a judgment lien creditor on the petition date of the Debtor's bankruptcy case would not take priority over Ditech's security interest.").

{213} ***Fink v. Wright (In re Wright)*, 611 B.R. 319 (Bankr. W.D. Mo. Dec. 10, 2019) (Fenimore)** (Because debtor's transfers of property to sister in 2016 created a constructive trust in favor of debtor, conveyance was not fraudulent as to creditors and could not be avoided by Chapter 13 trustee. Debtor remained the beneficial owner of the property at all times.).

{214} ***In re Riddlesprigger*, 603 B.R. 824, 829 (Bankr. M.D. Ala. June 14, 2019) (Sawyer)** (Corrected car title lien application filed outside the relation back period under state law that resulted in perfection of car lien after Chapter 13 petition is defeated by Chapter 13 trustee's § 544(a) avoidance powers, rendering the car lender's claim unsecured. Car lender timely filed an application for notation of lien on car title but Department of Revenue rejected the application because of discrepancies in the papers. Car lender resubmitted the application and the Department of Revenue ultimately approved the resubmitted application but the Department issued a certificate of title 15 days after the Chapter 13 petition. "Exeter did not correct its application until well outside of the relation back period and after the Debtor filed bankruptcy. Therefore, the trustee may avoid the claim pursuant to her powers under 11 U.S.C. § 544. Accordingly, this Court will allow Exeter Finance's claim as unsecured.").

§ 53.13 Recovery of Overpayments

{215} ***In re Alston*, 610 B.R. 551 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (Santander Consumer USA, Inc., ordered to refund double payment of its claim in Chapter 13 case and ordered to pay debtors' attorney's fees for having to file contempt action to get refund. Plan proposed to pay Santander in full. Debtors paid Santander directly without telling anyone. Trustee thereafter paid Santander in full, again. Debtors asked for refund of second payment. Santander failed to respond. Debtors moved for a refund. Santander again failed to respond. Court found Santander willfully violated terms of confirmed plan that called for one payment in full, not two.).

§ 53.14 Seek Conversion or Dismissal
§ 53.15 Review Claims, Object to Claims and File Proofs of Claim
§ 53.16 Noticing Responsibilities
§ 53.17 § 342 Noticing Issues
§ 53.18 Audits by U.S. Trustee
§ 53.19 Trustees' Role in Debtor Education

§ 53.20 Trustees' Final Report

{216} ***Marshall v. McCarty (In re Marshall)*, 613 B.R. 458, 460–61 (B.A.P. 8th Cir. Apr. 16, 2020) (Saladino, Nail, Dow)** (Chapter 13 debtor is not a "person aggrieved" by trustee's final report and has no standing to appeal denial of objection to final report. The "Final Report is not a final order and thus, this Court has no jurisdiction over such an appeal. . . . Debtor questioned the accuracy of some of the information in Trustee's Final Report such as creditor information and the amounts listed as exempt property . . . . Debtor has failed to demonstrate how the bankruptcy court's Order overruling her Objection may have diminished her property, increased her burdens or impaired her rights as to make her an aggrieved party with standing. Nor has she demonstrated that the bankruptcy court's Order directly and adversely affected her pecuniarily.").

2. COMPENSATION AND EXPENSES
§ 54.1 Standard Percentage Fee and Expenses
§ 54.2 Compensation and Expenses of Chapter 13 Trustee after BAPCPA
§ 54.3 Lowered Percentage in a Case
§ 54.4 "No-Costing" Payments on a Claim
§ 54.5 Quantum Meruit
§ 54.6 Compensation on Direct Payments by Debtor
§ 54.7 Compensation on Sale or Transfer of Assets
§ 54.8 Compensation When Trustee Is Not a Standing Trustee
§ 54.9 Compensation When Case Is Dismissed or Converted before Confirmation

{217} ***In re Crespin*, No. 17-11234 ta13, 2019 WL 2246540, at *2–*6 (Bankr. D.N.M. May 23, 2019) (Thuma)** (At dismissal before confirmation, allowed attorney's fees are paid from funds held by the trustee and no trustee compensation can be deducted from funds paid to the attorney. "The rule in this district is that if a chapter 13 plan is not confirmed, all payments made by the debtor to the trustee must be refunded to the debtor without deducting the trustee's percentage fee. . . . This rule was not adopted because of perceived fairness to the trustee . . . . Were the Court drafting the law, it would pay the trustee her percentage fee in cases that fail pre-confirmation. . . . The trustee does a lot of work in failed cases and deserves to be paid for that work. Furthermore, the trustee's percentage fee is calculated in such a way that debtors in successful cases are forced to shoulder the expense of failed cases. . . . [T]he trustee may not make payments under unconfirmed plans. . . . The trustee begins earning her percentage fees when the post-confirmation distributions begin. § 1326(b)(2). . . . § 1326(a)(1)(C) allows *debtors* to make pre-confirmation adequate protection payments and requires them to report the payments to the trustee. The payments are not made 'under' the debtor's unconfirmed plan. Rather, they are made pursuant to §§ 361, 362(d)(1), and 1325(a)(1)(C). . . . There is no mention in chapter 13 of trustees making pre-confirmation adequate protection payments. . . . The better reading of the local rule is that it allows debtors to assign the trustee the task of making pre-confirmation adequate protection payments, in exchange for her normal fee. . . . The local rule does not transform adequate protection payments into plan payments . . . . When a chapter 13 is dismissed, the trustee must return held funds to the debtor after paying § 503(b) claims. § 1326(a)(2) . . . . The deduction from debtor's refund for administrative expenses is not a 'plan' payment. Rather, the payment is in lieu of a proposed plan payment that will never be made.").

D. REPRESENTING CREDITORS PRIOR TO CONFIRMATION
1. STOPPING THE CASE BEFORE CONFIRMATION
§ 55.1 Quick Action Is Essential
§ 55.2 Eligibility Attacks
§ 55.3 Conversion or Dismissal
§ 55.4 Preconfirmation Dismissal or Conversion after BAPCPA
2. GETTING INFORMATION
§ 56.1 How to Determine Proposed Treatment of a Creditor
§ 56.2 Working with the Chapter 13 Trustee
§ 56.3 Attending Meeting of Creditors
§ 56.4 Representation at Meeting of Creditors after BAPCPA
§ 56.5 Preconfirmation Discovery Rights of Creditors
§ 56.6 Rights to Documents and Information after BAPCPA
3. ASSERTING CREDITORS' RIGHTS BEFORE CONFIRMATION
§ 57.1 Proofs of Claim

{218} ***McDonald v. Wildfire Credit Union (In re Griffus)*, No. 19-cv-10577, 2019 WL 3564580 (E.D. Mich. Aug. 6, 2019) (Drain)** (Bankruptcy court did not abuse discretion by refusing to sanction attorney for filing and then withdrawing proof of claim when attorney admittedly did not have authority from creditor to file proof of claim but there was agency relationship between creditor and client with whom attorney actually dealt.).

§ 57.2 Adequate Protection Rights
§ 57.3 Preconfirmation Adequate Protection Rights after BAPCPA

{219} ***In re Taylor*, No. 19-30351-tmb13, 2019 WL 3713666, at *1 (Bankr. D. Or. Aug. 6, 2019) (not for publication) (Brown)** (Lien creditor is adequately protected and not entitled to periodic payments pending confirmation and sale of property because of a substantial equity cushion.).

§ 57.4 Preconfirmation Rights of Landlords and Lessors after BAPCPA

{220} ***In re Arrieta*, 612 B.R. 342, 346–49 (Bankr. D.S.C. Jan. 23, 2020) (Waites)** (Upon objection by landlord, Chapter 13 debtor's certification under § 362(*l*)(1) is not true and the stay exception in § 362(b)(22) applies because no provision of lease contract or of South Carolina law permits debtor to cure lease defaults after state court issued writ of ejectment. Debtor's tender of one month's rent is not enough. "In an effort to stay the eviction proceedings, Debtor filed the Certification which indicated that she had deposited with the Clerk of Court the rent to be due during the first 30 days after the petition and that under South Carolina law, she has the right to stay in Residence after the entry of the Writ of Ejectment upon the payment of the entire amount of unpaid prepetition rent owed to Landlord. . . . [S]ection 362(b)(22) provides an exception to the automatic stay . . . . [T]he Bankruptcy Code provides an 'exception to the exception' of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(*l*). . . . Under § 362(*l*)(2), the exception to the automatic stay under § 362(b)(22) shall not apply for the entirety of the case . . . . [T]he landlord may file an objection to the debtor's initial certification, and the Court must hold a hearing to determine if the certification filed by the debtor is true. . . . Debtor has not alleged any circumstances that would permit her at this stage in the eviction process and over the objection of the Landlord to cure the unpaid rent on the Lease. . . . Debtor is not permitted to cure the missed rent payments to Landlord after the issuance of the Writ of Ejectment. As the Court finds that the Certification filed by Debtor with her petition is not true, the objection is sustained and the exception to the automatic stay under § 362(b)(22) is immediately applicable so that Landlord may be permitted to complete the process of obtaining full possession of the Residence.").

§ 57.5 Domestic Support Obligations: Preconfirmation Rights after BAPCPA
§ 57.6 Preconfirmation Valuation Disputes
§ 57.7 Preconfirmation Classification Disputes
§ 57.8 Policing Debtor's Compliance with Preconfirmation Duties
§ 57.9 Negotiating for a Secured Claim Holder
§ 57.10 Negotiating for a Home Mortgage Holder
§ 57.11 Representing an Unsecured Claim Holder
E. AUTOMATIC STAY AND PRECONFIRMATION RELIEF FROM STAY
1. EXTENT OF AUTOMATIC STAY
§ 58.1 Usual Protections
§ 58.2 BAPCPA Shrank Stay
§ 58.3 Additional Protection for Postpetition Property and Income
§ 58.4 Postpetition Creditors
§ 58.5 Alimony and Support Exception
§ 58.6 Domestic Support Obligation Exception after BAPCPA

{221} ***In re Wagner*, No. 17-11252-TPA, 2020 WL 1844615 (Bankr. W.D. Pa. Apr. 9, 2020) (Agresti)** (With one spouse in Chapter 13 and the other in Chapter 12 and after several failed attempts to inspire the parties to complete a state court divorce with equitable distribution of property, the bankruptcy court carries through its threat to perform the equitable distribution of property in the bankruptcy court applying Pennsylvania domestic relations law principles.).

{222} ***In re Welsch*, 602 B.R. 682 (Bankr. N.D. Ill. July 30, 2019) (Doyle)** (Motion by former spouse for stay relief is unnecessary because stay does not apply to former spouse's effort to modify state court support order to include college expenses. In dicta, court details what is and what isn't subject to automatic stay in context of domestic relations litigation.).

{223} ***In re Dougherty-Kelsay*, 601 B.R. 426, 441–45 (Bankr. E.D. Ky. Apr. 23, 2019) (Wise)** (Former spouse did not violate automatic stay by seeking judgment "establishing" the amount of pre- and postpetition support because of exception in § 362(b)(2)(A)(ii). Wage assignment by state court to collect support fit within the stay exception in § 362(b)(2)(C). Intercept of tax refund to collect support was within the stay exception in § 362(b)(2)(F). State court order and efforts by former spouse to collect direct payment of $50 per month from the debtor violated the automatic stay because there was no restriction to payment from nonestate property and no other stay exception applied. State domestic relations court erroneously determined that stay did not apply to any part of its judgment and that erroneous decision does not protect former spouse from violating automatic stay and being subject to damages under § 362(k). Reduced attorney's fees are ordered based on failure to mitigate and $1,000 of punitive damages were awarded based on persistence in violating the stay. "[T]he § 362(b)(2)(A)(ii) stay exception permitted the Family Court to find that Debtor owed that amount and grant Creditor a judgment for same because doing so was part of the 'establishment or modification of an order for domestic

support obligations.' . . . [T]he Family Court 'established' Debtor's domestic support obligation when it determined that Debtor owed Creditor $ 1,270.66 in unpaid child support expenses . . . . The Bankruptcy Code defines 'domestic support obligations' broadly to include debts that accrue '*before*, on, or after the date of the order for relief.' 11 U.S.C. § 101(14A) (emphasis added). The plain language of § 362(b)(2)(A)(ii) allows family courts to review pre-petition domestic support obligation arrearages and establish the amount due post-petition . . . . Section 362(b)(2)(C) specifically excepts 'withholding of income that is property of the estate *or property of the debtor* for payment of a domestic support obligation . . . .' . . . Collection of a domestic support obligation outside the wage withholding process, however, is stayed except where it is 'from property that *is not property of the estate*.' . . . Read together, the two exceptions make clear that the collection of a domestic support obligation from property of a debtor's estate only may be accomplished through a wage garnishment order; otherwise, it violates the automatic stay. . . . [T]he Family Court's ruling that Debtor pay the $ 50 Award directly to the supervisor does not fall within the § 362(b)(2)(B) exception because the Judgment does not provide that the $ 50 Award shall be paid from non-estate property. . . . Recognizing that tax refund intercepts are common methods for collecting unpaid support, § 362(b)(2)(F) specifically excepts 'the interception of a tax refund . . . ' . . . . Unlike other stay exceptions, § 362(b)(2)(F) does not limit its applicability to non-estate property. The tax refund intercepts did not violate the stay. . . . [N]o stay exception permits a court to find a debtor in civil contempt for non-payment of a pre-petition domestic support obligation or to issue contempt sanctions to coerce a debtor into paying that debt. A finding of contempt is not 'the establishment or modification of an order for domestic support obligations' . . . it does not relate to 'the collection of a domestic support obligation' from non-estate property . . . . Rather, it was an effort to coerce Debtor into paying a pre-petition debt in violation of the automatic stay. . . . [T]here is no exception for the continuation of a judicial proceeding for incarceration or other impermissible collection activities as a result of a finding of civil contempt—even if it relates to a domestic support obligation exception. . . . [T]he Family Court's contempt findings violated the stay and are void.").

§ 58.7 Criminal Action or Proceeding Exception

{224} ***In re Deutsch*, No. 20-10135-RAM, 2020 WL 475902, at *1–*2 (Bankr. S.D. Fla. Jan. 29, 2020) (Mark)** (Criminal contempt proceeding in state court civil action based on debtor's willful failure to obey court orders fits the stay exception in § 362(b)(1), with limitations. "Judge Lee may not sentence the Debtor to jail with an Order that purges the sentence if the Debtor pays a fine and payment will necessarily come from property of the estate. Imposing a fine on the Debtor for his past conduct will not violate the stay if the fine is a postpetition debt that may be paid in the Debtor's chapter 13 plan rather than a fine immediately payable as a condition for not being incarcerated. Second, Judge Lee cannot threaten jail unless the Debtor produces documents or appears for deposition because any inquiry into the Debtor's financial condition must now be done in the bankruptcy case.").

§ 58.8 Police and Regulatory Power Exception

{225} ***In re Fulton*, 926 F.3d 916, 923–31 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder)** (Declining to overrule *Thompson v. General Motors Acceptance Corp., LLC*, 566 F.3d 699 (7th Cir. May 27, 2009) (Cudahy, Williams, Tinder), city of Chicago violated § 362(a)(3) by retaining possession of impounded vehicles and refusing turnover to Chapter 13 debtors. Surrendering possession to Chapter 13 debtor does not defeat perfection of city's possessory lien therefore § 362(b)(3) does not provide city with exception to automatic stay. On balance, neither pecuniary interest test nor public policy test weighs in favor of city for § 362(b)(4) purposes: revenue collection, not police power, is at issue in city's policy of refusing turnover of cars to Chapter 13 debtors based on unpaid traffic tickets. "Congress amended § 362(a)(3) in 1984 to prohibit conduct that 'exercise[d] control' over estate assets. . . . We therefore held that in retaining possession of the car, the creditor violated the automatic stay in § 362(a)(3). . . . § 542(a) 'indicates that turnover of a seized asset is compulsory.' . . . Because '[t]he right of possession is incident to the automatic stay,' . . . the creditor must first return the asset to the bankruptcy estate. Only then is 'the bankruptcy court [ ] empowered to condition the right of the estate to keep possession of the asset on the provision of certain specified adequate protections to the creditor.' . . . The Supreme Court indicated as much in *Whiting Pools* . . . . Applying *Thompson* to the facts before us, we conclude . . . that the City violated the automatic stay pursuant to § 362(a)(3) by retaining possession of the debtors' vehicles after they declared bankruptcy. . . . [T]he position we took in *Thompson* brought our Circuit in line with the majority rule, held by the Second, Eighth, and Ninth Circuits. . . . Although the Tenth Circuit recently adopted the City's view, *see* [*WD Equipment, LLC v. Cowen (In re Cowen)*, 849 F.3d 943 (10th Cir. Feb. 27, 2017) (Kelly, McKay, McHugh)], that position is still the minority rule. . . . At any point the City could have sought adequate protection of its interests, but it chose not to avail itself of the Code's available procedures. . . . [T]he City can also perfect its lien by filing notice of its interest in the vehicle . . . the City does not need to retain possession of the vehicle to maintain perfection of its lien. . . . [T]he City's possessory lien is not destroyed by its involuntary loss of possession due to forced compliance with the Bankruptcy Code's automatic stay. . . . Because the City does not lose its perfected lien via the involuntary loss of possession of the debtors' vehicles to the bankruptcy estates, § 362(b)(3) does not apply to except it from the stay. . . . [O]n balance, this is an exercise of revenue collection more so than police power. . . . [A] not insignificant portion of the City's annual operating fund comes from its collection of parking and traffic tickets. . . . [T]he City imposes the monetary penalty on the owner of the vehicle, not the driver, which signals a seeming disconnect if the City actually has safety concerns about the offending driver. . . . [E]ven if we assume that the adjudication of these violations is the result of the City's exercise of police and regulatory power, the City cannot enforce these final determinations of liability if they are 'money judgment[s]' as the term is used in § 362(b)(4).").

{226} ***In re Laskaratos*, 605 B.R. 282 (Bankr. E.D.N.Y. Aug. 30, 2019) (Stong)** (In long-running landlord-tenant dispute, landlord is assessed modest damages for removing backyard personal property in violation of the stay. Police and regulatory exception was not

available because the landlord was not a government agency and the folks that removed the personal property in violation of the stay worked for the landlord. Section 362(b)(22) did not apply because the debtor never entered into a written lease agreement with the landlord.).

{227} ***In re Berry*, No. 19-14527-BKC-RBR, 2019 WL 3992719 (Bankr. S.D. Fla. June 26, 2019) (Ray)** (Florida's action for injunctive and monetary relief against Chapter 13 debtor and others for running a fraudulent mortgage foreclosure rescue operation falls within police and regulatory exception to stay under § 362(b)(4); only enforcement of any monetary judgment remains subject to automatic stay.).

§ 58.9 Real Estate, Landlord and In Rem Exceptions after BAPCPA

{228} ***In re Arrieta*, 612 B.R. 342, 346–49 (Bankr. D.S.C. Jan. 23, 2020) (Waites)** (Upon objection by landlord, Chapter 13 debtor's certification under § 362(*l*)(1) is not true and the stay exception in § 362(b)(22) applies because no provision of lease contract or of South Carolina law permits debtor to cure lease defaults after state court issued writ of ejectment. Debtor's tender of one month's rent is not enough. "In an effort to stay the eviction proceedings, Debtor filed the Certification which indicated that she had deposited with the Clerk of Court the rent to be due during the first 30 days after the petition and that under South Carolina law, she has the right to stay in Residence after the entry of the Writ of Ejectment upon the payment of the entire amount of unpaid prepetition rent owed to Landlord. . . . [S]ection 362(b)(22) provides an exception to the automatic stay . . . . [T]he Bankruptcy Code provides an 'exception to the exception' of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(*l*). . . . Under § 362(*l*)(2), the exception to the automatic stay under § 362(b)(22) shall not apply for the entirety of the case . . . . [T]he landlord may file an objection to the debtor's initial certification, and the Court must hold a hearing to determine if the certification filed by the debtor is true. . . . Debtor has not alleged any circumstances that would permit her at this stage in the eviction process and over the objection of the Landlord to cure the unpaid rent on the Lease. . . . Debtor is not permitted to cure the missed rent payments to Landlord after the issuance of the Writ of Ejectment. As the Court finds that the Certification filed by Debtor with her petition is not true, the objection is sustained and the exception to the automatic stay under § 362(b)(22) is immediately applicable so that Landlord may be permitted to complete the process of obtaining full possession of the Residence.").

{229} ***In re Laskaratos*, 605 B.R. 282 (Bankr. E.D.N.Y. Aug. 30, 2019) (Stong)** (In long-running landlord-tenant dispute, landlord is assessed modest damages for removing backyard personal property in violation of the stay. Police and regulatory exception was not available because the landlord was not a government agency and the folks that removed the personal property in violation of the stay worked for the landlord. Section 362(b)(22) did not apply because the debtor never entered into a written lease agreement with the landlord.).

§ 58.10 Pension Loans Exception after BAPCPA

{230} ***Vargas Moya v. Administracion Sistemas de Retiro de los Empleados del Gobierno y la Judicatura (In re Vargas Moya)*, 601 B.R. 845, 857–63 (Bankr. D.P.R. May 16, 2019) (Lamoutte)** (Applying § 362(b)(19), claim of government retirement plan for loan used to acquire real estate is not a perfected security interest because it was not properly registered but the claim is a statutory lien on the debtor's postpetition contributions. The stay exception allowed the retirement plan to continue to receive contributions postpetition to which its statutory lien attached. Section 552(a) did not defeat the plan's statutory lien on after-acquired property and the plan's lien survived discharge notwithstanding that § 523(a)(18) does not apply. Debtor's personal liability was discharged. "Retiro's statutory lien specifically states that it attaches to future property, that is, all the contributions accrued or to be accrued in the System. . . . [S]ection 552(a) only refers to security interests and not to statutory liens. . . . Section 362(b)(19) states that the filing of a petition . . . does not operate as a stay . . . 'of withholding of income from a debtor's wages and collection of amounts withheld . . . .' . . . Retiro has affirmatively alleged their compliance with § 362(b)(19) . . . . Retiro's statutory lien attaches to contributions acquired post-petition by the Debtor. . . . [A]lthough the Debtors released the personal liability of Retiro' loan through the discharge, the Defendant's lien continues to attach to the post-petition contributions to the retirement system, as established by the statutory lien.").

§ 58.11 Miscellaneous New Stays and Exceptions after BAPCPA
§ 58.12 Setoffs and Recoupments

{231} ***In re Beacham*, No. 20-60714-SMS, 2020 WL 1486790 (Bankr. N.D. Ga. Mar. 23, 2020) (Sigler)** (Automatic stay precludes former spouse from exercising recoupment to recover amounts owed under support judgment from payments former spouse owes debtor under equitable division of property in divorce decree. Elements of recoupment are not present because obligations arising from the divorce decree involve a different set of facts than the judgments for nonpayment of support.).

{232} ***In re Mojica Nieves*, No. 18-01866 (ESL), 2019 WL 4936868 (Bankr. D.P.R. Oct. 7, 2019) (Lamoutte)** (Creditor with right of setoff is appropriately provided for as a secured creditor under § 1325(a)(5) with plan payments and lien retention and creditor cannot exercise right of setoff under § 553 without first seeking stay relief. Creditor cannot force Chapter 13 debtor to surrender savings account and dividends deposited with creditor when plan provides for payment of claim consistent with § 1325(a)(5).).

{233} ***City of New York v. Matamoros (In re Matamoros)*, 605 B.R. 600, 606-12 (Bankr. S.D.N.Y. Aug. 2, 2019) (Morris)** (Extended Military Benefits Program pursuant to which debtor was paid salary by City of New York while on active military duty, subject to reimbursement upon return, was a dischargeable contract debt not subject to recoupment from debtor's weekly pay after return to city employment and filing of Chapter 13 case. City violated stay by continuing deduction from salary and refusing to return amounts deducted after the petition. Amount owed to city by debtor was dischargeable at completion of payments because no provision of § 523 applied and recoupment was not an available theory. "The Reimbursement Agreement provided that the City would pay him his City salary on the condition that he repay the City, after returning from ordered military duty, an undetermined portion of the monies based upon [a] formula . . . . [E]quitable recoupment is in the nature of a defense and arises only out of cross demands that stem from the same transaction. The Debtor has no post-petition claims or demands against the City and so the City has asserted equitable recoupment as a claim for relief rather than in the nature of a defense. In doing so, the City has misapplied the doctrine. . . . The debt owed to the City does not fall under any of the statutory exceptions to discharge in a chapter 13 bankruptcy and is dischargeable.").

{234} ***Collum v. East Ala. Med. Ctr. (In re Collum)*, 604 B.R. 61 (Bankr. M.D. Ala. July 18, 2019) (Sawyer)** (Creditor willfully violated automatic stay in § 362(a)(7) by failing to stop setoff under tax refund setoff program after notice of Chapter 13 petition.).

{235} ***In re Duca*, No. 19-10661-MKN, 2019 WL 5880434 (Bankr. D. Nev. Apr. 5, 2019) (Nakagawa)** (Credit union is granted stay relief to exercise setoff against $5,192 in Chapter 13 debtor's account. Stay relief is delayed to allow debtor to offer alternative adequate protection given that debtor needs the money in the account to pay living expenses and to fund proposed plan.).

{236} ***In re Thigpen*, 600 B.R. 19, 27 (Bankr. N.D. Ill. Mar. 20, 2019) (Cox)** (On remand, Social Security Administration is denied stay relief to exercise setoff of its judgment for restitution for fraudulently obtained Supplemental Security Income against Old Age, Survivors and Disability Insurance benefits when confirmed plan to which SSA did not object would pay 17% of its nondischargeable restitution debt. "The SSA is protected while the monthly payments are being made toward the Debtor's non-dischargeable debt. . . . [I]t would be inequitable to now modify the automatic stay when the government could have sought 100% of the Debtor's future benefits at the 2009 sentencing on the criminal charge or pre-confirmation.", *on remand from* 590 B.R. 810 (N.D. Ill. Sept. 30, 2018) (Feinerman) Because Supplemental Security Income benefits and Old-Age, Survivors and Disability Insurance benefits are in different subchapters of the Social Security Act, a judgment for overpayment of SSI cannot be recovered from future payments due under OASDI by way of recoupment; automatic stay applies to government's claim of a right to recover SSI overpayment judgment from future OASDI benefits. Remand is necessary to determine whether government should be granted stay relief to set off its debt against debtor's future benefits notwithstanding pending Chapter 13 plan that proposes to pay the debt.).

§ 58.13 Termination of Services to Debtor and Discrimination against Debtor
§ 58.14 Expiration of Stay

{237} ***Ross v. Wilmington Sav. Fund Soc'y, FSB*, No. 4:19-CV-23-DMB, 2019 WL 7195319 (N.D. Miss. Dec. 26, 2019) (Brown)** (Appeal of order declaring that no stay was in effect because debtor had no interest in property at issue is moot because stay expired when underlying Chapter 13 case was dismissed based on debtor's failure to make payments.).

2. 11 U.S.C. § 362(c)(3) AND (c)(4): 30-DAY STAY TERMINATION; NO STAY
§ 59.1 In General
a. 11 U.S.C. § 362(c)(3): 30-DAY STAY TERMINATION
§ 60.1 When Does § 362(c)(3) Apply?
§ 60.2 Which Stays Terminate?

{238} ***In re Wade*, 926 F.3d 447 (7th Cir. June 14, 2019) (Kanne, Sykes, Hamilton)** (Direct appeal of question whether § 362(c)(3) stay terminates with respect to all property of the estate or just with respect to the debtor and property of the debtor is dismissed when parties failed to file a petition for permission to direct appeal as required by Bankruptcy Rule 8006(g).), *dismissing appeal of* 592 B.R. 672 (Bankr. N.D. Ill. June 6, 2018) (Hunt) (Adopting *In re Daniel*, 404 B.R. 318 (Bankr. N.D. Ill. Apr. 28, 2009) (Wedoff), stay that terminates 30 days after second petition within a year under § 362(c)(3) is entire stay. Creditor did not violate stay by proceeding in state court after stay terminated 30 days after the Chapter 13 petition. Court adopts "spousal exception" reasoning in *Daniel*.).

{239} ***In re James*, No. 19-00680, 2019 WL 6833835 (Bankr. D.D.C. Dec. 13, 2019) (Teel)** (No stay arose in second case within one year because of § 362(c)(3) but not necessary to address the extent to which the stay expired after 30 days because the property at issue was not property of the estate in the first instance based on a prepetition foreclosure sale.).

§ 60.3 Timing, Procedure and Form for Extension of Stay

{240} ***Mangaoang v. Newport Beach Holdings, LLC (In re Mangaoang)*, No. NC-18-1309-BSTa, 2019 WL 3801497 (B.A.P. 9th Cir. Aug. 13, 2019) (not for publication) (Brand, Spraker, Taylor)** (Appeal of denial of extension of stay in second case within a year under § 362(c)(3) is moot when underlying Chapter 13 case is dismissed while appeal is pending.).

{241} ***Mata v. Arvest Cent. Mortg. Co.*, No. 19-CV-2846 (PKC), 2020 WL 1694314 (E.D.N.Y. Apr. 7, 2020) (Chen)** (Appeal of refusal to extend stay in second case within a year under § 362(c)(3) is moot because property was sold at foreclosure, there is no allegation of bad faith with respect to the sale and Chapter 13 debtor did not seek a stay pending appeal.).

{242} ***In re Clark*, No. 19-10698-JDW, 2019 WL 2488146, at *2–*3 (Bankr. N.D. Miss. May 9, 2019) (Woodard)** (In second case within a year, Chapter 13 debtor cannot use untimely motion under § 362(c)(4) to end-run failure to move to extend stay within 30 days as required by § 362(c)(3). "Debtor had one prior case and thus fell within the purview of § 362(c)(3). Not only did the Debtor fail to file a motion to extend the stay in time for notice and a hearing within the thirty-day period, she did not file an extension motion at all. . . . Instead, the Debtor filed the Motion seeking to impose the stay. However, the Motion was filed forty-eight days after the petition was filed, outside the window for both a motion to extend and a motion to impose. . . . Debtor cannot use § 362(c)(4) as an end run around the requirements of § 362(c)(3).").

§ 60.4 (Rebuttable) Presumption of Lack of Good Faith

{243} ***In re Baker*, No. 19-41358, 2020 WL 290650 (Bankr. D. Kan. Jan. 14, 2020) (Somers)** (Presumption of bad faith did not arise in second case within a year under § 362(c)(3) because change in circumstances made it likely that a plan could be confirmed and completed. Debtor provided clear and convincing evidence of changed circumstances and of good faith for § 362(c)(3) purposes including new employment, reduction of monthly expenses and improved personal and family circumstances.).

{244} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706, 711–12 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Presumption of bad faith for purposes of § 362(c)(3)(B) in second filing within a year did not arise because changed employment and possession of new driver's license would allow debtor to attend meeting of creditors in current case after missing four meetings of creditors in prior, dismissed case. "The presumption of bad faith does not arise . . . because there has been a substantial change in the Debtor's personal affairs since the Prior Bankruptcy Case, and the Court has no reason to find that the Current Bankruptcy Case will not be concluded. . . . [T]he Debtor testified that she is prepared to attend a § 341 meeting with her Social Security Card and current driver's license. . . . Accordingly, the presumption of bad faith does not arise. The Court finds that the Debtor has satisfied the good faith requirement of § 362(c)(3)(B).").

§ 60.5 Proof of Good Faith

{245} ***In re Bartley*, No. 3:19-CV-00400 (KAD), 2019 WL 6467353 (D. Conn. Dec. 2, 2019) (Dooley)** (Tag-team bankruptcies and multiple meritless state court and bankruptcy court lawsuits with respect to foreclosure demonstrate bad-faith abuse by Chapter 13 debtor that justified denial of extension of stay and dismissal with prejudice to refiling for two years.).

{246} ***In re Davis*, No. 19-36077-KLP, 2020 WL 583126 (Bankr. E.D. Va. Feb. 5, 2020) (Phillips)** (In second bankruptcy case within a year, motion to reconsider order denying extension of stay under § 362(c)(3) is denied. Chapter 13 debtor failed to prove good faith with respect to home mortgage that had already been foreclosed. Debtor's remedies lie in state court.).

{247} ***In re Baker*, No. 19-41358, 2020 WL 290650 (Bankr. D. Kan. Jan. 14, 2020) (Somers)** (Presumption of bad faith did not arise in second case within a year under § 362(c)(3) because change in circumstances made it likely that a plan could be confirmed and completed. Debtor provided clear and convincing evidence of changed circumstances and of good faith for § 362(c)(3) purposes including new employment, reduction of monthly expenses and improved personal and family circumstances.).

{248} ***In re Garcia Rivera*, No. 19-00163 (EAG), 2019 WL 2143470 (Bankr. D.P.R. May 14, 2019) (Godoy)** (Debtor overcomes presumption of lack of good faith in second case within a year for purposes of § 362(c)(3) and stay is extended as to all creditors based on evidence that current plan crams down large secured debt that was treated differently in prior case, current plan will use payments through trustee instead of direct payments and debtor has prospects of increased job income.).

b. 11 U.S.C. § 362(c)(4): NO STAY

§ 61.1 When Does § 362(c)(4) Apply?

{249} ***In re Othello*, No. 19-51502, 2020 WL 232836 (Bankr. D. Conn. Jan. 14, 2020) (Manning)** (Evidence of bad faith and abuse of bankruptcy process for purposes of dismissal included that fourth petition did not trigger automatic stay because of § 362(c)(4) but debtor took no action to request a stay.).

{250} ***In re Clark*, No. 19-10698-JDW, 2019 WL 2488146, at *2–*3 (Bankr. N.D. Miss. May 9, 2019) (Woodard)** (In second case within a year, Chapter 13 debtor cannot use untimely motion under § 362(c)(4) to end-run failure to move to extend stay within 30 days as required by § 362(c)(3). "Debtor had one prior case and thus fell within the purview of § 362(c)(3). Not only did the Debtor fail to file a motion to extend the stay in time for notice and a hearing within the thirty-day period, she did not file an extension motion at all. . . . Instead, the Debtor filed the Motion seeking to impose the stay. However, the Motion was filed forty-eight days after the petition

was filed, outside the window for both a motion to extend and a motion to impose. . . . Debtor cannot use § 362(c)(4) as an end run around the requirements of § 362(c)(3).").

{251} ***In re Clinton-Briscoe*, No. 18-24703-K, 2018 WL 10323372 (Bankr. W.D. Tenn. July 3, 2018) (Kennedy)** (In third bankruptcy case within a year, no stay was in effect when mortgagee foreclosed debtor's residence the day after the petition; foreclosure sale did not violate stay and debtor is granted 30 days to vacate the property.).

§ 61.2 Procedure, Timing and Form for Imposing Stay

{252} ***In re Perkins*, 609 B.R. 576, 577–81 (Bankr. D. Conn. Dec. 16, 2019) (Manning)** (When mortgage creditor moves for declaration that no stay is in effect under § 362(c)(4) and for *in rem* relief under § 362(d)(4) in third case within a year, creditor is entitled to declaration that no stay is in effect but relief under § 362(d)(4) is not available because there is no stay in effect from which *in rem* relief could be granted. "[T]he Bankruptcy Code does not permit subsection 362(d)(4) *in rem* relief to enter in a case such as this one, where the automatic stay is not in effect under subsection 362(c)(4). . . . [T]he plain language of 362(c)(4) applies to individual debtors who file a third case within one year of two prior cases that were pending but dismissed, while the plain language of 362(d)(4) applies to the stay of an act against real property by a creditor whose claim is secured by an interest in such real property. . . . Movant cannot obtain 'relief from the stay' under subsection (d)(4) in this case because the stay was never in effect. The language of subsection 362(d) . . . compels the interpretation that the stay must be in effect as a condition precedent to obtaining *in rem* relief pursuant to (d)(4). . . . [T]o grant both types of relief the Movant seeks would require the Court to conclude both that the stay was not in effect *and* that it was . . . . The Movant was not stayed from proceeding with the State Court Foreclosure Action and therefore does not need *in rem* relief to do so . . . because a stay was never in effect in the Debtor's third Chapter 13 case.").

§ 61.3 (Rebuttable) Presumption of Lack of Good Faith
§ 61.4 Proof of Good Faith

{253} ***In re Mendoza*, No. 6:19-bk-20972-WJ, 2020 WL 211388 (Bankr. C.D. Cal. Jan. 9, 2020) (Johnson)** (In third Chapter 13 case pending within a year debtor failed to prove by clear and convincing evidence that plan in current case was likely to succeed when plans failed in both prior cases. At a minimum, feasibility must be proven by clear and convincing evidence to overcome presumption of bad faith in § 362(c)(4).).

3. VIOLATION OF STAY AND REMEDIES

§ 62.1 Examples of Stay Violations, and Not

{254} ***Williamson v. Pars (In re Williamson)*, 795 F. App'x 537 (9th Cir. Feb. 26, 2020) (Schroeder, Berzon, R. Nelson)** (Pension fund did not violate automatic stay when it exercised equitable recoupment to recover prepetition overpayments to Chapter 13 debtor by withholding postpetition pension payments.).

{255} ***In re Denby-Peterson*, 941 F.3d 115, 123–26 (3d Cir. Oct. 28, 2019) (McKee, Shwartz, Fuentes)** (Adopting minority position, car lender does not violate automatic stay by retaining possession of car repossessed before the petition so long as lender does not take any affirmative action to enforce its lien. Lender can retain possession notwithstanding demand for turnover until bankruptcy court orders return of car. "Under the majority position, held by the Second, Seventh, Eighth, Ninth, and Eleventh Circuits, a secured creditor, upon learning of the bankruptcy filing, must return the collateral to the debtor and failure to do so violates the automatic stay. . . . However, both the Tenth and D.C. Circuits disagree with the majority's interpretation of the automatic stay provision. . . . Under their view, a secured creditor is not obligated to return the collateral to the debtor until the debtor obtains a court order from the Bankruptcy Court requiring the creditor to do so. . . . While we agree that Section 362(a)(3) is unambiguous, we decline to hold that a plain reading of that Section compels the conclusion that the creditors in this case violated the automatic stay by failing to turn over the Corvette to Denby-Peterson. . . . [W]e agree with the minority position . . . the text of Section 362(a)(3) requires a post-petition affirmative act to exercise control over property of the estate. . . . Although the creditors exercised control over the Corvette by keeping it in their possession after learning of the bankruptcy filing, the requisite post-petition affirmative 'act . . . to exercise control over' the Corvette is not present in this case. . . . " The Supreme Court has granted review of this issue in an unrelated case, *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019), *cert. granted sub nom. Chicago v. Fulton*, No. 19-357, 2019 WL 6880702 (U.S. Dec. 18, 2019), *aff'g* 595 B.R. 184, 189-90 (D.N.J. Nov. 1, 2018) (Hillman) (Adopting minority rule and without discussion of *Whiting Pools*, car lender did not violate stay by refusing to return car repossessed before the petition. "The majority position, which is followed in the Second, Seventh, Eighth, and Ninth Circuit Courts of Appeals advises that a creditor violates the automatic stay when it fails to affirmatively and immediately return qualifying property of the debtor that was seized pre-petition. . . . The minority position . . . has only been followed in the Tenth and District of Columbia Circuit Court of Appeals. This position finds no violation of the automatic stay as long as the creditor merely maintains the status quo in effect at the time of the automatic stay. . . . [T]his Court finds the minority position more persuasive. . . . [T]he *exercise* of control is not stayed, but the act to exercise control is stayed."), *aff'g and dismissing appeal of* 576 B.R. 66, 81-83 (Bankr. D.N.J. Oct. 20, 2017) (Altenburg) (Repossessing creditor did not violate automatic stay by refusing to turn over car when debtor's interest in car was disputed and retaining possession maintained status quo pending hearing on turnover. "[T]he practice in this district has been that a creditor holding a car repossessed prepetition may request proof of insurance naming it as

loss payee prior to turnover without violating the stay. But once proof of insurance has been produced, the creditor violates the stay by not returning the car. Yet it could find no case rationalizing this. Section 362(b) does not include an exception for adequate protection. . . . The court sees no reason to abandon the long established practice of maintaining the *status quo* in repossessed vehicle cases until a debtor provides proper proof of adequate protection, i.e., insurance. . . . In this case, this court finds the minority position particularly persuasive. That position criticizes the majority's claim that section 542(a) is self-effectuating, as it does not allow for the possibility of defenses to turnover. . . . It would simply be unfair to declare a stay violation for not turning the Vehicle over when the Debtor's true interest in the Vehicle was unknown. . . . The personal property presents a different result. There is no question that at the time of the bankruptcy filing, the Debtor had a legal right to her possessions and the Creditors had no right to that property. Unlike the Vehicle, there is no question of ownership. . . . The court cannot determine with certainty whether there has been a stay violation under section 362 as to the personal property.").

{256} ***In re Fulton*, 926 F.3d 916, 923–31 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder)** (Declining to overrule *Thompson v. General Motors Acceptance Corp., LLC*, 566 F.3d 699 (7th Cir. May 27, 2009) (Cudahy, Williams, Tinder), city of Chicago violated § 362(a)(3) by retaining possession of impounded vehicles and refusing turnover to Chapter 13 debtors. Surrendering possession to Chapter 13 debtor does not defeat perfection of city's possessory lien therefore § 362(b)(3) does not provide city with exception to automatic stay. On balance, neither pecuniary interest test nor public policy test weighs in favor of city for § 362(b)(4) purposes: revenue collection, not police power, is at issue in city's policy of refusing turnover of cars to Chapter 13 debtors based on unpaid traffic tickets. "Congress amended § 362(a)(3) in 1984 to prohibit conduct that 'exercise[d] control' over estate assets. . . . We therefore held that in retaining possession of the car, the creditor violated the automatic stay in § 362(a)(3). . . . § 542(a) 'indicates that turnover of a seized asset is compulsory.' . . . Because '[t]he right of possession is incident to the automatic stay,' . . . the creditor must first return the asset to the bankruptcy estate. Only then is 'the bankruptcy court [ ] empowered to condition the right of the estate to keep possession of the asset on the provision of certain specified adequate protections to the creditor.' . . . The Supreme Court indicated as much in *Whiting Pools* . . . . Applying *Thompson* to the facts before us, we conclude . . . that the City violated the automatic stay pursuant to § 362(a)(3) by retaining possession of the debtors' vehicles after they declared bankruptcy. . . . [T]he position we took in *Thompson* brought our Circuit in line with the majority rule, held by the Second, Eighth, and Ninth Circuits. . . . Although the Tenth Circuit recently adopted the City's view, *see* [*WD Equipment, LLC v. Cowen (In re Cowen)*, 849 F.3d 943 (10th Cir. Feb. 27, 2017) (Kelly, McKay, McHugh)], that position is still the minority rule. . . . At any point the City could have sought adequate protection of its interests, but it chose not to avail itself of the Code's available procedures. . . . [T]he City can also perfect its lien by filing notice of its interest in the vehicle . . . the City does not need to retain possession of the vehicle to maintain perfection of its lien. . . . [T]he City's possessory lien is not destroyed by its involuntary loss of possession due to forced compliance with the Bankruptcy Code's automatic stay. . . . Because the City does not lose its perfected lien via the involuntary loss of possession of the debtors' vehicles to the bankruptcy estates, § 362(b)(3) does not apply to except it from the stay. . . . [O]n balance, this is an exercise of revenue collection more so than police power. . . . [A] not insignificant portion of the City's annual operating fund comes from its collection of parking and traffic tickets. . . . [T]he City imposes the monetary penalty on the owner of the vehicle, not the driver, which signals a seeming disconnect if the City actually has safety concerns about the offending driver. . . . [E]ven if we assume that the adjudication of these violations is the result of the City's exercise of police and regulatory power, the City cannot enforce these final determinations of liability if they are 'money judgment[s]' as the term is used in § 362(b)(4).").

{257} ***Porras v. Parker (In re Porras)*, 770 F. App'x 830 (9th Cir. May 23, 2019) (not for publication) (Thomas, Friedland, Bennett)** (Court of appeals affirms denial of pro se debtor's repeat motion for sanctions for violation of stay when conversion from Chapter 13 to Chapter 7 did not reinstate stay.).

{258} ***In re Benitez*, 611 B.R. 106, 109 (B.A.P. 8th Cir. Feb. 4, 2020) (Schermer, Nail, Shodeen)** (Chapter 13 petition filed by debtor in a Chapter 7 case violated automatic stay and was void. Debtor filed Chapter 13 petition to stop foreclosure after mortgagee obtained stay relief in pending Chapter 7 case. "By filing his Chapter 13 petition, the Debtor attempted to exercise control over his interest in the Property, which is undisputed to be property of his Chapter 7 bankruptcy estate. . . . Debtor filed his Chapter 13 case as an effort to stop the foreclosure of the Property noticed by the Creditor after it obtained stay relief in the Debtor's Chapter 7 case.").

{259} ***Richardson v. PRDO Retail Investors, LP (In re Richardson)*, No. SC-18-1273-LBKu, 2019 WL 4928891 (B.A.P. 9th Cir. Oct. 4, 2019) (not for publication) (Lafferty, Brand, Kurtz)** (Lessor violated stay by sending billing statements to debtors during Chapter 13 case, but debtors failed to prove that lessor wrote racial slurs on those statements. Attorney's fees awarded as damages are reduced for various reasons.).

{260} ***Ibrahim v. Bankowski (In re Ibrahim)*, No. MB 18-020, 2019 WL 4127600 (B.A.P. 1st Cir. Aug. 28, 2019) (Tester, Cabán, Fagone)** (Chapter 13 debtor's claims of stay violation were appropriately rejected when property was sold at foreclosure sale long before petition and debtor did not file adversary proceeding challenging foreclosure by deadline fixed by bankruptcy court. Underlying case was dismissed before any viable challenge to prepetition foreclosure was filed.), *aff'g* No. 16-13549-JNF, 2016 WL 10954444 (Bankr. D. Mass. Feb. 27, 2018) (Feeney) (Debtor failed to prove stay violation as predicate to damages motion under § 362(k). Convoluted account of prepetition foreclosure and multiple state court orders for possession established that debtor had no interest in the two condo units at the time state court judgments were entered against other tenants in a multiyear battle for possession.).

{261} ***BioConvergence LLC v. Attariwala*, No. 1:19-cv-01745-SEB-TAB, 2020 WL 1915269 (S.D. Ind. Apr. 20, 2020) (Barker)** (Automatic stay does not apply to motion to dismiss Chapter 13 debtor's counterclaim in district court litigation between former employer and debtor; stay also does not apply to employer's motion for sanctions under Federal Rule of Civil Procedure 11 filed against former counsel for debtor based on contention that debtor's counterclaim was frivolous.).

{262} ***United States ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, No. C16-0052JLR, 2019 WL 6052646 (W.D. Wash. Nov. 15, 2019) (Robart)** (Automatic stay precludes assessment of attorney's fees against Chapter 13 debtor for prepetition litigation misconduct.).

{263} ***Sanchez v. Servis One*, No. 18cv586 JM(JMA), 2019 WL 2373565 (S.D. Cal. June 4, 2019) (Miller)** (On motion to dismiss, stay violation cannot be premised on transfer of debt from one creditor to another. But complaint states claim for violation of stay based on multiple monthly statements and notices of delinquency that demanded payment, threatened collection and otherwise did not acknowledge Chapter 13 stay.).

{264} ***Berrios v. Puerto Rico Treasury Dep't (In re Berrios)*, No. 17-0240 (ESL), 2020 WL 1809608 (Bankr. D.P.R. Apr. 8, 2020) (Lamoutte)** (Question whether Puerto Rico Treasury Department violated stay by issuing levy on Chapter 13 debtor's "d/b/a" can't be answered on summary judgment because unincorporated business had separate tax ID number and proper procedure for levy was subject to conflicting inferences.).

{265} ***Steed v. GSRAN-Z, LLC (In re Steed)*, No. 19-5201-JWC, 2020 WL 1562526 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (Levy by purchaser of tax certificates did not violate automatic stay because Chapter 13 case was dismissed at time of levy and no stay was in effect; once Chapter 13 case was reinstated and servicer had notice, servicer and purchaser of tax certificates violated stay by posting foreclosure notices and not acting affirmatively to stop sheriff from proceeding with foreclosure. Material disputed facts preclude determination of damages. Debtor's claims of negligence by purchaser and servicer are left for trial.).

{266} ***In re Keskey*, No. DL 15-06761, 2020 WL 1547539 (Bankr. W.D. Mich. Mar. 31, 2020) (Dales)** (Garnishments and attempted execution on property of the Chapter 13 estate did not violate stay because settlement agreement allowed creditor to collect its debt without limitation.).

{267} ***Johnson v. Apex Mortg. (In re Johnson)*, No. 18-00178-TOM, 2020 WL 961892 (Bankr. N.D. Ala. Feb. 27, 2020) (Mitchell)** (Mortgagee did not violate automatic stay when it received and kept insurance proceeds paid to it when car crashed into debtor's business property. Mortgage clause in insurance contract was not property of Chapter 13 estate but belonged to mortgagee and proceeds of that insurance policy never became property of the Chapter 13 estate.).

{268} ***In re Moon*, 613 B.R. 317, 344–48 (Bankr. D. Nev. Feb. 25, 2020) (Nakagawa)** (Rushmore violated stay by making hundreds of phone calls and written contacts with Chapter 13 debtors notwithstanding actual knowledge of bankruptcy. Rushmore "reprehensibly" created internal procedures that maintained a cone of ignorance around its actual knowledge. It was undisputed that notice mailed to Rushmore was incorrectly addressed and undisputed that in a phone call debtor told a Rushmore representative that a bankruptcy case had been filed with respect to property mortgaged by debtor's spouse. Rushmore's internal operating procedures did not treat oral notice as actual notice of a bankruptcy filing. Rushmore did not conduct a PACER search to confirm or deny the existence of a bankruptcy. "Rushmore's only witness acknowledged that Willie informed a Rushmore representative . . . that the Debtors were in bankruptcy. Rushmore's witness attested, however, that Willie is not a party authorized to speak to Rushmore about the servicing of the loan because Willie is not a borrower. . . . Rushmore's own Policy Manual expressly acknowledges that notice of a borrower's bankruptcy can be of any nature, written or oral, and by telephone or in person. . . . To suggest that a borrower's spouse would be an unauthorized third party . . . is absurd at best. Moreover, the court is not aware of any authority that would permit creditors to create a shield of ignorance to protect themselves from liability for violating the bankruptcy laws. . . . Rushmore is not ignorant of bankruptcy law, but has adopted procedures to remain ignorant of a borrower's resort to bankruptcy relief.").

{269} ***McGarvey v. USAA Sav. Bank (In re McGarvey)*, 613 B.R. 285 (Bankr. E.D. Cal. Feb. 21, 2020) (Sargis)** (FCRA claims against bank for reporting debts as delinquent instead of reporting that debts were provided for in a confirmed Chapter 13 plan consistent with METRO guidelines are dismissed for the most part because prior to discharge the information reported was not inaccurate and industry standards do not control in FCRA cases; one claim remaining for trial is whether bank violated automatic stay by not correcting its credit reporting to show that debt was involved in a Chapter 13 case.).

{270} ***Christie v. Fort Gibson State Bank (In re Christie)*, No. 19-8002-TRC, 2020 WL 739267, at *6 (Bankr. E.D. Okla. Feb. 13, 2020) (Cornish)** (Bank violated automatic stay by demanding additional money from debtor after completion of Chapter 13 plan that paid bank's prepetition claim in full and required bank to release its lien. Bank demanded payment of postpetition cash advances as a condition for release of its lien. Some of the postpetition advances were chargeable to nondebtor spouse, not to the debtor. Bank used cross-collateralization clause to increase debt secured by property of the Chapter 13 estate in violation of § 362(a)(4). "[T]he Bank made postpetition advances of credit to the [debtor] without obtaining court authorization. It treated these advances as secured by property of the estate, extending and increasing the amount of its secured claim . . . . By increasing the value of its lien . . . , and later demanding

additional funds before it would release its lien the Bank created, perfected and enforced a lien against property of the estate, a clear violation of § 362(a)(4). . . . The Bank's reliance on language in the . . . Note and Security Agreement pledging the Travel Trailer for all present and future debts is misplaced. That language does not give it permission to extend and enforce its lien on the Travel Trailer regardless of the automatic stay . . . . [T]he Bank's willful violation of the automatic stay caused the [debtor] to suffer actual damages in the amount . . . added to her Travel Trailer loan. The Court also finds that she should be awarded attorneys' fees . . . .").

{271} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194, 221 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Demand by prepetition tax sale purchaser for postpetition rent did not violate automatic stay because postpetition rent was postpetition claim, collection of which is not prohibited by automatic stay. "Abdoun's demand for the Postpetition Rent was taken in connection with a *postpetition* claim. As a result, Abdoun's Postpetition Rent demand did not violate either § 362(a)(1) or § 362(a)(6). . . . [T]he Postpetition Rent demand made by Abdoun does not constitute an act to obtain possession of, or control over, property of the estate because Abdoun did not actually take possession of any property of the estate through the Postpetition Rent demand nor exercise control over it merely by sending a collection letter.").

{272} ***Tate v. Fairfax Vill. I Condo. (In re Tate)*, No. 19-10009, 2020 WL 634293 (Bankr. D.D.C. Feb. 10, 2020) (Teel)** (Condominium association willfully violated the stay by proceeding with foreclosure after notice of Chapter 13 filing by son who claimed interest in condo unit by inheritance from deceased parent; under District of Columbia law, son had equitable, inchoate interests that were not ambiguous and those interests became property of Chapter 13 estate protected by automatic stay.).

{273} ***In re Franklin*, No. 19-80661, 2020 WL 603900 (Bankr. M.D.N.C. Feb. 6, 2020) (Kahn)** (Ambiguous motion for stay pending appeal of order under § 362(k) finding creditor violated stay by using car kill switch and repossessing car after the petition is denied. Chapter 13 case is not suspended pending appellate review of sanctions order.), *denying stay pending appeal of* No. 19-80661, 2020 WL 570092, at *4–*11 (Bankr. M.D.N.C. Jan. 24, 2020) (Kahn) (Car lender blithely, contumaciously and repeatedly violated automatic stay by engaging kill switch, repossessing car while debtor was in hospital, demanding payment and refusing to return car for three weeks after actual knowledge of Chapter 13 petition. Compensatory damages awarded including attorney's fees and punitive damages totaling $15,000. "Debtor filed for bankruptcy on September 4, 2019. . . . When Debtor got into her Vehicle on September 6 and turned the key, the car failed to start because Fields had activated the kill switch. . . . Fields not only refused to release the kill switch, but also repossessed the Vehicle on September 11 while Debtor was in the hospital. . . . More than 22 days after Debtor filed her Petition, Fields still stubbornly refused to return the Vehicle repossessed in violation of the automatic stay. . . . Fields[']conduct was repetitive and reprehensible by any measure. The blithe and callous phlegm of the repeated notifications and warnings from Debtor, Debtor's counsel, and the Trustee's office, combined with Fields' total disregard for the strictures of the automatic stay in this case is remarkable. Fields has shown no contrition, remorse, or comprehension of the severity of its actions. . . . Debtor is financially vulnerable . . . . Fields preyed on her vulnerability and repossessed her Vehicle while she was in the hospital and in bankruptcy.").

{274} ***Crockett v. Nationstar Mortg., LLC (In re Crockett)*, No. 19-10030, 2020 WL 425388, at *3 (Bankr. D.D.C. Jan. 27, 2020) (Teel)** (Nationstar did not violate automatic stay when state court set status conference to determine whether foreclosure could go forward. Debtor was in an active Chapter 13 case but did not inform state court of status of current case or of a prior dismissed case. "The status hearings have only served informational purposes, and do not entail a resumption of the litigation in the Superior Court. In any event, it was not Nationstar that requested the setting of a status hearing. There has been no act by Nationstar to resume litigating the civil action and thus no violation of the automatic stay. Nor has the debtor pointed to any damage arising from the Superior Court's setting further status hearings.").

{275} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682, 694–95 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (Complaint plausibly alleges violation of automatic stay when CitiFinancial and its successor servicer, Carrington, misapplied payments from Chapter 13 case, resulting in inflated loan balances transferred from one servicer to another and inaccurate demand letters to debtor. "While there is a split of authority on the issue, the majority of courts to consider the issue have concluded that misapplication of chapter 13 plan payments is a cause of action for violation of the automatic stay. . . . [A]lleged misapplied payments by CitiFinancial and Carrington were not simply bookkeeping entries without impact and communicated to no one, but were used to support an inflated loan balance that was transferred from one creditor to another for collection from Plaintiffs.").

{276} ***In re Lagares Santana*, No. 18-07127 (ESL), 2020 WL 412185 (Bankr. D.P.R. Jan. 24, 2020) (Lamoutte)** (Applying Puerto Rico law, because judicial transfer deed was executed after foreclosure sale and before the Chapter 13 petition, no interest came into the Chapter 13 estate and foreclosing creditor did not violate stay by obtaining confirmation of the sale after the petition.).

{277} ***Banks v. Gralin Hampton Auto Sales (In re Banks)*, 612 B.R. 167 (Bankr. D.S.C. Jan. 15, 2020) (Waites)** (Postpetition repossession of luxury cars used in debtor's limousine service violated stay and entitled debtor to damages under § 362(k) notwithstanding dismissal of Chapter 13 case for nonpayment. Debtor failed to prove loss of business income and was entitled only to attorney's fees of $12,000 and punitive damages of $1,500.).

{278} ***In re Duff*, No. 19-00500, 2020 WL 119685 (Bankr. D.D.C. Jan. 9, 2020) (Teel)** (Failure to perform under a prepetition contract for loan modification services is not a stay violation and is not punishable by contempt.).

{279} ***In re Terry*, No. 18-44642-ELM-13, 2019 WL 7169095, at *10, *12, *12 (Bankr. N.D. Tex. Dec. 23, 2019) (Morris)** (Landlord willfully violated stay—after stay relief was granted—by seizing, storing and refusing to return personal property that remained property of Chapter 13 estate and which had not been abandoned by the debtor. Compensatory damages of $7,400 awarded for lost and damaged personal property and attorney's fees, and $7,500 punitive damages for "the high degree of reprehensibility" of the landlord's conduct. An agreed order provided that if debtor failed to move out of the landlord's property by date certain, the landlord could take "'any and all steps necessary to exercise any and all rights it may have in the rental property . . . .'" Debtor failed to move out and landlord eventually removed the debtor's personal property from the house and put it in storage. "[T]he Debtor neither 'surrendered' nor 'abandoned' the [property] under the terms of the Lease. . . . ").

{280} ***Qarni v. Vahora (In re Qarni)*, No. 19-01090-A, 2019 WL 6817106, at *1–*5 (Bankr. E.D. Cal. Dec. 11, 2019) (Clement)** (Debtors' complaint states a claim for violation of the stay in § 362(a)(3) when defendants with judgment against debtor and debtor's wholly owned corporation filed action for appointment of receiver to take control of corporation. Corporate control was an asset that became property of the Chapter 13 estate and seeking appointment of a receiver was an action to exercise control over that property. "[A] creditor obtained a judgment against the debtor and his corporation. As the sole shareholder, the debtor has plenary control over corporate activities. Thereafter, the debtor filed chapter 13 bankruptcy. . . . The right to control a wholly owned entity is a property right. . . . Naeem had a right to control VDL and California law deems that right to be property. . . . [T]he violation of the stay occurred after the Qarnis filed their chapter 13 petition but before plan confirmation, which would have revested the property in the debtor. . . . Consequently, at the time of the stay violation, Naeem's right to control the affairs and direction of VDL was property of the Qarnis' estate. The act of filing suit, which includes causes of action that seek to exercise control over property of the estate, is itself a violation of § 362(a)(3). . . . Since VDL's liquidation would result in Qarnis' loss of employment, and consequent ability to fund their chapter 13 plan, Vahora's efforts to appoint a receiver over VDL, if successful, would alter Naeem's right to control that entity in a manner inconsistent with § 362(a). . . . [A] creditor who attempts, but fails, to achieve actual control over estate property does not give the creditor a safe harbor against a stay violation action.").

{281} ***Wilson v. Arbors of Cent. Park ICG, LLC (In re Wilson)*, 610 B.R. 255 (Bankr. N.D. Tex. Dec. 2, 2019) (Morris)** (Landlord egregiously and reprehensibly violated automatic stay by engineering fake default under stay relief order then commencing eviction to which it was not entitled. Compensatory damages in excess of $12,000 and punitive damages of $10,000 awarded in addition to various injunctions.).

{282} ***Comer v. Carilion Clinic (In re Comer)*, No. 19-07030, 2019 WL 6273386 (Bankr. W.D. Va. Nov. 22, 2019) (Black)** (Clinic willfully violated automatic stay by repeatedly billing and contacting debtors to collect prepetition debts for services after notice of Chapter 13 case. Compensatory damages included attorney's fees but not emotional distress damages because of lack of evidence of emotional impact of collection efforts.).

{283} ***In re Carr*, No. 18-80386, 2019 WL 7840665 (Bankr. M.D.N.C. Nov. 18, 2019) (James)** (Postpetition state court lawsuit and lien *lis pendens* violated automatic stay in Chapter 13 case and are void.).

{284} ***In re Caldwell*, No. 18-32346-jda, 2019 WL 5616908 (Bankr. E.D. Mich. Oct. 30, 2019) (Applebaum)** (Citing *Taggert v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), Chapter 13 debtor failed to prove that judgment creditor violated stay when tractor-trailer was repossessed prepetition and towing lot owner refused to release it without payment of towing fees. Debtor failed to prove any action by the judgment creditor that violated stay or that violated turnover order. Debtor sought damages only from the judgment creditor. Decision does not address whether tow lot owner was acting as agent for judgment creditor or what effect agency might have on *Taggert* analysis.).

{285} ***Somers v. Bell Helicopter Textron, Inc. (In re Somers)*, 608 B.R. 262 (Bankr. M.D. Ala. Oct. 24, 2019) (Sawyer)** (Employer did not violate stay by doing nothing except holding wages that were subject to garnishment order from state court.).

{286} ***Johnson v. North Mill Credit (In re Johnson)*, 608 B.R. 784 (Bankr. S.D. Ga. Sept. 27, 2019) (Barrett)** (Postpetition repossession of truck did not violate stay because truck was owned by corporation and Chapter 13 debtor's ownership of that corporation did not bring truck into bankruptcy estate. Confirmed plan that provided for payment of guaranty of truck debt did not have effect of making the truck property of the Chapter 13 estate for purposes of the automatic stay when the truck was owned by the corporation. Personal property removed or lost from the truck was property of the Chapter 13 debtor and material disputed facts prevent summary judgment with respect to whether repossession of personal property violated the automatic stay.).

{287} ***Edwards v. B & E Transp., LLC (In re Edwards)*, No. 19-06026, 2019 WL 4686633, at *4 (Bankr. W.D. Va. Sept. 25, 2019) (Connelly), *corrected and superseded,* 607 B.R. 530 (Bankr. W.D. Va. Oct. 25, 2019) (Connelly)** (Lender willfully violated stay by repossessing motorcycle after actual notice of Chapter 13 filing and then refusing to return it notwithstanding that debtor was current on payments at the petition and lender had no contractual right to repossess. Damages for egregious stay violation included $14,000 for value of motorcycle not returned, attorney's fees of $3,125 and punitive damages of $25,000. Lender "admitted it intended to disregard the Bankruptcy Code.").

{288} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Circularly, Ford Motor Credit's refusal to return funds garnished before the petition does not violate automatic stay in § 362(a)(3) because garnished funds were removed from the estate before the petition. That garnished funds are recoverable as a preference under §§ 547 and 522(h) does not change this conclusion.).

{289} ***Turner v. Fidelity Bank (In re Turner)*, No. 18-0036, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (Callaway)** (Bank willfully violated stay by sending five past-due notices to debtor after failing to correctly code that payments would be coming from the Chapter 13 trustee rather than by automatic draft. $750 emotional distress damages awarded. Only one hour of attorney's fees allowed because counsel could have avoided the trial and much of the injury to debtor by simply making a phone call to the bank.).

{290} ***Chambers v. Auto Brokers (In re Chambers)*, 605 B.R. 720 (Bankr. D.S.C. Sept. 10, 2019) (Burris)** (Forcible repossession and refusal to return car with full knowledge of Chapter 13 petition was blatant and egregious violation of automatic stay. Actual damages of $1,000 awarded for injury to the debtor's knee and attorney's fees and $10,000 punitive damages.).

{291} ***In re Laskaratos*, 605 B.R. 282 (Bankr. E.D.N.Y. Aug. 30, 2019) (Stong)** (In long-running landlord-tenant dispute, landlord is assessed modest damages for removing backyard personal property in violation of the stay. Police and regulatory exception was not available because the landlord was not a government agency and the folks that removed the personal property in violation of the stay worked for the landlord. Section 362(b)(22) did not apply because the debtor never entered into a written lease agreement with the landlord.).

{292} ***In re Baldwin*, 605 B.R. 453, 457–59 (Bankr. E.D. Ky. Aug. 26, 2019) (Schaaf)** (Judgment creditor violated stay by refusing to deliver or to allow delivery of garnished funds and settlement proceeds held by others when the garnished funds and settlement proceeds became property of the Chapter 13 estate. "[S]ervice of the order of garnishment in Kentucky only initiates the procedure by which a creditor can apply non-exempt property to pay a judgment. . . . The procedure is not complete until the state court rules on the claimed exemptions. The Madison Circuit Court has not ruled, so the Debtor still has an interest in the garnished funds that became property of the estate on the petition date. . . . A creditor is required to return any property of the estate that it possesses when the petition is filed. . . . Passive retention is no defense. The burden of requesting adequate protection is on the creditor. . . . PBK Bank's continued possession of the garnished funds and failure to allow Ford to deliver funds to the Debtor's estate violate the automatic stay.").

{293} ***In re Bohannon*, No. 19-02123-NPO, 2019 WL 5057945 (Bankr. S.D. Miss. Aug. 16, 2019) (Olack)** (Chapter 13 debtor failed to prove that former spouse violated stay by appearing at state court contempt proceeding. Former spouse overcame presumption of regularity of the mails with corroborating testimony that no notice of bankruptcy was received coupled with unexplained failure by debtor to mention bankruptcy at hearing in state court.).

{294} ***City of New York v. Matamoros (In re Matamoros)*, 605 B.R. 600, 606-12 (Bankr. S.D.N.Y. Aug. 2, 2019) (Morris)** (Extended Military Benefits Program pursuant to which debtor was paid salary by City of New York while on active military duty, subject to reimbursement upon return, was a dischargeable contract debt not subject to recoupment from debtor's weekly pay after return to city employment and filing of Chapter 13 case. City violated stay by continuing deduction from salary and refusing to return amounts deducted after the petition. Amount owed to city by debtor was dischargeable at completion of payments because no provision of § 523 applied and recoupment was not an available theory. "The Reimbursement Agreement provided that the City would pay him his City salary on the condition that he repay the City, after returning from ordered military duty, an undetermined portion of the monies based upon [a] formula . . . . [E]quitable recoupment is in the nature of a defense and arises only out of cross demands that stem from the same transaction. The Debtor has no post-petition claims or demands against the City and so the City has asserted equitable recoupment as a claim for relief rather than in the nature of a defense. In doing so, the City has misapplied the doctrine. . . . The debt owed to the City does not fall under any of the statutory exceptions to discharge in a chapter 13 bankruptcy and is dischargeable.").

{295} ***Lee v. Nationstar Mortg. LLC*, No. 19-3019-pcm, 2019 WL 3521626 (Bankr. D. Or. Aug. 1, 2019) (McKittrick)** (Nationstar did not violate automatic stay by accepting payments from Chapter 13 trustee. Nationstar did not violate stay by paying property taxes which became a lien under reverse mortgage because property vested in debtor at confirmation and there was no estate remaining for § 362(a)(3) or § 362(a)(4) purposes. Section 362(a)(5) did not apply because taxes paid were not prepetition debts—they were property taxes that arose after the petition. If they were prepetition debts, stay relief had been granted to conduct foreclosure of reverse mortgage and paying taxes merely transferred tax lien to Nationstar.).

{296} ***In re Haynes*, No. 19-20601-PRW, 2019 WL 7945834 (Bankr. W.D.N.Y. Aug. 1, 2019) (Warren)** (Entry of default judgment and filing of foreclosure tax deed vested property in county before the petition and left no legal or equitable interest in the Chapter 13 debtor. Automatic stay did not apply to the county because prepetition default judgment and filing of foreclosure tax deed divested debtor of all legal and equitable interests in the property.).

{297} ***Prescott v. Wells Fargo Bank, N.A. (In re Prescott)*, No. 17-01007, 2019 WL 3421676, at *6 (Bankr. S.D. Tex. July 29, 2019) (Isgur)** (Wells Fargo violated Final Cure Order by attempting to collect monthly installment that was declared paid by order which

deemed mortgage current at end of prior Chapter 13 case. Wells Fargo willfully violated stay in second Chapter 13 case by contacting debtor and demanding payment of amounts that were barred by Final Cure Order in prior Chapter 13 case. Internal accounting errors did not violate stay but stay was violated when those mistakes translated into demands for payment and foreclosure. Negligence and negligent misrepresentation claims against Wells Fargo survive summary judgment when Wells Fargo attempted to collect amounts that were deemed paid by Final Cure Order in prior Chapter 13 case. Breach of contract claims fail because cure order eliminated any errors Wells Fargo may have made in crediting payments during prior Chapter 13 case. "The source of this discrepancy was likely the response Wells Fargo filed . . . to the Trustee's Notice of Final Cure Payment. In its response, Wells Fargo admitted that Mr. Prescott 'paid in full the amount required to cure the default.' . . . Wells Fargo also contradictorily stated that Mr. Prescott owed payments for both November 1 and December 1, 2015 . . . . No hearing was held regarding Wells Fargo's response and . . . the Court entered its Cure Order, which deemed Mr. Prescott current on his mortgage payment and that his next payment was due in December 2015. . . . [T]he reason for this discrepancy is irrelevant; Wells Fargo's claim for the November 2015 payment was eliminated by the Cure Order. Wells Fargo failed to challenge the Cure Order via reconsideration or appeal and it became a final, binding order, which held that Mr. Prescott's next payment was due on December 1, 2015. Accordingly, Wells Fargo's attempt to collect the November 2015 mortgage payment is a violation of the Court's Cure Order, which deemed Mr. Prescott current on his mortgage payments through December 2015.").

{298} ***Garza v. CMM Enters., LLC (In re Garza)*, 605 B.R. 817 (Bankr. S.D. Tex. July 25, 2019) (Rodriguez)** (Car lender willfully violated stay by repossessing car with actual knowledge of petition and refusing counsel's demands to return car. Lender also violated state consumer protection statute. Actual damages of $1,000 awarded and punitive damages of $6,000 with attorney's fees to be added upon application.).

{299} ***In re Jones*, No. 18-02837-NPO, 2019 WL 5061166 (Bankr. S.D. Miss. July 22, 2019) (Olack)** (City violated stay by coercing Chapter 13 debtor to make deposit and sign installment payment agreement with respect to prepetition utility arrears notwithstanding actual notice of Chapter 13 case in which debtor scheduled and proposed to pay the utility claim in full. Remedy for violating stay by coercing debtor to sign agreement and make payment included attorney's fees and refund of payments.).

{300} ***Collum v. East Ala. Med. Ctr. (In re Collum)*, 604 B.R. 61 (Bankr. M.D. Ala. July 18, 2019) (Sawyer)** (Creditor willfully violated automatic stay in § 362(a)(7) by failing to stop setoff under tax refund setoff program after notice of Chapter 13 petition.).

{301} ***In re Paxton*, No. 12-33036 HLB, 2019 WL 2462797, at *5–*6 (Bankr. N.D. Cal. June 12, 2019) (Blumenstiel)** (On motion to alter or amend, defendants violated automatic stay by not releasing judgments upon demand after notice of Chapter 13 case and by defending debtors' appeal of state court action. "Respondents had an affirmative duty to correct any stay violation once they became aware of Mr. and Mrs. Paxton's bankruptcy case. . . . [T]he court GRANTS the Motion to Reconsider with respect to Mr. and Mrs. Paxton's argument that Respondents willfully violated that automatic stay by failing to immediately release the Abstracts. . . . [T]he Declaratory Relief Action was originally brought against Mr. Paxton. Accordingly, Mr. Paxton's appeal of the Declaratory Relief Action was stayed by the pendency of this bankruptcy case, regardless of the fact that Mr. Paxton instituted the appeal. Because Respondents knew of Mr. and Mrs. Paxton's bankruptcy case at the time of the appeal, their violation of the stay was willful. . . . Respondents' defense of the appeal was a willful violation of the automatic stay.").

{302} ***Lewis v. Money Mayday Loans (In re Lewis)*, No. 18AP-3016, 2019 WL 2158832 (Bankr. W.D. La. May 16, 2019) (Hodge)** (Car title lender willfully violated stay by refusing to return repossessed car, by forging documents to falsely allege car was sold, by failing to account for (fake) proceeds from sale and by repossessing without compliance with state law.).

{303} ***In re Johnson*, 601 B.R. 365 (Bankr. E.D. Pa. May 14, 2019) (Chan)** (For "patently reprehensible" violations of stay—including eviction, throwing away personal property, threatening arrest and cutting off power—some after a telephone hearing during which bankruptcy judge warned creditor not to proceed, actual damages awarded of $70,000, $24,000 attorneys' fees awarded to Philadelphia legal services and punitive damages awarded of $20,000.).

{304} ***Wagner v. Union State Bank (In re Wagner)*, No. 18-5106, 2019 WL 1995606, at *2–*8 (Bankr. D. Kan. May 3, 2019) (Nugent)** (Bank violated stay and is liable for damages under § 362(k) when it took personal judgment against Chapter 13 debtors in foreclosure action after limited stay relief was granted to proceed *in rem*. "[T]he Bank demanded that it be granted an *in personam* judgment against the Wagners with the proviso that it not be enforceable unless their Chapter 13 case was dismissed before discharge. . . . The springing nature of the judgment doesn't save the Bank. Suggesting that the judgment would not be enforced against the Wagners while they were in bankruptcy or unless certain events didn't occur doesn't make the judgment any less personal. . . . Under agency principles, the Bank is liable for the actions of its attorneys who represented it both here and in state court.").

{305} ***In re Melly*, No. 18-26036-RG, 2019 WL 1953661 (Bankr. D.N.J. Apr. 29, 2019) (Sherwood)** (Judgment creditor violated automatic stay by continuing fraudulent conveyance action in state court against nondebtor spouse and others because lawsuit was property of the Chapter 13 estate. No damages were apparent and stay relief was appropriate to allow creditor to proceed to judgment if possible. Automatic stay applied to state court fraudulent conveyance action against the debtor, nonfiling spouse and other entities because recovery would enlarge the estate—even after debtor was dropped from the lawsuit.).

{306} ***Quintao v. Deutsche Bank Nat'l Tr. Co. (In re Quintao)*, No. 15-1063, 2018 WL 9990318 (Bankr. D. Mass. July 16, 2018) (Bailey)** (Mortgage servicer did not violate automatic stay or confirmed plan by paying taxes and utility arrearages after confirmation when plan did not prohibit mortgagee or servicer from doing so. That plan provided for payment of delinquent taxes and utilities did not preclude the mortgagee from exercising its contract right to pay those amounts, especially after the mortgagee obtained stay relief to foreclose. Neither the mortgagee nor the servicer violated stay or confirmed plan by making internal records of amounts owed by Chapter 13 debtor, notwithstanding confirmed plan that would cure default and maintain installment payments during the case. Sending account statements after the grant of stay relief could not violate the stay. Mortgagee did not violate stay by accurately reporting to credit agency amounts owed by debtor after mortgagee paid taxes and utilities on behalf of the debtor.).

§ 62.2 What Court?

{307} ***Potter v. Newkirk*, 802 F. App'x 696, 700 (3d Cir. Feb. 4, 2020) (Shwartz, Restrepo, Rendell)** (Action under § 362(k) to remedy stay violation is a civil action with respect to which the United States district court has jurisdiction independent of the bankruptcy court in which the bankruptcy case arose. "We have recently held that an action under § 362(k) for violation of an automatic stay is an independent private cause of action which need not be litigated as part of the bankruptcy proceeding. . . . As such, a district court has jurisdiction to entertain it.").

{308} ***Steed v. GSRAN-Z, LLC (In re Steed)*, No. 19-05304-JWC, 2020 WL 1596411 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (Filing writ of *fieri facias* by tax commissioner with respect to prepetition property taxes did not violate automatic stay because taxing authority had a statutory lien and filing writ did not create, perfect or extend that lien; bona fide purchaser under Georgia law would always be on notice of property tax lien without regard to filing of *fieri facias*.).

{309} ***Session v. American Honda Fin. Corp. (In re Session)*, No. 18-65-JCO, 2019 WL 3326026 (Bankr. S.D. Ala. May 29, 2019) (Oldshue)** (Bankruptcy judge recommends that district court deny withdrawal of reference motion filed by debtor in adversary proceeding to remedy violation of stay by car lender.).

§ 62.3 Sanctions or Contempt?

{310} ***In re Reed*, No. 16-12995-JDW, 2020 WL 1456515 (Bankr. N.D. Miss. Mar. 20, 2020) (Woodard)** (For second willful violation of stay and violation of prior order prohibiting further stay violations, Department of Education is in contempt and compensatory damages including attorney's fees are awarded totaling $4,231.67. Punitive damages would be appropriate but § 106(3) precludes that award.).

§ 62.4 Motion Practice or Adversary Proceeding?
§ 62.5 Remedies for Violation of Stay

{311} ***Richardson v. PRDO Retail Investors, LP (In re Richardson)*, No. SC-18-1273-LBKu, 2019 WL 4928891 (B.A.P. 9th Cir. Oct. 4, 2019) (not for publication) (Lafferty, Brand, Kurtz)** (Lessor violated stay by sending billing statements to debtors during Chapter 13 case, but debtors failed to prove that lessor wrote racial slurs on those statements. Attorney's fees awarded as damages are reduced for various reasons.).

{312} ***Hunsaker v. United States*, No. 6:16-cv-00386-MC, 2019 WL 2563819 (D. Or. June 20, 2019) (McShane)** (District court affirms bankruptcy court's award of $4,000 damages for emotional distress caused by IRS violations of stay after Ninth Circuit held that IRS does not have sovereign immunity defense to emotional distress damages for violation of stay.).

{313} ***In re Reed*, No. 16-12995-JDW, 2020 WL 1456515 (Bankr. N.D. Miss. Mar. 20, 2020) (Woodard)** (For second willful violation of stay and violation of prior order prohibiting further stay violations, Department of Education is in contempt and compensatory damages including attorney's fees are awarded totaling $4,231.67. Punitive damages would be appropriate but § 106(3) precludes that award.).

{314} ***In re Moon*, 613 B.R. 317 (Bankr. D. Nev. Feb. 25, 2020) (Nakagawa)** (Compensatory damages including emotional distress damages of $100,000, attorney's fees and punitive damages of $200,000 awarded based on findings that Rushmore acted "reprehensibly" by maintaining internal procedures to keep itself ignorant of bankruptcy filing information.).

{315} ***Waters v. McCleod Loris Seacoast Hosp. (In re Waters)*, No. 19-80090-JW, 2020 WL 1884191 (Bankr. D.S.C. Feb. 13, 2020) (Waites)** (Negligence and state law consumer protection claims are preempted by Bankruptcy Code when only alleged facts are that creditor violated automatic stay by sending notice of collection after Chapter 13 petition. Punitive damages request survived motion to dismiss because facts may ultimately show a right to punitive damages under § 362(k).).

{316} ***Garza v. CMM Enters., LLC (In re Garza)*, No. 17-7001, 2020 WL 718444, at *7 (Bankr. S.D. Tex. Feb. 12, 2020) (Rodriguez)** (Applying lodestar method and *Johnson* factors, attorney's fees allowed for stay violation under § 362(k) to two law firms

for $3,973 and $69,787. Car lender that violated stay failed to prove that debtor's attorneys did not mitigate damages. "[A]ssertion of a duty to mitigate does not allow one who willfully violated the automatic stay to deflect blame for damages it caused. . . . [N]o evidence was presented that [debtor's] counsel sat on their hands with the intention of racking up attorney's fees. On the contrary, [debtor's] counsel was diligent in their representation. Repeated calls and requests were made to Defendants to return [debtor's] vehicle. . . . [C]alculating attorney's fees under the lodestar method gets the Court to the reasonable amount.").

{317} ***Tate v. Fairfax Vill. I Condo. (In re Tate)*, No. 19-10009, 2020 WL 634293 (Bankr. D.D.C. Feb. 10, 2020) (Teel)** (On summary judgment, condominium association's argument that debtor failed to mitigate damages after association foreclosed in violation of automatic stay is not ready for decision because trial is necessary to determine mitigation issue and to fix amount of fees allowable under § 362(k).).

{318} ***In re Bragg*, No. 18-20577-dob, 2020 WL 729132 (Bankr. E.D. Mich. Jan. 24, 2020) (Opperman)** (On reconsideration, order assessing sanctions against credit union and its counsel is set aside and trustee's motion for sanctions under Rule 9011 and 28 U.S.C. § 1927 is denied.), *setting aside judgment on reconsideration of* No. 18-20577-dob, 2019 WL 7580292 (Bankr. E.D. Mich. Dec. 9, 2019) (Opperman) (Postconfirmation payments totaling $198.74 that may have been extracted from Chapter 13 debtor in violation of automatic stay and of settlement agreements between U.S. trustee and credit union should have been resolved between counsel but were not; reduced attorney's fees awarded to trustee after unnecessarily rancorous litigation.).

{319} ***In re Terry*, No. 18-44642-ELM-13, 2019 WL 7169095, at *10, *12, *12 (Bankr. N.D. Tex. Dec. 23, 2019) (Morris)** (Landlord willfully violated stay—after stay relief was granted—by seizing, storing and refusing to return personal property that remained property of Chapter 13 estate and which had not been abandoned by the debtor. Compensatory damages of $7,400 awarded for lost and damaged personal property and attorney's fees, and $7,500 punitive damages for "the high degree of reprehensibility" of the landlord's conduct. An agreed order provided that if debtor failed to move out of the landlord's property by date certain, the landlord could take "'any and all steps necessary to exercise any and all rights it may have in the rental property . . . .'" Debtor failed to move out and landlord eventually removed the debtor's personal property from the house and put it in storage. "[T]he Debtor neither 'surrendered' nor 'abandoned' the [property] under the terms of the Lease. . . . ").

{320} ***Wilson v. Arbors of Cent. Park ICG, LLC (In re Wilson)*, 610 B.R. 255 (Bankr. N.D. Tex. Dec. 2, 2019) (Morris)** (Landlord egregiously and reprehensibly violated automatic stay by engineering fake default under stay relief order then commencing eviction to which it was not entitled. Compensatory damages in excess of $12,000 and punitive damages of $10,000 awarded in addition to various injunctions.).

{321} ***Comer v. Carilion Clinic (In re Comer)*, No. 19-07030, 2019 WL 6273386 (Bankr. W.D. Va. Nov. 22, 2019) (Black)** (Clinic willfully violated automatic stay by repeatedly billing and contacting debtors to collect prepetition debts for services after notice of Chapter 13 case. Compensatory damages included attorney's fees but not emotional distress damages because of lack of evidence of emotional impact of collection efforts.).

{322} ***McGregor v. McGregor (In re McGregor)*, 606 B.R. 460 (Bankr. M.D. Fla. Sept. 30, 2019) (Williamson)** (On motion to reconsider, Chapter 13 debtor was obligated to mitigate damages caused by violation of stay by former spouse; failure to mitigate damages reduces debtor's recovery. Former spouse violated stay by seeking state court help to set off support obligation against recovery of dischargeable property settlement owed by the debtor.).

{323} ***Edwards v. B & E Transp., LLC (In re Edwards)*, No. 19-06026, 2019 WL 4686633, at *4 (Bankr. W.D. Va. Sept. 25, 2019) (Connelly), *corrected and superseded,* 607 B.R. 530 (Bankr. W.D. Va. Oct. 25, 2019) (Connelly)** (Lender willfully violated stay by repossessing motorcycle after actual notice of Chapter 13 filing and then refusing to return it notwithstanding that debtor was current on payments at the petition and lender had no contractual right to repossess. Damages for egregious stay violation included $14,000 for value of motorcycle not returned, attorney's fees of $3,125 and punitive damages of $25,000. Lender "admitted it intended to disregard the Bankruptcy Code.").

{324} ***Turner v. Fidelity Bank (In re Turner)*, No. 18-0036, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (Callaway)** (Bank willfully violated stay by sending five past-due notices to debtor after failing to correctly code that payments would be coming from the Chapter 13 trustee rather than by automatic draft. $750 emotional distress damages awarded. Only one hour of attorney's fees allowed because counsel could have avoided the trial and much of the injury to debtor by simply making a phone call to the bank.).

{325} ***Chambers v. Auto Brokers (In re Chambers)*, 605 B.R. 720 (Bankr. D.S.C. Sept. 10, 2019) (Burris)** (Forcible repossession and refusal to return car with full knowledge of Chapter 13 petition was blatant and egregious violation of automatic stay. Actual damages of $1,000 awarded for injury to the debtor's knee and attorney's fees and $10,000 punitive damages.).

{326} ***Garza v. CMM Enters., LLC (In re Garza)*, 605 B.R. 817 (Bankr. S.D. Tex. July 25, 2019) (Rodriguez)** (Car lender willfully violated stay by repossessing car with actual knowledge of petition and refusing counsel's demands to return car. Lender also violated

state consumer protection statute. Actual damages of $1,000 awarded and punitive damages of $6,000 with attorney's fees to be added upon application.).

{327} ***Collum v. East Ala. Med. Ctr. (In re Collum)*, 604 B.R. 61 (Bankr. M.D. Ala. July 18, 2019) (Sawyer)** (Because debtor's counsel made "mountain out of a molehill" by failing to reach out to creditor before filing complaint about $328 automatic setoff, attorney's fees for willful violation of stay are limited to $150.).

{328} ***Lewis v. Money Mayday Loans (In re Lewis)*, No. 18AP-3016, 2019 WL 2158832 (Bankr. W.D. La. May 16, 2019) (Hodge)** (Damages for willful violation of stay by refusing to return repossessed car and forging documents to falsely allege car was sold included value of car, emotional distress, attorney's fees and punitive damages of $10,000. Damages were assessed jointly against corporate creditor and its owner.).

{329} ***In re Johnson*, 601 B.R. 365 (Bankr. E.D. Pa. May 14, 2019) (Chan)** (For "patently reprehensible" violations of stay—including eviction, throwing away personal property, threatening arrest and cutting off power—some after a telephone hearing during which bankruptcy judge warned creditor not to proceed, actual damages awarded of $70,000, $24,000 attorneys' fees awarded to Philadelphia legal services and punitive damages awarded of $20,000.).

{330} ***In re Dougherty-Kelsay*, 601 B.R. 426 (Bankr. E.D. Ky. Apr. 23, 2019) (Wise)** (For persistence in violating the stay, former spouse is ordered to pay $1,000 of punitive damages but attorney's fees were substantially reduced based on debtor's failure to mitigate damages in long-running litigation with former spouse.).

§ 62.6 Limitation on Monetary Penalties after BAPCPA

4. PRECONFIRMATION RELIEF FROM STAY

a. PROCEDURE

§ 63.1 Strategic Considerations

§ 63.2 Timing, Procedure and Form

{331} ***In re Hinchliffe*, 792 F. App'x 154 (3d Cir. Feb. 5, 2020) (McKee, Shwartz, Phipps)** (Third Circuit summarily affirms grant of stay relief to mortgagee. Chapter 13 debtor raised no issue warranting review.).

{332} ***Zalloum v. Bank of N.Y. Mellon Corp. (In re Zalloum)*, 790 F. App'x 205 (11th Cir. Jan. 16, 2020) (Martin, Newsom, Branch)** (Appeal of grant of stay relief was moot because underlying Chapter 13 case was dismissed.).

{333} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (Appeal of grant of stay relief was moot because underlying Chapter 13 case was dismissed, terminating the stay.).

{334} ***Stokes v. LSF8 Participation Tr. (In re Stokes)*, No. MT-18-1293-BHF, 2019 WL 7372666 (B.A.P. 9th Cir. Dec. 16, 2019) (not for publication) (Brand, Hercher, Faris)** (Appeal of stay relief order is moot because bankruptcy court dismissed Chapter 13 case terminating stay and leaving debtor with no remedy on appeal.).

{335} ***Buczek v. KeyBank Nat'l Ass'n*, No. 20-CV-80, 2020 WL 1435101 (W.D.N.Y. Mar. 24, 2020) (Sinatra)** (Pro se motion for injunction—treated as motion for stay pending appeal of order granting *in rem* stay relief—is rejected for lack of jurisdiction. Debtor did not first ask the bankruptcy court for a stay pending appeal of order granting stay relief.).

{336} ***Ross v. Wilmington Sav. Fund Soc'y, FSB*, No. 4:19-CV-23-DMB, 2019 WL 7195319 (N.D. Miss. Dec. 26, 2019) (Brown)** (Appeal of order declaring that no stay was in effect because debtor had no interest in property at issue is moot because stay expired when underlying Chapter 13 case was dismissed based on debtor's failure to make payments.), *dismissing appeal of* No. 18-11356, 2019 WL 480269 (Bankr. N.D. Miss. Feb. 6, 2019) (Maddox) ("Comfort order" is granted Wilmington acknowledging that debtor has no legal interest in property occupied pursuant to oral lease with relatives who have surrendered their interests to Wilmington in other cases. Wilmington did not ask for and is not granted any relief with respect to debtor's possessory right in the lease of the property.).

{337} ***Wilson v. Trustees Under Stan S. Cutler Revocable Trust Agreement*, No. 3:19-cv-88, 2019 WL 6689903 (E.D. Va. Dec. 6, 2019) (Gibney)** (Appeal of bankruptcy court order granting stay relief is moot when Chapter 13 case is dismissed during appeal and stay terminated.).

{338} ***Barnes v. Sea Hawai'i Rafting, LLC*, No. 13-00002 ACK-WRP, 2019 WL 2330266 (D. Haw. May 31, 2019) (Kay)** (District court denies withdrawal of reference of Chapter 13 case and related litigation because moving creditor has already appealed everything substantive pending in the Chapter 13 case and withdrawal of reference seems to be an effort to deal with the bankruptcy court's denial of stay relief.).

{339} ***In re Winder*, No. 19-20773-PRW, 2020 WL 1679389 (Bankr. W.D.N.Y. Apr. 6, 2020) (Warren)** (Automatic stay did not expire 60 days after stay relief motion under § 362(e) because case management order implicitly extended stay consistent with § 362(e)(2)(B)(ii). Stay relief denied with respect to 17-year-old land sale contract because of disputed facts material to the amount of debt, payment of property taxes and inaccurate accounting for payments.).

{340} ***In re James*, No. 19-00680, 2019 WL 6833835 (Bankr. D.D.C. Dec. 13, 2019) (Teel)** (Debtor is not entitled to waiver of fees for appeal of order granting stay relief under 28 U.S.C. § 1915(a)(1) or 28 U.S.C. § 1930(f)(3). Debtor did not file the required affidavit with respect to income and expenses, the appeal was frivolous and without any good faith grounds and property at issue had been sold prepetition with eviction of the debtor pending.).

{341} ***In re Quinteros*, No. 19-00195, 2019 WL 6337911 (Bankr. D.D.C. Nov. 22, 2019) (Teel)** (Bankruptcy court gives additional reasons why denial of waiver of transcription fee was appropriate including that debtor has no credible likelihood of success on appeal of stay relief granted mortgagee when large mortgage claim was not provided for by plan.), *supplementing* No. 19-00195, 2019 WL 5880605, at *1 (Bankr. D.D.C. Nov. 8, 2019) (Teel) (Chapter 13 debtor's motion to waive fee for transcription of hearing on stay relief is denied because appeal is frivolous and not in good faith. Debtor fails to identify any issue for appellate review. "The transcript fee is not prescribed under § 1930. . . . However, under 28 U.S.C. § 753 . . . [t]he debtor has not paid the fee for filing the notice of appeal, and has not obtained leave to proceed *in forma pauperis*, and such leave (if it were sought) must be denied . . . . It follows that the court cannot waive the fee for a transcript for the appeal.").

{342} ***In re Quinteros*, No. 19-00195, 2019 WL 5874609 (Bankr. D.D.C. Nov. 8, 2019) (Teel)** (Motion for stay pending appeal of order granting stay relief is denied when there is no equity in the property, the plan does not propose to pay the mortgage, the debtor made no payments on the mortgage in years, the mortgagee established standing to foreclose and no bankruptcy purpose would be served by continuing the stay.).

b. GROUNDS FOR RELIEF FROM STAY

§ 64.1 Lack of Adequate Protection

{343} ***In re Johnson*, No. 19-3620, 2020 WL 1450751 (E.D. Pa. Mar. 25, 2020) (Robreno)** (Stay relief was appropriate because Chapter 13 debtor failed to make postpetition mortgage payments to Wells Fargo.).

{344} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

§ 64.2 Other Cause for Relief

{345} ***Rickert v. Specialized Loan Servicing LLC (In re Rickert)*, No. MT-19-1120-LBG, 2020 WL 1170732 (B.A.P. 9th Cir. Mar. 9, 2020) (not for publication) (Lafferty, Brand, Gan)** (Cause for stay relief included that debtor made no payments to mortgagee for six months since Chapter 13 petition and proposed plan continued to deny mortgagee had a claim notwithstanding unrefuted proof to contrary.), *aff'g* No. 18-60937-13, 2019 WL 1959898 (Bankr. D. Mont. Apr. 29, 2019) (Hursh) (Specialized Loan Servicing is entitled

to stay relief for cause because debtor has made no mortgage payment for 19 months, debtor refuses to provide for SLS on frivolous theories gathered from the Internet and SLS has shown it is entitled to enforce the note.).

{346} ***Mead v. HSBC Bank USA, Nat'l Ass'n (In re Mead)*, No. CO-19-001, 2019 WL 5257957 (B.A.P. 10th Cir. Oct. 16, 2019) (not for publication) (Cornish, Hall, Loyd)** (Stay relief was appropriate based on lack of equity when debtor valued property in schedules at approximate amount of first mortgage and no cushion or other form of adequate protection was apparent or offered.).

{347} ***Coppedge v. Specialized Loan Servicing LLC (In re Coppedge)*, No. 19-12-MN, 2020 WL 1332993, at *6 (D. Del. Mar. 23, 2020) (Noreika)** (In decade-long battle between pro se debtor and mortgagee that included "vague, repetitive, and nonsensical" claims that debts payable in currency had been forgiven by Congress in 1933, stay relief was appropriately granted to mortgagee. Multiple bankruptcy cases and endless litigation and relitigation—all barred by res judicata after state court foreclosure judgment—supported stay relief and other sanctions previously imposed by bankruptcy court and other courts.).

{348} ***Craig v. Bendall*, No. 4:19cv00048, 2020 WL 1234947, at *3 (W.D. Va. Mar. 13, 2020) (Kiser)** (Bankruptcy court order granting relief from stay is stayed pending appeal when debtor is owner of property, debtor is not personally liable on mortgage but debtor has good argument that *Johnson v. Home State Bank*, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (June 10, 1991), claim of mortgagee can be managed through plan under § 1322. Debtor owns real property pursuant to quitclaim deed. Property is subject to mortgage and Chapter 13 plan proposes to modify note under § 1322(b)(2) to make monthly payments until property is sold or refinanced. Bankruptcy court granted stay relief, questioning whether a Chapter 13 debtor could modify note to which the debtor was not a party. "I believe Craig has made an adequate, preliminary showing that the *in rem* action against the property she owns could be a claim subject to the bankruptcy court's authority under 11 U.S.C. § 1322, and which is subject to the automatic stay, even if the bankruptcy court has no authority to adjust the note between [nondebtor] and the [mortgagee].").

{349} ***Beaudouin v. Village Capital & Inv. LLC*, 613 B.R. 514 (E.D. Pa. Mar. 13, 2020) (Smith)** (Bankruptcy court committed no error denying reconsideration of grant of stay relief when debtors had staved off eviction for more than two years without progress toward any bankruptcy goal other than stopping eviction.).

{350} ***Walkama v. Nellams*, No. C19-1207-JCC, 2020 WL 995853, at *2–*4 (W.D. Wash. Mar. 2, 2020) (Coughenour)** (Plaintiff in discrimination lawsuit against Chapter 13 debtor is entitled to stay relief to liquidate claim against debtor based on findings that notice of bankruptcy was insufficient to bind plaintiff to confirmed plan and lack of notice renders plaintiff's claim nondischargeable in the Chapter 13 case. "Discharging a debt in a Chapter 13 bankruptcy proceeding requires that the plan specifically 'provide for' the debt. . . . Even if the Chapter 13 plan refers to the debt, the plan does not sufficiently provide for that debt unless the creditor to whom the debt is owed is timely notified of the bankruptcy proceeding. . . . Accordingly, if the notice to the creditor is deemed inadequate, then the debt is not dischargeable. . . . Appellee never received formal, statutorily required notice . . . . Appellee was not notified that his claim was subject to discharge under Appellants' proposed Chapter 13 plan. . . . Appellee had no opportunity to be heard or to contest the proposed plan before it was confirmed. . . . Appellee's claim was not subject to discharge in Appellants' proposed plan.").

{351} ***Ahmed v. Ahmed*, No. 1:18-cv-698, 2019 WL 8063351 (E.D. Va. Jan. 18, 2019) (O'Grady)** (District court denies stay pending appeal of order affirming bankruptcy court's grant of stay relief to allow former spouse to return to state domestic relations court to seek modification of divorce decree and to seek sanctions against Chapter 13 debtor. Bankruptcy court retained jurisdiction with respect to any enforcement that might result rendering stay pending appeal unnecessary.).

{352} ***In re Conrad*, No. 20-50021 (JAM), 2020 WL 1891218 (Bankr. D. Conn. Apr. 16, 2020) (Manning)** (In fourth bankruptcy case filed on eve of foreclosure, cause for stay relief included that debtor had made no payment to mortgagee since 2008 and could not propose a confirmable Chapter 13 plan that would deal with huge arrearage.).

{353} ***In re Winder*, No. 19-20773-PRW, 2020 WL 1679389 (Bankr. W.D.N.Y. Apr. 6, 2020) (Warren)** (Automatic stay did not expire 60 days after stay relief motion under § 362(e) because case management order implicitly extended stay consistent with § 362(e)(2)(B)(ii). Stay relief denied with respect to 17-year-old land sale contract because of disputed facts material to the amount of debt, payment of property taxes and inaccurate accounting for payments.).

{354} ***In re Dedo*, No. 18-00657, 2020 WL 961311 (Bankr. D.D.C. Feb. 24, 2020) (Teel)** (Motion by creditor for leave to file complaint to determine dischargeability of debt under § 523(a)(3) is denied without prejudice to creditor's right to file a complaint objecting to dischargeability under § 523(a)(3). Stay relief is allowed to permit creditor to pursue its claims against debtor—including its § 523(a)(3) action—in state court. Leave of court is not required to file a complaint under § 523(a)(3) and a motion is not the proper route to that determination.).

{355} ***In re Pittman*, No. 19-41057, 2020 WL 859435 (Bankr. D. Kan. Feb. 20, 2020) (Somers)** (Cause for relief from stay that former spouse must return to state court to determine entitlement to interest in debtor's retirement account by way of a qualified domestic relations order (QDRO) request. Retirement fund is not property of Chapter 13 estate and bankruptcy court has no jurisdiction to determine rights in the fund or to issue a QDRO.).

{356} ***In re Bauer*, No. 19-33534, 2020 WL 837366 (Bankr. N.D. Ohio Feb. 19, 2020) (Gustafson)** (Stay relief granted on ground that Chapter 13 filing was a bad-faith effort to frustrate county's foreclosure on nonresidential property to collect criminal fines.).

{357} ***In re Mager*, No. 19-14008 ELF, 2020 WL 717702 (Bankr. E.D. Pa. Feb. 12, 2020) (Frank)** (Creditor involved in bitter business litigation with debtor in state court is granted stay relief to proceed with that litigation. Debtor needs successful outcome in litigation to propose confirmable plan but has done nothing to advance the process either in the bankruptcy court or in the state court.).

{358} ***In re Brammer*, No. 16-00642, 2019 WL 6734560 (Bankr. D.D.C. Dec. 9, 2019) (Teel)** (Debtor admittedly did not comply with payment obligations in consent order that resolved motion for stay relief. Debtor states no ground for relief from that consent order or in support of opposition to mortgagee's notice of default.).

{359} ***In re Mainous*, 610 B.R. 916 (Bankr. S.D. Ala. Nov. 21, 2019) (Oldshue)** (Stay relief is appropriate for cause to allow litigation in Alabama state or federal court between Chapter 13 debtor and franchisor of lawn care business. Other court should determine enforceability of franchise contract and its noncompete provisions and other court should determine amount of claim of franchisor that must be dealt with in Chapter 13 plan.).

{360} ***In re Barrett*, No. 18-21501-GLT, 2019 WL 3890147 (Bankr. W.D. Pa. Aug. 16, 2019) (Taddonio)** (Because prepetition distributive award vested ownership of one-half of proceeds from sale of debtor's business in former spouse, only bare legal title to that half of the funds came into Chapter 13 estate; former spouse is entitled to stay relief to cause the transfer of funds from domestic relations attorney to the former spouse.).

{361} ***In re Cheeks*, No. 19-10516-BFK, 2019 WL 3805990 (Bankr. E.D. Va. Aug. 13, 2019) (Kenney)** (Because debtor's nonfiling spouse was record owner of property, stay did not interrupt foreclosure process and purchaser at foreclosure sale was entitled to stay relief to complete remedies under state law.).

{362} ***In re Rizzo*, 603 B.R. 550 (Bankr. D.S.C. July 29, 2019) (Waites)** (Limited stay relief is appropriate for cause to allow state court to complete trial with respect to whether debtor is owner of disputed funds withdrawn from a fiduciary account.).

{363} ***In re McLain*, No. DL 17-02218, 2019 WL 2323776 (Bankr. W.D. Mich. May 29, 2019) (Dales)** (Cause for stay relief that Public Administrator has accused Chapter 13 debtor of mishandling probate estate of his mother and state court is proper forum for that dispute.).

{364} ***In re Kolnberger*, 603 B.R. 253 (Bankr. E.D.N.Y. May 10, 2019) (Trust)** (Stay relief is appropriate under § 362(b)(1) and (d)(2) when plan is dependent on loan modification that has been denied three times. RESPA claims against mortgagee are no defense to stay relief when debtor cannot afford property without a mortgage modification that has been refused. Stay relief is not prohibited when loss mitigation is in process—nothing in RESPA prohibits mortgagee from moving for stay relief when a loss mitigation application is pending.).

{365} ***In re Melly*, No. 18-26036-RG, 2019 WL 1953661 (Bankr. D.N.J. Apr. 29, 2019) (Sherwood)** (Cause for relief from the stay that state court fraudulent conveyance action against nondebtor spouse and others is fully developed and ready for trial; judgment creditor can complete the state court action and if successful then return to bankruptcy court for collection.).

{366} ***In re Mendez*, 600 B.R. 321 (Bankr. D.N.J. Apr. 10, 2019) (Altenburg)** (Bankruptcy court grants limited stay relief to allow state court to determine reasonableness of attorney's fees sought by mortgagee. State court entered foreclosure judgment prepetition after underlying debt matured. Plan proposed to cure default through a loan modification. Plan must pay mortgagee's entitlement to fees consistent with the contract—an amount best determined by the state court rather than the bankruptcy court.).

{367} ***In re Harmon*, No. DG 18-04298, 2019 WL 6492475 (Bankr. W.D. Mich. Mar. 25, 2019) (Dales)** (Stay relief for cause denied that would have allowed attorneys to litigate charging lien on Chapter 13 debtor's residence in state court. Litigation in state court would proceed by default to determine a lien on homestead property that would be relevant to rights of creditors in the Chapter 13 case.).

{368} ***In re Grayson*, No. 18-00863, 2018 WL 10345323 (Bankr. S.D. Ala. June 18, 2018) (Callaway)** (Stay is conditionally modified to allow victim of prepetition car accident to pursue Chapter 13 debtor and uninsured motorist coverage. Conditions include no collection from debtor personally and no stay relief if insurer refuses to defend debtor.).

{369} ***Beesley v. Beesley (In re Beesley)*, No. 17-00021, 2018 WL 10345325 (Bankr. S.D. Ala. Jan. 8, 2018) (Callaway)** (Bankruptcy court abstains and grants stay relief to allow state domestic relations court to determine what portion of "property settlement" was actually a domestic support obligation for purposes of confirmation of Chapter 13 plan.).

{370} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537, 545–46 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (*In rem* stay relief under § 362(d)(4) was not appropriate when only evidence of scheme was three bankruptcy cases in 10 years. "ARCPE has not shown that it was entitled to § 362(d)(4) relief. A bankruptcy court may grant *in rem* relief from the automatic stay under § 362(d)(4) to prevent schemes using bankruptcy to thwart foreclosures through one or more real property transfers or bankruptcies. . . . The bankruptcy court must affirmatively find the existence of a scheme. . . . In moving for § 362(d)(4) relief, ARCPE simply requested that the bankruptcy court take judicial notice of the Jimenezes' 2009 and 2012 bankruptcies. Otherwise, it submitted no evidence or even argument . . . that the three cases were part of a scheme to delay, hinder, or defraud creditors that originated in 2009 and continued over the decade thereafter. The filing of multiple bankruptcies over a very extended period of time (as in this case) does not invariably justify the findings required for § 362(d)(4) relief.").

{371} ***Stokes v. LSF8 Participation Tr. (In re Stokes)*, No. MT-18-1293-BHF, 2019 WL 7372666 (B.A.P. 9th Cir. Dec. 16, 2019) (not for publication) (Brand, Hercher, Faris)** (*In rem* stay relief under § 362(d)(4) is not available because movant is owner of property by virtue of prepetition foreclosure sale and *in rem* relief is only available to secured creditors.).

{372} ***Ahmed v. NewRez LLC*, No. TDC-19-2534, 2020 WL 1904699 (D. Md. Apr. 17, 2020) (Chuang)** (After 15 bankruptcy petitions by debtor and/or spouse, bankruptcy court appropriately granted "equitable servitude" to foreclosing mortgage holder under § 362(d)(4). Debtor waived statute of limitations argument with respect to prepetition state court foreclosure by contesting foreclosure without raising statute of limitations challenge.).

{373} ***Akzam v. U.S. Bank NA*, No. 2:16-cv-02274-TLN, 2020 WL 1700028 (E.D. Cal. Apr. 8, 2020) (Nunley)** (Appeal of order granting *in rem* stay relief under § 362(d)(4) is moot for two reasons: the underlying Chapter 13 case has been dismissed, terminating the automatic stay; the two years of *in rem* relief granted under § 362(d)(4) expired during the appellate process.).

{374} ***Askri v. U.S. Bank, N.A.*, 612 B.R. 867 (E.D. Va. Feb. 18, 2020) (Ellis)** (Bankruptcy court appropriately granted *in rem* stay relief to mortgagee under § 362(d)(4) based on six bankruptcies in seven years, each filed by debtor and/or spouse to stop foreclosure. Debtors had not paid mortgagee in 84 months.).

{375} ***Smith v. U.S. Bank, N.A.*, No. 4:19CV2682, 2020 WL 607638 (N.D. Ohio Feb. 6, 2020) (Pearson)** (In third bankruptcy case to stop foreclosure, district court denies stay pending appeal of bankruptcy court orders setting aside dismissal and granting *in rem* relief to foreclosing creditor.).

{376} ***Kajla v. U.S. Bank Nat'l Ass'n (In re Kajla)*, No. 19-1043 (MAS), 2019 WL 7288891 (D.N.J. Dec. 30, 2019) (Shipp)** (Four tag-team bankruptcies by debtor and spouse to stop foreclosures amply support bankruptcy court's § 362(d)(4) *in rem* order.).

{377} ***In re Conrad*, No. 20-50021 (JAM), 2020 WL 1891218 (Bankr. D. Conn. Apr. 16, 2020) (Manning)** (*In rem* relief from stay under § 362(d)(4) was appropriate in fourth bankruptcy case filed by debtor or spouse on the eve of foreclosure. Debtor made no payment on mortgage since 2008, no possible plan was in sight that could deal with huge arrearage and no bankruptcy purpose appeared other than continuing to stall foreclosure sale.).

{378} ***In re Moore*, No. 19-51257 (JAM), 2020 WL 1189367 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Stay relief granted for cause under § 362(d)(1) and based on lack of equity and inability to propose any confirmable plan under § 362(d)(2); *in rem* relief also granted under § 362(d)(4). Debtor filed three bankruptcy cases between 2012 and 2019 to stop foreclosures and debtor attempted same frivolous litigation against mortgagee in each case. Serial filing indicated scheme to hinder and delay mortgagee. Schedules showed debtor could not pay mortgage arrears in any confirmable plan.).

{379} ***In re Smith*, No. 19-40227, 2020 WL 476013 (Bankr. N.D. Ohio Jan. 29, 2020) (not for publication) (Kendig)** (Bankruptcy court denies Chapter 13 debtor's motion to reconsider order denying stay pending appeal of order granting *in rem* stay relief in third Chapter 13 case filed to stop foreclosure. Debtor immediately dismissed bare-bones petition after stopping foreclosure but bankruptcy court reopened case to grant *in rem* relief to foreclosing mortgagee.).

{380} ***In re Meltzer*, No. 19-21110-PRW, 2020 WL 129441 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** (Third *pro se* Chapter 13 petition filed to stop foreclosure is dismissed for cause—including bad faith, prejudicial delay, failure to make payments and lack of adequate protection—with 18-month bar to refiling under § 1307(c)(1), (c)(3) and (c)(4) and §§ 105(a) and 349(a). *In rem* relief is also appropriate under § 362(d)(4)(B). Court declines to dismiss "with prejudice" to discharge of debts in a future bankruptcy case.).

{381} ***In re Perkins*, 609 B.R. 576, 577–81 (Bankr. D. Conn. Dec. 16, 2019) (Manning)** (When mortgage creditor moves for declaration that no stay is in effect under § 362(c)(4) and for *in rem* relief under § 362(d)(4) in third case within a year, creditor is entitled to declaration that no stay is in effect but relief under § 362(d)(4) is not available because there is no stay in effect from which *in rem* relief could be granted. "[T]he Bankruptcy Code does not permit subsection 362(d)(4) *in rem* relief to enter in a case such as this

one, where the automatic stay is not in effect under subsection 362(c)(4). . . . [T]he plain language of 362(c)(4) applies to individual debtors who file a third case within one year of two prior cases that were pending but dismissed, while the plain language of 362(d)(4) applies to the stay of an act against real property by a creditor whose claim is secured by an interest in such real property. . . . Movant cannot obtain 'relief from the stay' under subsection (d)(4) in this case because the stay was never in effect. The language of subsection 362(d) . . . compels the interpretation that the stay must be in effect as a condition precedent to obtaining *in rem* relief pursuant to (d)(4). . . . [T]o grant both types of relief the Movant seeks would require the Court to conclude both that the stay was not in effect *and* that it was . . . . The Movant was not stayed from proceeding with the State Court Foreclosure Action and therefore does not need *in rem* relief to do so . . . because a stay was never in effect in the Debtor's third Chapter 13 case.").

{382} ***In re Lossee*, No. 19-40540-JMM, 2019 WL 4923150 (Bankr. D. Idaho Oct. 4, 2019) (Meier)** (In fourth Chapter 13 case filed to stop foreclosure, debtors state no ground for relief from order granting *in rem* stay relief to mortgagee under §§ 362(d)(4) and 362(b)(20).).

{383} ***In re Smith*, No. 19-40227, 2019 WL 4897030 (Bankr. N.D. Ohio Sept. 30, 2019) (Kendig), *motion to amend denied by* No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (In third Chapter 13 case in 12 years filed to stop foreclosure, mortgagee is granted relief from stay and from codebtor stay and granted *in rem* relief under § 362(d)(4). Cause includes that debtor cannot pay the partially secured $800,000 debt, debtor acted in bad faith and abusively and history of filings without payment to creditors is a scheme to delay or hinder for § 362(d)(4) purposes.).

{384} ***In re Atkinson*, No. 19-71044-ast, 2019 WL 4438963 (Bankr. E.D.N.Y. Sept. 16, 2019) (Trust)** (In third bankruptcy filed to stop foreclosure, after stay relief was granted in prior cases and after seven years without payments, *in rem* stay relief is granted mortgagee under § 362(d)(4)(B).).

{385} ***In re Smith*, No. 19-40227, 2019 WL 3774152 (Bankr. N.D. Ohio Aug. 9, 2019) (not for publication) (Kendig)** (Stay pending appeal is denied with respect to bankruptcy court determination that U.S. Bank had standing to seek to set aside dismissal to allow bank to then seek *in rem* stay relief to foreclose.), *denying stay of* No. 19-40227, 2019 WL 2406940, at *5 (Bankr. N.D. Ohio June 6, 2019) (not for publication) (Kendig) (Right to voluntarily dismiss Chapter 13 case is not absolute when debtor has three times abused bankruptcy relief by filing Chapter 13 cases to stop long-running foreclosure and then immediately dismissed each case. Dismissal is vacated to allow foreclosing bank to seek *in rem* relief after nearly 15 years of trying to complete a foreclosure. Foreclosing bank has standing to seek to vacate order of dismissal to then pursue *in rem* relief. "U.S. Bank clearly and convincingly persuaded the court that Debtor's conduct in filing this case, stopping the sheriff's sale, then dismissing the case with no notice, was unfair, especially in light of the history between the parties and Debtor's pattern of filings. The court will therefore vacate the dismissal order and reinstate the case to allow U.S. Bank to proceed to seek in rem relief promptly.").

{386} ***In re Dawood*, 602 B.R. 640, 644–45 (Bankr. E.D. Mich. July 19, 2019) (Tucker)** (To support its decision in a related Chapter 11 case involving property used as a medical marijuana dispensary, bankruptcy court sua sponte dismisses Chapter 13 case with two-year bar to refiling and with *in rem* relief with respect to debtor's interest in property. Court finds that Chapter 13 case was filed in bad faith for sole purpose of upsetting dismissal of related Chapter 11 case and for improper purpose of disrupting state court litigation over disposition of marijuana-related property. "The Court will enter an *in rem* order, which will prevent the automatic stay under 11 U.S.C. § 362(a) from arising, with respect to the . . . Property or actions taken against that property, in any future bankruptcy case filed within two years . . . . The Court has authority to order such *in rem* relief under 11 U.S.C. § 105(a) and by analogous authority under 11 U.S.C. § 362(d)(4). . . . Section 362(d)(4) does not literally apply here, because the Court is not acting on the motion of a secured creditor. But when combined with § 105(a), § 362(d)(4) does lend support, by analogy, to the *in rem* relief being granted here.").

{387} ***In re Ihejurobi*, No. 18-13380-RAG, 2019 WL 2016612 (Bankr. D. Md. May 6, 2019) (Gordon), *aff'd*, No. SAG-19-1391, 2019 WL 5102679 (D. Md. Oct. 11, 2019) (Gallagher)** (Stay relief with 365-day "equitable servitude" is appropriate when Chapter 13 case was filed to delay inevitable foreclosure, the debtor's challenge to $1.7 million mortgage was frivolous and case was causing unjustified delay.).

§ 64.4 Annulment of the Stay

{388} ***Oya v. Wells Fargo, N.A. (In re Oya)*, No. SC-19-1095-BKuL, 2019 WL 5390007 (B.A.P. 9th Cir. Oct. 18, 2019) (not for publication) (Brand, Kurtz, Lafferty)** (In sixth tag-team bankruptcy filed to stop foreclosure, bankruptcy court appropriately annulled stay retroactively to eliminate basis for any violation of stay alleged by debtor. On egregious facts, appropriate to annul stay notwithstanding that mortgagee may have had notice of bankruptcy at time of foreclosure sale. Bankruptcy court appropriately granted retroactive annulment of the automatic stay under § 362(d)(1) and *in rem* stay relief under § 362(d)(4).).

{389} ***Clarke v. LNV Corp.*, No. 3:17-cv-148-TCB, 2018 WL 10322004 (N.D. Ga. Feb. 5, 2018) (Batten)** (In fourth bankruptcy case in three years, each filed to stop foreclosure sale, bankruptcy court appropriately granted retroactive stay relief to validate foreclosure sale two days after the petition.).

§ 64.5 Application of § 362(d)(2) in Chapter 13 Cases

{390} ***Mead v. HSBC Bank USA, Nat'l Ass'n (In re Mead)*, No. CO-19-001, 2019 WL 5257957 (B.A.P. 10th Cir. Oct. 16, 2019) (not for publication) (Cornish, Hall, Loyd)** (Plan that depended for feasibility on modifying mortgages would not support necessity for effective reorganization for § 362(d)(2) purposes when mortgage was protected from modification by § 1322(b)(2) and could not be modified without consent of the mortgagee. Property had rental units and a principal residence but was protected from modification by § 1322(b)(2).).

{391} ***In re Conrad*, No. 20-50021 (JAM), 2020 WL 1891218 (Bankr. D. Conn. Apr. 16, 2020) (Manning)** (Stay relief under § 362(d)(2) was appropriate because there was no equity in property and debtor could not confirm a plan that would cure arrearage on mortgage after four bankruptcies and no payments since 2008.).

{392} ***In re Moore*, No. 19-51257 (JAM), 2020 WL 1189367 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Stay relief granted for cause under § 362(d)(1) and based on lack of equity and inability to propose any confirmable plan under § 362(d)(2); *in rem* relief also granted under § 362(d)(4). Debtor filed three bankruptcy cases between 2012 and 2019 to stop foreclosures and debtor attempted same frivolous litigation against mortgagee in each case. Serial filing indicated scheme to hinder and delay mortgagee. Schedules showed debtor could not pay mortgage arrears in any confirmable plan.).

{393} ***In re Taylor*, No. 19-30351-tmb13, 2019 WL 3713666 (Bankr. D. Or. Aug. 6, 2019) (not for publication) (Brown)** (Stay relief under § 362(d)(2) is not appropriate when success of plan depends on sale of property protected by stay.).

{394} ***In re Brown*, No. 1:19-bk-10580J, 2019 WL 3540790 (Bankr. E.D. Ark. Aug. 1, 2019) (Jones)** (Bank not entitled to stay relief under § 362(d)(2) because debtor proved that personal residence was necessary to reorganization and that a confirmable plan was in prospect that would save the home. Residence was on property given to debtor by parents who lived next door. Debtor took care of parents' property and of niece who lived with parents. Rental apartments were available but moving would be "unsettling and disruptive.").

{395} ***In re Lara-Morales*, No. 18-15549-MKN, 2019 WL 5884230 (Bankr. D. Nev. Apr. 5, 2019) (Nakagawa)** (Mortgagee's motion for stay relief is denied because reasonable prospect of confirmable Chapter 13 plan includes that debtor may seek to strip off lien. That debtor is not eligible for a discharge because of a prior Chapter 7 discharge is not a bar to lien stripping.).

F. CODEBTOR STAY

1. EXTENT OF CODEBTOR STAY

§ 65.1 Cosigners and Joint Obligors Are Protected

{396} ***United States ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, No. C16-0052JLR, 2019 WL 6052646 (W.D. Wash. Nov. 15, 2019) (Robart)** (Codebtor stay does not protect Chapter 13 debtor's attorney from assessment of attorney's fees as a sanction for bad-faith litigation misconduct because fees would be assessed not as consumer debts but for the work by the attorney as a lawyer representing the debtor. Any fees assessed against the attorney would not be debts of the Chapter 13 debtor and imposing the fees as a sanction on the attorney would not violate the codebtor stay with respect to the debtor.).

§ 65.2 Consumer Debts Only

{397} ***United States ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, No. C16-0052JLR, 2019 WL 6052646 (W.D. Wash. Nov. 15, 2019) (Robart)** (Codebtor stay does not protect Chapter 13 debtor's attorney from assessment of attorney's fees as a sanction for bad-faith litigation misconduct because fees would be assessed not as consumer debts but for the work by the attorney as a lawyer representing the debtor. Any fees assessed against the attorney would not be debts of the Chapter 13 debtor and imposing the fees as a sanction on the attorney would not violate the codebtor stay with respect to the debtor.).

{398} ***Johnson v. North Mill Credit (In re Johnson)*, 608 B.R. 784 (Bankr. S.D. Ga. Sept. 27, 2019) (Barrett)** (Codebtor stay in § 1301 does not apply to Chapter 13 debtor's guaranty of business debt for purchase of a truck by a wholly owned corporation.).

{399} ***In re Berry*, No. 19-14527-BKC-RBR, 2019 WL 3992719 (Bankr. S.D. Fla. June 26, 2019) (Ray)** (Codebtor stay under § 1301 does not apply to action for injunctive and monetary relief by state of Florida against debtor and others for operating a fraudulent foreclosure rescue business because § 362(b)(4) exception applies and debt at issue is not a consumer debt.).

{400} ***Zeba, LLC v. Hosseini (In re Hosseini)*, No. 19-02001, 2019 WL 1872930 (Bankr. S.D. Tex. Apr. 25, 2019) (Isgur)** (Lawsuit in state court against Chapter 13 debtor's parents did not violate codebtor stay because underlying debt arose out of a check cashing business and the debt was not a consumer debt for purposes of § 1301.).

{401} ***Labovitz v. IRS (In re Labovitz)*, No. 18-00010, 2018 WL 10323609 (Bankr. W.D. Tenn. May 14, 2018) (Latta)** (Because the Sixth Circuit has declared that tax claims are not consumer debts, codebtor stay in § 1301 does not prohibit IRS from collecting joint taxes from nondebtor spouse. The Anti-Injunction Act prohibits the bankruptcy court from creating a codebtor stay that does not exist by statute.).

§ 65.3 Codebtor Heaven after BAPCPA
§ 65.4 Can Plan Enlarge Codebtor Stay?

{402} ***Labovitz v. IRS (In re Labovitz)*, No. 18-00010, 2018 WL 10323609 (Bankr. W.D. Tenn. May 14, 2018) (Latta)** (Because the Sixth Circuit has declared that tax claims are not consumer debts, codebtor stay in § 1301 does not prohibit IRS from collecting joint taxes from nondebtor spouse. The Anti-Injunction Act prohibits the bankruptcy court from creating a codebtor stay that does not exist by statute.).

§ 65.5 Expiration of Codebtor Stay
2. RELIEF FROM CODEBTOR STAY
a. PROCEDURE
§ 66.1 Motion Practice
§ 66.2 Automatic Relief under § 1301(d)
§ 66.3 Timing of Request for Relief
§ 66.4 Burden of Proof
b. GROUNDS FOR RELIEF FROM CODEBTOR STAY
§ 67.1 Codebtor Received the Consideration
§ 67.2 Plan Does Not Pay Debt in Full

{403} ***In re Smith*, No. 19-40227, 2019 WL 4897030 (Bankr. N.D. Ohio Sept. 30, 2019) (Kendig), *motion to amend denied by* No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (Relief from codebtor stay is appropriate under § 1301(c)(2) because debtor does not have sufficient income to repay $800,000 mortgage.).

{404} ***In re Kolnberger*, 603 B.R. 253 (Bankr. E.D.N.Y. May 10, 2019) (Trust)** (Codebtor stay relief is appropriate when Chapter 13 plan cannot pay mortgage without a loan modification that has been refused three times.).

§ 67.3 Postpetition Interest, Attorneys' Fees, Costs and Other Charges
§ 67.4 Can Creditor Collect Original Contract Payment from Codebtor?
§ 67.5 Irreparable Harm

{405} ***In re Smith*, No. 19-40227, 2019 WL 4897030 (Bankr. N.D. Ohio Sept. 30, 2019) (Kendig), *motion to amend denied by* No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (Codebtor stay relief is appropriate under § 1302(c)(3) because mortgagee faces irreparable harm when debtor is making no payments on an $800,000 mortgage, debtor does not have income sufficient to pay the debt and property is not worth enough to protect the mortgagee after 12 years and three Chapter 13 cases.).

§ 67.6 Annulment of Codebtor Stay
G. UTILITY STAY
§ 68.1 Utility Stay and Continuing Service

{406} ***In re Jones*, No. 18-02837-NPO, 2019 WL 5061166 (Bankr. S.D. Miss. July 22, 2019) (Olack)** (City violated stay by coercing Chapter 13 debtor to make deposit and sign installment payment agreement with respect to prepetition utility arrears notwithstanding actual notice of Chapter 13 case in which debtor scheduled and proposed to pay utility claim in full. Remedy for violating stay by coercing debtor to sign agreement and make payment included attorney's fees and refund of payments.).

§ 68.2 Utility Stay Uncertainty after BAPCPA
H. MISCELLANEOUS PRECONFIRMATION PROBLEMS
§ 69.1 Incurring Debt prior to Confirmation
§ 69.2 *Pro Se* Debtors
§ 69.3 Loss of Job or Income
§ 69.4 Loss of Contact with Debtor
§ 69.5 Incurable Opposition by a Creditor or Trustee

{407} ***Dean v. Lane (In re Lane)*, 604 B.R. 23 (B.A.P. 6th Cir. Aug. 30, 2019) (Buchanan, Dales, Wise)** (Bankruptcy court appropriately sanctioned creditor under Bankruptcy Rule 9011 for filing harassing pleadings, for improperly filing settlement offer and for litigation strategy to harass and impede Chapter 13 debtors after confirming a 100% plan over the creditor's objection.).

PART 5: DRAFTING AND CONFIRMING PLANS

§ 70.1 Summary of Part 5

A. STATUTES AND RULES DISCUSSED IN PART 5

§ 71.1 11 U.S.C. § 365: Executory Contracts and Unexpired Leases
§ 71.2 11 U.S.C. § 1321: Filing of Plan
§ 71.3 11 U.S.C. § 1322: Contents of Plan
§ 71.4 11 U.S.C. § 1324: Confirmation Hearing
§ 71.5 11 U.S.C. § 1325: Confirmation Standards
§ 71.6 Bankruptcy Rule 2002: Notice of Confirmation Hearing
§ 71.7 Bankruptcy Rule 3012: Valuation of Security
§ 71.8 Bankruptcy Rule 3013: Classification of Claims
§ 71.9 Bankruptcy Rule 3015: Filing of Plan and Objections to Confirmation

B. TIMING, STANDING AND FORM OF PLAN

§ 72.1 Overview: Designing Plans That Work
§ 72.2 Challenges Added by BAPCPA
§ 72.3 Time for Filing Plan
§ 72.4 Who Can File Plan?
§ 72.5 Form of Plan

{408} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Deletion of nonstandard plan provision that preserved Thirteenth Amendment challenge to any future effort by Chapter 13 trustee to increase payments by way of plan modification is not ripe for appellate review because no modification has been sought by trustee. Plan originally contained a footnote that preserved the debtors' argument that any attempt by the Chapter 13 trustee to increase payments by way of plan modification constituted involuntary servitude in violation of the Thirteenth Amendment to the Constitution. Bankruptcy court struck the footnote but confirmed the plan. BAP dodged debtors' appeal by finding that constitutional challenge was not ripe.).

{409} ***Santander Consumer USA Inc. v. Donnadio (In re Donnadio)*, 608 B.R. 507, 509–14 (B.A.P. 6th Cir. Nov. 25, 2019) (Buchanan, Harrison, Wise)** (Plan cannot be confirmed that fails to explicitly state that liens are retained consistent with § 1325(a)(5)(B)(i)(I) notwithstanding that plan provides for full payment with interest of 910-day car claim consistent with the hanging sentence at the end of § 1325(a)(5). Bankruptcy Rule 9009 does not prohibit a nonstandard addition to Official Form 113 that adds lien retention language consistent with § 1325(a)(5)(B)(i)(I). "Section 3.3 of Official Form 113 does not discuss lien retention for claims treated thereunder. Therefore, Debtors' proposed plan did not have language addressing Creditor's retention of its lien in Section 3.3. . . . [T]he court overruled the objection, holding that, while Creditor held a secured claim that was not subject to bifurcation under § 506 owing to the 'hanging paragraph' in § 1325(a), the court was 'not convinced that this means § 1325(a)(5) applies to a 910-day claim exactly as it would to any other allowed, secured claim.' . . . Debtors' plan must fully satisfy § 1325(a)(5)(B) to achieve confirmation over Creditor's objection. . . . But it does not 'provide that' Creditor retains its lien on the Vehicle as § 1325(a)(5)(B)(i)(I) requires. Accordingly, the plan does not satisfy § 1325(a)(5) because it does not treat the 910 Claim in full compliance with § 1325(a)(5)(B). . . . Rule 9009(a) does not prohibit a chapter 13 plan, crafted from Official Form 113, from containing a nonstandard provision affording a 910 claimant lien retention rights in accordance with § 1325(a)(5)(B)(i)(I).").

{410} ***Vega-Lara v. Viegelahn (In re Vega-Lara)*, No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth)** (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form].").

{411} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

{412} ***In re Revels*, No. 19-01583-5-SWH, 2020 WL 1456502, at *4–*6 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Nonstandard provision of plan that absolves Chapter 13 debtor of any requirement to file a Rule 9019 motion to approve settlement of pending employment action is consistent with §§ 1303 and 363(b) and Bankruptcy Rule 9019 because Chapter 13 debtor owns and controls the litigation and its settlement, exclusive of the trustee, and Rule 9019 applies only to trustees. In contrast, nonstandard provision that would absolve debtor of any obligation to report settlement of employment action is inconsistent with disclosure requirements of Code and Rules and would impede ability of trustee and others to monitor income and assets of the debtor. Nonstandard provision that would require the trustee to inform the parties to the employment action that the trustee has no role in settlement is "unacceptable, demeaning, retributory." "A chapter 13 debtor assumes 'exclusive of the trustee, the rights and powers of a trustee under section[ ] 363(b) . . . . Under section 363(b), the debtor ' . . . may use, sell, or lease . . . property of the estate.' . . . Thus, implicit within the chapter 13 debtor's exclusive authority to use property of the estate is the power of the debtor to maintain a cause of action that is part of the bankruptcy estate. . . . Rule 9019 authorizes a 'trustee' to seek a court order approving a compromise or settlement. . . . Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . [T]he settlement of the cause of action is controlled by the chapter 13 debtor. . . . Although the court can see reasons why a debtor would want court approval of a settlement, on its face, Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . Even though a chapter 13 debtor is not required to file a motion to approve settlement or compromise under Rule 9019, the debtor still has a duty to disclose assets, including the settlement of claims against third parties. . . . An objective check on settlements must exist to ensure that chapter 13 trustees have full disclosure of estate assets. . . . [T]he act of settling a claim . . . equates to a 'substantial change' in the financial circumstances of the debtor that would warrant disclosure to the trustee, even if the amount of the settlement is not substantially different than the amount scheduled.").

{413} ***In re Mank*, No. 19-04199-5-SWH, 2020 WL 1228671, at *2–*4 (Bankr. E.D.N.C. Mar. 3, 2020) (Humrickhouse)** (Nonstandard provision that all property vests in debtor at confirmation and that debtor can dispose of property after confirmation without complying with motion practice requirements in § 363(b) is not appropriate for § 1322(b)(11) purposes. The first part—vesting in the debtor—is redundant of other provisions in the local plan form. The provision about § 363(b) seeks to resolve a legal uncertainty that is not based on actual circumstances in this case. Nonstandard provision that would prohibit the Chapter 13 trustee from seeking approval of a compromise or settlement under Bankruptcy Rule 9019 unless the trustee is the plaintiff is also rejected as "not appropriate" for purposes of § 1322(b)(11). "While nonstandard provisions may be included in a plan under section 1322(b)(11), those provisions must be 'appropriate' and 'not inconsistent' with the Bankruptcy Code. . . . [E]ven if a nonstandard provision is an accurate reflection of the law, or at least 'not inconsistent' with the Bankruptcy Code, that provision could still be inappropriate. . . . A nonstandard provision is not appropriate if it requires the court to clarify the law on an issue that does not specifically affect the debtor. . . . [I]ncluding unnecessary nonstandard provisions only increases the cost of administration and impedes efficient administration of the plan. . . . [A]llowing debtors' attorneys to create 'standard nonstandard' provisions in chapter 13 plans would enable debtors' attorneys to create a new form plan without complying with the procedure for altering the Local Form. . . . Restating the law in a nonstandard provision is unnecessary . . . .").

{414} ***In re Willis*, No. 19-41567, 2020 WL 697198 (Bankr. N.D. Ohio Feb. 11, 2020) (not for publication) (Kendig)** (Claim objection and motion to value collateral are both denied because Chapter 13 plan is the proper vehicle to accomplish reduction of interest rate on a secured claim and valuation of collateral, not separate motions. Debtors' attorney failed to properly serve two versions of the proposed plan and instead of correcting service consistent with Bankruptcy Rule 7004 counsel filed two motions to accomplish the same ends. Court was not happy with that approach.).

§ 72.6 [RESERVED]

C. PROVIDING FOR PRIORITY CLAIMS

§ 73.1 Plan Must Provide Full Payment

§ 73.2 What Claims Are Priority Claims?

{415} ***In re Steenes*, 942 F.3d 834, 836–39 (7th Cir. Nov. 12, 2019) (Easterbrook, Rovner, Hamilton)** (On rehearing, traffic fines incurred by Chapter 13 debtors during confirmed cases are administrative expenses that must be paid in full and promptly. "After bankruptcy judges confirmed their Chapter 13 payment plans, Steenes and Dudley used their cars in ways that led to fines for running red lights, illegal parking, and similar offenses. . . . Allowing debtors in bankruptcy to stiff involuntary creditors, such as cities trying to collect for on-street parking, has nothing to recommend it. . . . [D]ebtors who need cars must pay their involuntary creditors—including

cities as well as, say, pedestrians run down by reckless driving—along with the suppliers of gasoline and insurance. . . . [A] debtor making payments under a Chapter 13 plan is not entitled to park for free on city streets, when others must pay in advance or pay fines for parking in forbidden places or at forbidden times. . . . [V]ehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full.").

§ 73.3 Priority Claims Added or Changed by BAPCPA

{416} ***In re Albracht*, No. 19-03672-5-DMW, 2020 WL 1547198 (Bankr. E.D.N.C. Mar. 31, 2020) (Warren)** (Citing *United States v. Chesteen (In re Chesteen)*, No. 19-30195, 2020 WL 859688 (5th Cir. Feb. 20, 2020) (Owen, Barksdale, Duncan), shared responsibility payment is not an excise tax on a transaction for purposes of priority in § 507(a)(8)(E).).

{417} ***In re LaSpina*, 611 B.R. 219 (Bankr. E.D. Pa. Jan. 3, 2020) (Chan)** (After review of state court special master report and considering significant income disparity, one-third of state court award was a priority, nondischargeable support obligation and two-thirds of the award was equitable division of property that could be discharged in a Chapter 13 case.).

{418} ***In re Jones*, 610 B.R. 663, 666–68 (Bankr. D. Mont. Nov. 13, 2019) (Hursh)** (Shared responsibility payment required by 26 U.S.C. § 5000A is an excise tax but it is not entitled to priority under § 507(a)(8)(E) because it is not based on a "transaction" but instead on a failure to engage in a transaction. "[*National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012),] did not (specifically) address whether the SRP was an excise tax. In fact, the Supreme Court did not even go so far as to label the SRP a true tax. . . . [T]he SRP is an excise tax under 11 U.S.C. § 507(a)(8)(E). . . . [Section] 507(a)(8)(E)(i) and (ii) allow priority status for an excise tax imposed '*on a transaction* . . .' . . . The SRP arises out of a taxpayer's choice to *not* do something (the choice to not maintain minimum health care coverage). . . . Other courts have concluded that the SRP is not an excise tax entitled to priority treatment under § 507(a)(8)(E) because the 'transaction' element is not met merely by failing to do something.").

{419} ***In re Beasley*, No. 18-04268-DSC13, 2019 WL 3403361 (Bankr. N.D. Ala. July 3, 2019) (Crawford)** (Though denominated Equitable Distribution Judgment, award by domestic relations court to former spouse was based on disparity in income and history of support and was actually in the nature of support—a DSO that was entitled to priority and full payment in a Chapter 13 case. Sanctions ordered by state court for litigation misconduct by the debtor was more in the nature of punishment than support and was not a DSO.).

{420} ***In re Moore-McKinney*, 603 B.R. 855, 861–62 (Bankr. N.D. Ga. May 10, 2019) (Hagenau)** (Interest is included in domestic support obligation after BAPCPA and claim of former spouse must be paid with state law rate interest as part of nondischargeable DSO notwithstanding § 1322(b)(10). Interest in DSO is allowable and must be paid in current case notwithstanding that former spouse did not seek postpetition interest on DSO in prior case. DSO and interest are nondischargeable and there is no preclusive effect of prior plan with respect to former spouse's right to postpetition interest. "The interest that accrues on a prepetition debt in the nature of alimony, maintenance or support shares the nondischargeable character of the debt and becomes part of the DSO itself. . . . Section 101(14A) enlarged the concept of a domestic support obligation to define post-petition interest as part of the DSO claim itself. The Bankruptcy Code therefore not only *allows* but *requires* Chapter 13 plans to provide for payment of post-petition interest on DSO claims. . . . There is no reference to or exception for DSOs in section 1322(b)(10). . . . But the predicate to § 1322(b) is that all of its subsections are 'subject to subsection[ ] (a).' . . . It is subparagraph (2) in 'subsection[ ] (a)' that mandates that a chapter 13 plan provide for full payment of all claims entitled to priority under § 507. Paying post-petition interest as part of a DSO claim under § 101(14A) is therefore required by § 1322(a)(2) and an exception to the general rule in § 1322(b)(10) . . . .").

§ 73.4 Deferred Payments Are Permitted
§ 73.5 Interest Not Required, with Exceptions

{421} ***In re Moore-McKinney*, 603 B.R. 855, 861–62 (Bankr. N.D. Ga. May 10, 2019) (Hagenau)** (Interest is included in domestic support obligation after BAPCPA and claim of former spouse must be paid with state law rate interest as part of nondischargeable DSO notwithstanding § 1322(b)(10). Interest in DSO is allowable and must be paid in current case notwithstanding that former spouse did not seek postpetition interest on DSO in prior case. DSO and interest are nondischargeable and there is no preclusive effect of prior plan with respect to former spouse's right to postpetition interest. "The interest that accrues on a prepetition debt in the nature of alimony, maintenance or support shares the nondischargeable character of the debt and becomes part of the DSO itself. . . . Section 101(14A) enlarged the concept of a domestic support obligation to define post-petition interest as part of the DSO claim itself. The Bankruptcy Code therefore not only *allows* but *requires* Chapter 13 plans to provide for payment of post-petition interest on DSO claims. . . . There is no reference to or exception for DSOs in section 1322(b)(10). . . . But the predicate to § 1322(b) is that all of its subsections are 'subject to subsection[ ] (a).' . . . It is subparagraph (2) in 'subsection[ ] (a)' that mandates that a chapter 13 plan provide for full payment of all claims entitled to priority under § 507. Paying post-petition interest as part of a DSO claim under § 101(14A) is therefore required by § 1322(a)(2) and an exception to the general rule in § 1322(b)(10) . . . .").

§ 73.6 Treatment of Priority Claims Changed by BAPCPA
§ 73.7 Secured Priority Claims?
§ 73.8 Special Provisions for Attorneys' Fees

§ 73.9 Attorney Fees after BAPCPA

{422} ***Credit Acceptance Corp. v. Thompson*, No. 1:19-cv-1802-JMS-TAB, 2019 WL 4860971, at *4–*6 (S.D. Ind. Oct. 2, 2019) (Magnus-Stinson)** (Embracing *In re DeSardi*, 340 B.R. 790 (Bankr. S.D. Tex. Apr. 21, 2006) (Isgur), Chapter 13 plan can make adequate protection payments to secured creditor for 21 months after confirmation while attorney's fees are paid in full and then make equal monthly payments to secured claimholder without violating equal-payment requirement in § 1325(a)(5)(B)(iii)(I). Equal monthly payments need not begin at confirmation and administrative expenses must be paid in full before or at the same time that equal monthly payments begin. "[A]dequate protection payments under § 1326(a)(1)(C) are independent of the plan, as they can begin before any plan is approved . . . . Accordingly, 'any unpaid claim' for attorney's fees 'shall be paid' either 'before or at the time of each' [equal monthly amount] payment required by the confirmed plan. . . . [T]he most natural reading of the phrases 'any unpaid claim' and 'shall be paid' is that any outstanding balance owed must be satisfied in full. . . . Accordingly, § 1326(b)(1) requires that an administrative claim for the debtor's attorney's fees be paid in full before or at the same time as EMA payments to secured creditors begin. . . . [T]he equal payment provision is silent as to the time at which EMA payments are to begin or end . . . . [W]hile the equal payment provision requires that EMA payments must be equal to each other, such payments need not be equal to the § 1326(a)(1)(C) adequate protection payments paid to the creditor until the EMA payments begin. . . . If a debtor were required to both commence EMA payments upon confirmation and pay his attorney's fees in full before or at the time of the first EMA payment, then the attorney's fee would effectively be due in full upon confirmation. . . . [I]nterpreting the equal payment provision to require that EMA payments begin at confirmation would be inconsistent with the attorney's fee provision and would create an absurd and infeasible result . . . . [T]he above interpretation of the equal payment provision is consistent with its purpose of protecting secured creditors' interests against depreciation in the value of their collateral during the bankruptcy proceeding.").

§ 73.10 Filing Fees

{423} ***In re Willis*, 604 B.R. 206, 207–09 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases, attorney is sanctioned for collecting a $500 "expense retainer" that included filing fees, then filing installment fee applications with respect to which no fees were paid. Attorney kept the $500 as attorney's fees. Installment filing fee applications misrepresented debtors' abilities to pay fees. Sanctions included that attorney develop a one-hour CLE program on best practices in consumer bankruptcy cases. "Willis received an advance expense retainer of $500 from each of his clients. Included as part of the expenses incurred in bankruptcy cases are the filing fees . . . . Willis caused the 32 bankruptcy cases to be filed without the payment of the requisite filing fees . . . . Instead, Willis filed motions asking that his clients be permitted to pay the filing fees over time . . . . Willis made no mention in his pleadings of the expense retainers previously paid to Willis by his clients. . . . In the cases which were closed or dismissed it appears that not only were the fees unpaid, it is undisputed that Willis did not return the unused funds to either his client or remit them to the Court. Instead, Willis kept the funds. . . . [T]hrough the course of administration of some of the cases . . . Willis received payment of further attorney fees from certain bankruptcy estates. . . . Such payments violate Fed.R.Bankr.P. 1006(b)(3) . . . . The Chapter 13 Trustee . . . filed the Disgorgement Motions to compel the payment of the filing fees, which for the first time made the Court aware of this problem with Willis' practices.").

§ 73.11 Filing Fees after BAPCPA

{424} ***In re Johnson*, 607 B.R. 250, 252–53 (Bankr. W.D. Pa. Oct. 28, 2019) (Taddonio)** (Filing fees unpaid in prior dismissed Chapter 13 case are a general unsecured claim in subsequent case and are not entitled to priority or payment in advance of other unsecured creditors. "The Trustee now requests authority to use funds currently in her possession from the 2017 Case to satisfy the filing fee that accrued in the 2014 Case. . . . [T]he Court finds that the *Motion* is premised on a fundamental legal flaw—that the Court enjoys some sort of priority regarding these unpaid fees that would allow a distribution to the Court before distributions to other creditors. The Trustee has not articulated any legal authority in support of such priority treatment, and the Court is unaware of any that would apply under these circumstances. . . . [A]ny unpaid filing fee assessed against a prior estate is nothing more than a prepetition general unsecured claim in a subsequent bankruptcy filing. . . . As the holder of a general unsecured claim, the Court, *if a proof of claim was filed on its behalf*, would be entitled to a pro rata distribution in pari passu with other similarly-situated creditors. Nothing more, nothing less. . . . The Court recognizes that the Trustee's request was well-intentioned if not legally sustainable. Although it would be tempting for the Court to direct the payment of its filing fees in this manner for hundreds of delinquent cases, it finds that it cannot sacrifice core bankruptcy principles simply to recover lost revenue. The central tenets of the Code mandate that creditor distributions occur in order of priority and that similarly-situated creditors are treated equally. . . . If creditors are expected to abide by these precepts, the Court must do likewise when acting as the holder of a comparable claim. Put simply, the Court cannot contravene the Code simply to move itself to the front of the unsecured-creditors line.").

{425} ***In re Welling*, No. 18-30900 HCD, 2018 WL 8223570 (Bankr. N.D. Ind. May 22, 2018) (Dees)** (Fourth Chapter 13 case since 2005 is dismissed with prejudice to eligibility for any relief under Title 11 until the $310 filing fee is paid in the current case.).

D. PROVIDING FOR SECURED CLAIMS

1. GENERAL RULES BEFORE AND AFTER BAPCPA

§ 74.1 General Rules before BAPCPA

§ 74.2 General Rules Changed by BAPCPA

§ 74.3 Acceptance of Plan before BAPCPA
§ 74.4 Acceptance of Plan after BAPCPA

{426} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (When Chapter 13 plan proposes to treat creditor as partially secured but creditor files proof of claim stating its claim is unsecured, creditor has waived secured status and is unsecured for plan confirmation purposes.).

{427} ***In re Boddy*, 604 B.R. 770, 771–73 (Bankr. E.D. Wis. Aug. 26, 2019) (Halfenger)** (Mortgagee's agreement to mediate in effort to modify mortgage does not satisfy "acceptance" condition for confirmation in § 1325(a)(5); mortgagee's objection to confirmation is sustained though the logic of the mortgagee's inconsistent positions is not obvious or reasonable. "The plan provides that the debtors will pay about $2,200 a month to the holder of a claim secured by a mortgage on their residence pending their participation with the holder of that claim in the court's Mortgage Modification Mediation Program . . . . The holder of the claim objects to confirmation of the plan, thus signaling that it does not accept the plan. Absent the claim holder's acceptance of the plan, the court cannot confirm it. . . . The Boddys moved for referral to MMM to explore a possible loan modification with Community First. . . . Community First did not object . . . . Though Community First consented to mediation, it objects to confirmation of the Boddys' amended plan. . . . Community First's chosen course is truly difficult to understand. It has engaged in mediation with the Boddys over whether it will agree to modify the Boddys' mortgage loan; yet it refuses to accept the Boddys' debt-adjustment plan that defers addressing how the Boddys will pay the unmodified mortgage-loan debt through the plan until after the parties complete the mediation. If Community First is potentially willing to agree to modify the mortgage-loan agreement—as its participation in mediation suggests—why refuse to accept a plan that postpones litigating whether the Boddys can feasibly cure their prepetition default and maintain payments due under the terms of the *unmodified* agreement?").

{428} ***In re Foley*, No. 18-29998-bhl, 2019 WL 3933616, at *3–*6 (Bankr. E.D. Wis. Aug. 19, 2019) (Ludwig)** (On sua sponte review, nonstandard plan provision that releases liens at completion of payment of allowed secured claim satisfies § 1325(a)(5)(A) because the failure to object is acceptance under these circumstances. "The appellate courts that have addressed the issue agree that a secured creditor accepts a plan under § 1325(a)(5) when the creditor does not object to confirmation. . . . At the bankruptcy court level, courts are more widely split. In the years shortly after the passage of BAPCPA, at least three bankruptcy courts refused to find § 1325(a)(5) satisfied by a creditor's failure to object. . . . [T]he chapter 13 plan confirmation process is not a normal contractual negotiation. . . . In the context of this formalized process, a secured creditor that has been properly served, but then fails to voice any objection, should be treated as having accepted the proposed plan. . . . If a plan violates any . . . independent free-standing confirmation requirement, in § 1325(a) or elsewhere in Title 11, the plan cannot be confirmed. . . . Where the Bankruptcy Code and Rules affirmatively provide a single mechanism for a creditor to weigh-in on a proposed plan, it makes sense to treat a creditor's failure to exercise that right as the creditor's acceptance of the plan. . . . Because a creditor's failure to object constitutes acceptance for purposes of § 1325(a)(5)(A), the plans at issue satisfy § 1325(a)(5). Having satisfied subsection (A) of § 1325(a)(5), the plans do not need to satisfy the lien-retention requirements in § 1325(a)(5)(B).").

§ 74.5 Surrender or Sale of Collateral before BAPCPA
§ 74.6 Surrender, Sale, Vesting in Lienholder and Payment with Property after BAPCPA

{429} ***In re Achinivu*, 612 B.R. 860, 866 (Bankr. D.N.J. Feb. 27, 2020) (Kaplan)** (Surrender of property to city as tax sale purchaser through confirmed plan did not vest title or ownership in city and will not support injunctive relief to stop city from enforcing property code ordinances against Chapter 13 debtor who remains owner of the property. "[T]here has been no consent to vesting title to the Trenton Properties in the City. . . . Debtor's surrender of his interest in the Trenton Properties under his plan serves merely as an offer to cede his property rights to the lienholders, and without acceptance by the City . . . does nothing to alter title and legal obligations relative to the properties. . . . [H]ad the Debtor included 'vesting' language in his plan, the result would have been no different, and the Court would not have entered injunctive relief. . . . '[V]esting' cannot be undertaken in a unilateral fashion by a grantor, but rather requires actual acceptance by the purported grantee in order to constitute a legal transfer of property.").

{430} ***In re Unacha*, 598 B.R. 693, 695–96 (Bankr. D. Mass. Apr. 23, 2019) (Katz)** ("Surrender" cannot be conditional to satisfy § 1325(a)(5)(C); plan cannot propose to surrender property only if mortgage modification is not successful. "As for the provision . . . the Debtor 'hereby surrenders' the subject property if loan modification efforts prove unsuccessful, the Court agrees with the Creditors that this type of equivocal surrender is not permissible under the Code absent a creditor's consent. . . . [I]f a debtor proposes to surrender property to a secured creditor in satisfaction of their claim pursuant to § 1325(a)(5)(C), that surrender cannot be delayed and must occur at or before the time of plan confirmation.").

§ 74.7 Classification of Secured Claims

{431} ***In re Brown*, No. 19-20011, 2019 WL 6119774 (Bankr. E.D. Ky. Nov. 15, 2019) (Wise)** (Chapter 13 plan cannot treat $33,324 claim secured by car worth $18,000 as fully secured but must instead bifurcate the claim and treat each part separately. Plan can pay

interest on the secured portion of the claim and separately classify the unsecured portion for more favorable treatment because the claim is cosigned. But the plan cannot treat the claim as if it were fully secured when it is not.).

§ 74.8 Direct Payment of Secured Claims by Debtor before BAPCPA
§ 74.9 Direct Payment of Secured Debt after BAPCPA

{432} ***McDonald v. Chambers (In re Chambers)*, No. 19-10421, 2020 WL 913815, at *3 (E.D. Mich. Feb. 26, 2020) (Goldsmith)** (District court approves Chapter 13 plan provision that debtor will pay car lender directly with a contract interest rate of 15%. Trustee cannot force debtor to use lower interest rate available under *Till v. SCS Credit Corp*., 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (May 17, 2004). Without consideration of effect of 15% rate on unsecured creditors, outcome is supported by reasoning that direct payment avoids trustee fees. "To employ the cramdown option, payments must be made through the Trustee, instead of directly to DFCU. . . . The consequence of funneling the payments through the Trustee is that the payments would be subject to the Trustee's statutory fee of 5.5%. . . . Therefore, although the prime-plus rate may be 50% less than the 15% contract rate, in the end, the rate will not result in a 50% savings that can be disbursed to unsecured creditors, as the Trustee appears to suggest. . . . *Till* does not *require* courts to set the risk adjustment rate at 1% to 3%. . . . The bankruptcy court has the discretion to select the appropriate risk adjustment rate, so long as it does not result in an 'eye-popping' interest rate. . . . The 15% contract rate, when compared to the prime-plus rate with the Trustee's statutory fee, is not an eye-popping interest rate in this case.").

{433} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

§ 74.10 Partially Secured Claims
§ 74.11 The Power to Modify

{434} ***In re Thompson*, No. 19 BK 06176, 2020 WL 728605 (Bankr. N.D. Ill. Jan. 15, 2020) (Schmetterer)** (Applying *In re LaMont*, 740 F.3d 397 (7th Cir. Jan. 7, 2014) (Manion, Kanne, Sykes), Chapter 13 debtor can modify claim of prepetition tax purchaser through plan under § 1322(b)(2) when petition is filed before expiration of redemption period under state law; however, no provision of the Bankruptcy Code tolls redemption period and that period expired during the Chapter 13 case. Plan cannot be confirmed that fails to pay tax purchaser's claim but dismissal is delayed to allow debtor another chance to propose confirmable plan.).

{435} ***In re Christiano*, 605 B.R. 1, 6–9 (Bankr. D. Conn. Aug. 2, 2019) (Nevins)** (Applying Connecticut law, because tax sale purchaser takes title to property at tax sale, subject to six-month right of redemption in taxpayer, when Chapter 13 case was filed at end of redemption period, right of redemption came into Chapter 13 estate and was extended for 60 days by § 108(b) but right expired when not exercised during case and no interest remained to be modified by Chapter 13 plan. Purchaser does not have a claim in the Chapter 13 case and cannot be compelled to accept full payment of the redemption amount over life of Chapter 13 plan. "[T]he Debtor lost her fee

simple interest in the Property when the Tax Sale occurred, subject only to her right to redeem. On the Petition Date, the Debtor's bankruptcy estate included the Debtor's personal right to redeem the Property, not the title to the Property itself. The Town, as the successful bidder at the Tax Sale, held title to the Property on the Petition Date, subject to the Debtor's right to redeem the Property by paying the Redemption Amount. . . . Debtor's right to redeem was not stayed by the filing of the bankruptcy petition, although it was extended until sixty (60) days after the Petition Date. . . . Courts in states in which the tax sale purchaser has a lien against the property on the petition date, generally find that the debtor may modify the 'claim' of the tax purchaser through a Chapter 13 plan pursuant to § 1322, since the property sold at a tax sale becomes a lien on property of the bankruptcy estate. . . . Courts in states where the tax purchaser acquires title to the property, similar to the procedure here . . . , generally determine that a tax sale purchaser did not hold a 'claim' on the petition date, but instead held title to the property subject to the relinquishment of title upon the payment of the redemption price.").

{436} ***In re Woodruff*, 600 B.R. 616 (Bankr. N.D. Ill. Apr. 30, 2019) (Barnes)** (Deciding the issue reserved in *In re Robinson*, 577 B.R. 294 (Bankr. N.D. Ill. Dec. 4, 2017) (Barnes), prepetition tax sale purchaser has a claim secured by a statutory lien for the redemption amount and an unsecured contingent claim for the equitable right to seek a tax deed if stay relief is granted. Prior to expiration of the redemption period, value of the equitable contingent claim is likely $0 because payment of the redemption amount would eliminate the unsecured contingent right to seek a tax deed. After expiration of the redemption period, the contingent equitable claim would increase dramatically to the value of the property less the amount of the redemption right—to avoid double recovery by the tax sale purchaser. Result is that the tax sale purchaser, after expiration of the redemption period, has two claims in the Chapter 13 case: a secured claim for the redemption amount, an unsecured claim for the full value of the property less the exemption amount. Neither of these claims is a personal liability of the debtor.).

§ 74.12 Lien Retention before BAPCPA
§ 74.13 Lien Retention after BAPCPA, Including in No-Discharge Cases

{437} ***Santander Consumer USA Inc. v. Donnadio (In re Donnadio)*, 608 B.R. 507, 509–14 (B.A.P. 6th Cir. Nov. 25, 2019) (Buchanan, Harrison, Wise)** (Plan cannot be confirmed that fails to explicitly state that liens are retained consistent with § 1325(a)(5)(B)(i)(I) notwithstanding that plan provides for full payment with interest of 910-day car claim consistent with the hanging sentence at the end of § 1325(a)(5). Bankruptcy Rule 9009 does not prohibit a nonstandard addition to Official Form 113 that adds lien retention language consistent with § 1325(a)(5)(B)(i)(I). "Section 3.3 of Official Form 113 does not discuss lien retention for claims treated thereunder. Therefore, Debtors' proposed plan did not have language addressing Creditor's retention of its lien in Section 3.3. . . . [T]he court overruled the objection, holding that, while Creditor held a secured claim that was not subject to bifurcation under § 506 owing to the 'hanging paragraph' in § 1325(a), the court was 'not convinced that this means § 1325(a)(5) applies to a 910-day claim exactly as it would to any other allowed, secured claim.' . . . Debtors' plan must fully satisfy § 1325(a)(5)(B) to achieve confirmation over Creditor's objection. . . . But it does not 'provide that' Creditor retains its lien on the Vehicle as § 1325(a)(5)(B)(i)(I) requires. Accordingly, the plan does not satisfy § 1325(a)(5) because it does not treat the 910 Claim in full compliance with § 1325(a)(5)(B). . . . Rule 9009(a) does not prohibit a chapter 13 plan, crafted from Official Form 113, from containing a nonstandard provision affording a 910 claimant lien retention rights in accordance with § 1325(a)(5)(B)(i)(I).").

{438} ***In re Foley*, No. 18-29998-bhl, 2019 WL 3933616, at *3–*6 (Bankr. E.D. Wis. Aug. 19, 2019) (Ludwig)** (On sua sponte review, nonstandard plan provision that releases liens at completion of payment of allowed secured claim satisfies § 1325(a)(5)(A) because the failure to object is acceptance under these circumstances. "The appellate courts that have addressed the issue agree that a secured creditor accepts a plan under § 1325(a)(5) when the creditor does not object to confirmation. . . . At the bankruptcy court level, courts are more widely split. In the years shortly after the passage of BAPCPA, at least three bankruptcy courts refused to find § 1325(a)(5) satisfied by a creditor's failure to object. . . . [T]he chapter 13 plan confirmation process is not a normal contractual negotiation. . . . In the context of this formalized process, a secured creditor that has been properly served, but then fails to voice any objection, should be treated as having accepted the proposed plan. . . . If a plan violates any . . . independent free-standing confirmation requirement, in § 1325(a) or elsewhere in Title 11, the plan cannot be confirmed. . . . Where the Bankruptcy Code and Rules affirmatively provide a single mechanism for a creditor to weigh-in on a proposed plan, it makes sense to treat a creditor's failure to exercise that right as the creditor's acceptance of the plan. . . . Because a creditor's failure to object constitutes acceptance for purposes of § 1325(a)(5)(A), the plans at issue satisfy § 1325(a)(5). Having satisfied subsection (A) of § 1325(a)(5), the plans do not need to satisfy the lien-retention requirements in § 1325(a)(5)(B).").

§ 74.14 Equal Monthly Installments after BAPCPA

{439} ***Credit Acceptance Corp. v. Thompson*, No. 1:19-cv-1802-JMS-TAB, 2019 WL 4860971, at *4–*6 (S.D. Ind. Oct. 2, 2019) (Magnus-Stinson)** (Embracing *In re DeSardi*, 340 B.R. 790 (Bankr. S.D. Tex. Apr. 21, 2006) (Isgur), Chapter 13 plan can make adequate protection payments to secured creditor for 21 months after confirmation while attorney's fees are paid in full and then make equal monthly payments to secured claimholder without violating equal-payment requirement in § 1325(a)(5)(B)(iii)(I). Equal monthly payments need not begin at confirmation and administrative expenses must be paid in full before or at the same time that equal monthly payments begin. "[A]dequate protection payments under § 1326(a)(1)(C) are independent of the plan, as they can begin before any plan is approved . . . . Accordingly, 'any unpaid claim' for attorney's fees 'shall be paid' either 'before or at the time of each' [equal monthly

amount] payment required by the confirmed plan. . . . [T]he most natural reading of the phrases 'any unpaid claim' and 'shall be paid' is that any outstanding balance owed must be satisfied in full. . . . Accordingly, § 1326(b)(1) requires that an administrative claim for the debtor's attorney's fees be paid in full before or at the same time as EMA payments to secured creditors begin. . . . [T]he equal payment provision is silent as to the time at which EMA payments are to begin or end . . . . [W]hile the equal payment provision requires that EMA payments must be equal to each other, such payments need not be equal to the § 1326(a)(1)(C) adequate protection payments paid to the creditor until the EMA payments begin. . . . If a debtor were required to both commence EMA payments upon confirmation and pay his attorney's fees in full before or at the time of the first EMA payment, then the attorney's fee would effectively be due in full upon confirmation. . . . [I]nterpreting the equal payment provision to require that EMA payments begin at confirmation would be inconsistent with the attorney's fee provision and would create an absurd and infeasible result . . . . [T]he above interpretation of the equal payment provision is consistent with its purpose of protecting secured creditors' interests against depreciation in the value of their collateral during the bankruptcy proceeding.").

{440} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *5 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Plan that would require purchaser of tax sale certificate to apply payments from debtor first to principal portion of claim would require recalculation of principal balance each month, which would inevitably lead to non-uniform payments in violation of the equal-installments requirement in § 1325(a)(5)(B)(iii)(I). "[S]hould the Debtors be permitted to apply payments to the interest-bearing principal first, rather than the interest as mandated under state law, the principal would continuously change every month. While the Debtors do not directly suggest making balloon payments to satisfy their debt, their methodology would by necessity require unequal monthly payments.").

{441} ***In re Holmes*, No. 18-14513, 2019 WL 4187698, at *6–*7 (Bankr. S.D. Ohio Aug. 26, 2019) (Hopkins)** ("Disparate and confounding" treatment of secured claims that mature before completion of payments under the plan defeats confirmation because equal-payments provision in § 1325(a)(5)(B)(iii) applies to entire § 1322(c) claim and claim can't be bifurcated to avoid that result. Although not completely clear, proposed plan seemed to bifurcate claims that would mature during the plan with part of each claim paid pro rata to avoid the equal-payments requirement in § 1325(a)(5)(B)(iii). "[A]ny treatment of a single debt under § 1322(c) must satisfy *both subsections*. . . . This means the equal monthly payments to secured creditors provision of § 1325(a)(5), as incorporated by § 1322(c)(2), must apply to the entire amount of each claim. . . . [S]ince § 1322(c) does not authorize bifurcated treatment of debts and the entirety of the amounts owed to Bayview and US Bank are subject to the equal payments provision of § 1325(a)(5)(B)(iii)(I), the Debtor's disparate and confounding treatment of the two creditors . . . and his miscasting of § 1322(c) are not justified under the law.").

{442} ***In re Olsen*, 604 B.R. 790, 799-806 (Bankr. W.D. Wis. July 22, 2019) (Furay)** (Applying minority interpretation of § 1325(a)(5)(B)(iii) on unique facts, plan that pays monthly installments until refinancing at some point during case satisfies equal-installments requirement. "State Bank lulled—or possibly misled—the Debtor into a false sense of security he was renewing the Note with State Bank with the same term as the original Note. . . . By the time the Debtor realized that was not the case, his loan was in default. . . . There are majority and minority interpretations of section 1325(a)(5)(B)(iii)(I). The majority holds this subsection prohibits balloon payments. . . . A growing minority view interprets the 'periodic payments' language differently. As noted in *In re Cochran*, 555 B.R. 892, 897–98[, 904 (Bankr. M.D. Ga. Sept. 1, 2016) (Carter)] . . . . ' . . . [T]he majority rule runs against the grain of Chapter 13's underlying purposes. . . . ' . . . While the majority interpretation may be proper in some contexts, the unique facts of this case unequivocally warrant application of the minority view. . . . State Bank is not the innocent creditor. It appears here with unclean hands. . . . State Bank suffers little, if any, risk of harm. . . . Even if the majority interpretation of section 1325(a)(5)(B)(iii)(I) might apply, based on the principles of estoppel, while the Plan *as written* might not be confirmable, it would be confirmable if it proposed 42 equal monthly payments followed by a balloon payment.").

§ 74.15 "Adequate Protection" after Confirmation after BAPCPA

{443} ***Martinez v. Wells Fargo Bank, N.A. (In re Martinez)*, No. CC-19-1037-FSTa, 2019 WL 5066773 (B.A.P. 9th Cir. Oct. 8, 2019) (not for publication) (Faris, Spraker, Taylor)** (Confirmed plan that required debtor to make ongoing maintenance payments directly to Wells Fargo was not preclusive of motion for stay relief based on postconfirmation default in direct payments; stay relief with adequate protection requirement was appropriate remedy for postconfirmation default in ongoing maintenance payments.).

{444} ***Credit Acceptance Corp. v. Thompson*, No. 1:19-cv-1802-JMS-TAB, 2019 WL 4860971, at *4–*6 (S.D. Ind. Oct. 2, 2019) (Magnus-Stinson)** (Embracing *In re DeSardi*, 340 B.R. 790 (Bankr. S.D. Tex. Apr. 21, 2006) (Isgur), Chapter 13 plan can make adequate protection payments to secured creditor for 21 months after confirmation while attorney's fees are paid in full and then make equal monthly payments to secured claimholder without violating equal-payment requirement in § 1325(a)(5)(B)(iii)(I). Equal monthly payments need not begin at confirmation and administrative expenses must be paid in full before or at the same time that equal monthly payments begin. "[A]dequate protection payments under § 1326(a)(1)(C) are independent of the plan, as they can begin before any plan is approved . . . . Accordingly, 'any unpaid claim' for attorney's fees 'shall be paid' either 'before or at the time of each' [equal monthly amount] payment required by the confirmed plan. . . . [T]he most natural reading of the phrases 'any unpaid claim' and 'shall be paid' is that any outstanding balance owed must be satisfied in full. . . . Accordingly, § 1326(b)(1) requires that an administrative claim for the debtor's attorney's fees be paid in full before or at the same time as EMA payments to secured creditors begin. . . . [T]he equal payment provision is silent as to the time at which EMA payments are to begin or end . . . . [W]hile the equal payment provision requires that EMA payments must be equal to each other, such payments need not be equal to the § 1326(a)(1)(C) adequate protection payments

paid to the creditor until the EMA payments begin. . . . If a debtor were required to both commence EMA payments upon confirmation and pay his attorney's fees in full before or at the time of the first EMA payment, then the attorney's fee would effectively be due in full upon confirmation. . . . [I]nterpreting the equal payment provision to require that EMA payments begin at confirmation would be inconsistent with the attorney's fee provision and would create an absurd and infeasible result . . . . [T]he above interpretation of the equal payment provision is consistent with its purpose of protecting secured creditors' interests against depreciation in the value of their collateral during the bankruptcy proceeding.").

{445} ***In re Sharp*, 608 B.R. 546 (Bankr. D. Kan. Oct. 23, 2019) (Somers)** (Proposed monthly payment to car lender of $278 is adequate to protect lender from depreciation during five-year plan for purposes of § 1325(a)(5)(B)(iii)(II). Court rejects lender's contention that 12-year-old car with more than 200,000 miles will depreciate more quickly because of age and because debtor is in Chapter 13.).

2. SPECIAL RULES AFTER BAPCPA: 910-DAY PMSI CAR CLAIMS AND BEYOND

§ 75.1 In General: Modification Without § 506
§ 75.2 Motor Vehicles and Any Other Thing of Value
§ 75.3 Only PMSIs Need Apply

{446} ***In re Robinson*, No. 19-13895-EPK, 2019 WL 4923244, at *1–*2 (Bankr. S.D. Fla. Oct. 4, 2019) (Kimball)** (PMSI nature of car loan is not defeated by provision in security agreement that included other existing loans and future advances; valuation and bifurcation are prohibited by hanging sentence at the end of § 1325(a). "[T]he security agreement relating to the subject vehicle includes a provision stating that the vehicle serves as collateral not only for the loan made to permit the debtors to acquire the vehicle, but also for any existing or future loans . . . . [D]ebtors granted a security interest in that vehicle not only to secure the purchase money financing at issue here, but also to secure existing and future financing provided by GECU. . . . The statute requires that GECU have a purchase money security interest. . . . GECU does in fact have a purchase money security interest in the vehicle. That the vehicle may also be collateral for other obligations does not diminish this fact.").

{447} ***In re Dennis*, 604 B.R. 690, 692–93 (Bankr. D.S.C. Aug. 5, 2019) (Burris)** (Car lease with purchase option exercised before Chapter 13 petition created a purchase-money obligation under South Carolina law that was protected from bifurcation by hanging sentence at end of § 1325(a). "Once Dennis' obligations under the Lease were satisfied, she exercised her option to purchase the Vehicle. . . . That was a 'purchase money obligation' because her contractual obligations were for value given to enable Dennis to acquire rights in the vehicle, and the value was used for that purpose.").

{448} ***In re Castillo*, No. 18-52006 SLJ, 2019 WL 2553610, at *5 (Bankr. N.D. Cal. June 18, 2019) (Johnson)** (Applying *Americredit Financial Services, Inc. v. Penrod (In re Penrod)*, 611 F.3d 1158 (9th Cir. July 16, 2010) (Goodwin, Fletcher, Mills), when negative equity was financed as part of 910-day car purchase, cash down payment is properly applied to reduce the negative equity on the way to determining the amount of the secured claim that must be paid in full. "[T]he $1,500 down payment was applied to reduce the negative equity and was not part of the purchase price of the Honda.").

§ 75.4 Acquired for Personal Use of Debtor

{449} ***In re Butler*, 609 B.R. 895 (Bankr. M.D. Ala. Dec. 5, 2019) (Sawyer)** (Car acquired for personal use of the debtor's former girlfriend was not acquired for personal use of the debtor for purposes of hanging sentence at the end of § 1325(a)(5); debt secured by car can be bifurcated under § 506(a).).

§ 75.5 Surrender in Full Satisfaction?
§ 75.6 Procedure and Miscellaneous Hanging-Sentence Issues

{450} ***Santander Consumer USA Inc. v. Donnadio (In re Donnadio)*, 608 B.R. 507, 509–14 (B.A.P. 6th Cir. Nov. 25, 2019) (Buchanan, Harrison, Wise)** (Plan cannot be confirmed that fails to explicitly state that liens are retained consistent with § 1325(a)(5)(B)(i)(I) notwithstanding that plan provides for full payment with interest of 910-day car claim consistent with the hanging sentence at the end of § 1325(a)(5). Bankruptcy Rule 9009 does not prohibit a nonstandard addition to Official Form 113 that adds lien retention language consistent with § 1325(a)(5)(B)(i)(I). "Section 3.3 of Official Form 113 does not discuss lien retention for claims treated thereunder. Therefore, Debtors' proposed plan did not have language addressing Creditor's retention of its lien in Section 3.3. . . . [T]he court overruled the objection, holding that, while Creditor held a secured claim that was not subject to bifurcation under § 506 owing to the 'hanging paragraph' in § 1325(a), the court was 'not convinced that this means § 1325(a)(5) applies to a 910-day claim exactly as it would to any other allowed, secured claim.' . . . Debtors' plan must fully satisfy § 1325(a)(5)(B) to achieve confirmation over Creditor's objection. . . . But it does not 'provide that' Creditor retains its lien on the Vehicle as § 1325(a)(5)(B)(i)(I) requires. Accordingly, the plan does not satisfy § 1325(a)(5) because it does not treat the 910 Claim in full compliance with § 1325(a)(5)(B). . . . Rule 9009(a) does not prohibit a chapter 13 plan, crafted from Official Form 113, from containing a nonstandard provision affording a 910 claimant lien retention rights in accordance with § 1325(a)(5)(B)(i)(I).").

3. VALUATION: BEFORE AND AFTER BAPCPA

§ 76.1 Valuation, Claim Splitting and *Dewsnup*

§ 76.2 Is Claim Secured, and By What?

{451} ***Highland Greens Homeowners Ass'n of Buena Park v. Basave de Guillen (In re Basave de Guillen)*, 604 B.R. 826 (B.A.P. 9th Cir. Aug. 26, 2019) (Lafferty, Spraker, Taylor)** (Applying California law, bankruptcy court correctly determined that homeowners' association's recorded notice of lien created a secured claim only with respect to assessments and judgments before the notice—not a continuing lien that would include assessments and fees after recording of the notice.).

{452} ***Davis v. Carrington*, No. 2:18-CV-417-HAB, 2019 WL 4090224 (N.D. Ind. Aug. 28, 2019) (Brady)** (Creditor with judgment lien on debtor's interest in real property owned as tenants by the entirety with debtor's nonfiling spouse has a secured claim in Chapter 13 case. A judgment lien on marital property is a present property right and must be treated as a secured claim. The value of that claim, exemption rights in the property and lien avoidance issues are reserved.).

{453} ***In re LeBlanc*, No. 18-11748, 2019 WL 2337101 (E.D. La. June 3, 2019) (Feldman)** (Bankruptcy court correctly determined that under Louisiana law metes and bounds description of lot 46 did not create mortgage on lot 47 notwithstanding correct municipal address shared at one time by both lots. Original mortgage with incorrect property description did not create mortgage on lot that was not described. Remand necessary to determine priority of mortgages given subsequent events including a correcting mortgage deed and two intervening encumbrances.).

{454} ***Thompson v. Roberts (In re Thompson)*, 612 B.R. 396 (Bankr. E.D. Wis. Feb. 7, 2020) (Halfenger)** (Former spouse's lien arose from recording of state court divorce judgment—not from language of the judgment itself—and is junior in priority to mortgage and homestead exemption; former spouse's judgment is partially secured by value in home.).

{455} ***Maldonado Perez v. Banco Santander De P.R. (In re Maldonado Perez)*, No. 18-00102, 2019 WL 5799327 (Bankr. D.P.R. Nov. 6, 2019) (Tester)** (Chapter 13 debtor's complaint to determine value and extent of lien on property fails for lack of jurisdiction when property is owned by a corporation and dissolution of the corporation under Puerto Rican law does not vest ownership in the debtor as owner of the corporation.).

{456} ***In re Mojica Nieves*, No. 18-01866 (ESL), 2019 WL 4936868 (Bankr. D.P.R. Oct. 7, 2019) (Lamoutte)** (Creditor with right of setoff is appropriately provided for as a secured creditor under § 1325(a)(5) with plan payments and lien retention and creditor cannot exercise right of setoff under § 553 without first seeking stay relief. Creditor cannot force Chapter 13 debtor to surrender savings account and dividends deposited with creditor when plan provides for payment of claim consistent with § 1325(a)(5).).

{457} ***In re Boykins*, No. 17-08957-JMC-13, 2019 WL 4686563 (Bankr. S.D. Ind. Sept. 17, 2019) (Carr)** (Under Indiana law, homeowners' association lien is a secured claim perfected by recording but only to the extent of amount in notice of lien at the time of recording. Subsequent assessments and fees are not included in the notice and are not secured by the homeowners' association lien.).

{458} ***In re Hodgins*, No. 18-21810, 2019 WL 4296859 (Bankr. E.D. Mich. Sept. 10, 2019) (Opperman)** (Neither relief under Rule 9024 nor reconsideration under § 502(j) is appropriate with respect to order overruling claim objection when lender secured by siding on debtor's home perfected its lien under Michigan UCC by filing in register of deeds office.).

{459} ***In re Coleman*, No. 19-11091, 2019 WL 4267563 (Bankr. E.D. La. Sept. 6, 2019) (Magner)** (Omission of legal description for separate lot in mortgage was a substantive error, not a clerical error, so it could not be corrected by a Deed of Correction signed only by the lender. Separate lot was not collateral for mortgagee's loan and value of secured claim is adjusted accordingly.).

{460} ***In re Beasley*, No. 18-04268-DSC13, 2019 WL 3403361 (Bankr. N.D. Ala. July 3, 2019) (Crawford)** (Former spouse has secured claim to extent of value of assets scheduled and not scheduled by Chapter 13 debtor based on recorded judgments in domestic relations litigation.).

§ 76.3 As of What Date Is Value Determined?

{461} ***In re Gomes*, No. 8:18-bk-07978-RCT, 2020 WL 556279 (Bankr. M.D. Fla. Feb. 3, 2020) (Colton)** (Petition date is valuation date for lien-stripping purposes in Chapter 13 case.).

{462} ***In re Graves*, No. 19-01345-NPO, 2019 WL 6170789 (Bankr. S.D. Miss. Nov. 19, 2019) (Olack)** (Petition date determines value under § 506(a) for purposes of lien stripping a junior mortgage in a Chapter 13 case.).

{463} ***In re Schroeder*, 607 B.R. 329 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Amended claim filed more than a year after confirmation and long after claims bar date that more than doubles the amount of claim that is secured based on improvements to

property after the petition is disallowed. Valuation for bifurcation purposes should be focused on confirmation date, not a year after confirmation.).

§ 76.4 Valuation in Chapter 13 Cases before *Rash*
§ 76.5 *Rash* and Valuation
§ 76.6 Valuation after *Rash*
§ 76.7 Valuation after BAPCPA

{464} ***Carden v. Ditech Fin., LLC (In re Carden)*, No. 19-40012-JJR, 2020 WL 768585 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson)** (Disputed facts precluded summary judgment with respect to value of mobile home in Chapter 13 case in which debtor discharged personal liability in prior Chapter 7 case, Ditech has unavoidable interest in mobile home under superseded Alabama lien perfection law and Ditech has only claim that will be payable through the Chapter 13 plan.).

{465} ***In re Graves*, No. 19-01345-NPO, 2019 WL 6170789 (Bankr. S.D. Miss. Nov. 19, 2019) (Olack)** (After dissecting competing appraisals and eliminating "entrepreneurial profit" from the calculation, property subject to two mortgages is valued at the midpoint of comparable sales for purposes of lien stripping in a Chapter 13 case. Lien stripping is reserved pending further discussion whether two loans secured by one deed of trust are one claim or two for lien-stripping purposes.).

{466} ***In re Hawkins*, 606 B.R. 632 (Bankr. E.D. Pa. Oct. 25, 2019) (Chan)** (After review of competing appraisals, debtor's appraiser used better comparables and the value of the debtor's home is fully consumed by the first mortgage; second mortgage is wholly unsecured under § 506(a) and not protected from modification by § 1322(b)(2).).

4. PRESENT VALUE: INTEREST, BEFORE AND AFTER BAPCPA

§ 77.1 "Value, As of the Effective Date of the Plan" Means Interest
§ 77.2 Interest Rate Anarchy: Present Value before *Till*
§ 77.3 Present Value after *Till*

{467} ***McDonald v. Chambers (In re Chambers)*, No. 19-10421, 2020 WL 913815, at *3 (E.D. Mich. Feb. 26, 2020) (Goldsmith)** (District court approves Chapter 13 plan provision that debtor will pay car lender directly with a contract interest rate of 15%. Trustee cannot force debtor to use lower interest rate available under *Till v. SCS Credit Corp*., 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d d787 (May 17, 2004). Without consideration of effect of 15% rate on unsecured creditors, outcome is supported by reasoning that direct payment avoids trustee fees. "To employ the cramdown option, payments must be made through the Trustee, instead of directly to DFCU. . . . The consequence of funneling the payments through the Trustee is that the payments would be subject to the Trustee's statutory fee of 5.5%. . . . Therefore, although the prime-plus rate may be 50% less than the 15% contract rate, in the end, the rate will not result in a 50% savings that can be disbursed to unsecured creditors, as the Trustee appears to suggest. . . . *Till* does not *require* courts to set the risk adjustment rate at 1% to 3%. . . . The bankruptcy court has the discretion to select the appropriate risk adjustment rate, so long as it does not result in an 'eye-popping' interest rate. . . . The 15% contract rate, when compared to the prime-plus rate with the Trustee's statutory fee, is not an eye-popping interest rate in this case.").

5. MISCELLANEOUS SECURED CLAIMS ISSUES

§ 78.1 Full Payment of Allowed Secured Claim

{468} ***In re Brown*, No. 19-20011, 2019 WL 6119774 (Bankr. E.D. Ky. Nov. 15, 2019) (Wise)** (Chapter 13 plan cannot treat $33,324 claim secured by car worth $18,000 as fully secured but must instead bifurcate the claim and treat each part separately. Plan can pay interest on the secured portion of the claim and separately classify the unsecured portion for more favorable treatment because the claim is cosigned. But the plan cannot treat the claim as if it were fully secured when it is not.).

§ 78.2 Calculating Payments to Secured Claim Holders
§ 78.3 Accounting for Adequate Protection
§ 78.4 Curing Default, Waiving Default, Maintaining Payments and Combinations
§ 78.5 Oversecured Claim Holders
§ 78.6 Oversecured Claims after BAPCPA

{469} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *3–*4 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Citing § 511 and New Jersey law, plan cannot require purchaser of tax sale certificate to apply payments from Chapter 13 debtor first to principal portion of claim; state law fixes interest rate and applies GAAP principles to pay interest and penalties before principal. "SLS, as a tax certificate holder, is treated as a secured creditor, holding a lien against the Debtors' Property. . . . [T]o the extent SLS is over-secured, upon application of 11 U.S.C. § 506(a), it is entitled to collect interest on its claim at 'the rate determined under applicable nonbankruptcy law.' 11 U.S.C. § 511(a). . . . Pursuant to § 511, state law must be applied when determining interest due to an over-secured claimant. . . . [M]unicipalities are required to follow the Generally Accepted Accounting Principles . . . . Debtor may not deviate by applying payments to principal first and interest thereafter.").

{470} ***In re Smith*, No. 19-30059-dwh13, 2020 WL 129439 (Bankr. D. Or. Jan. 8, 2020) (Hercher)** (Oversecured lender is allowed attorney's fees with 7.5% interest payable through confirmed plan. Lender is not entitled to immediate payment of attorney's fees but instead is entitled by confirmed plan to be paid at sale or refinance.).

{471} ***In re Anders*, No. BK17-41268, 2019 WL 1768874 (Bankr. D. Neb. Feb. 19, 2019) (Saladino)** (Objection to oversecured business loan is sustained in part based on finding that lender failed to use good business judgment by ordering excessive inspections and appraisals and by miscalculating late charges. Lender failed to accurately follow SBA guidelines in administering the loan.).

§ 78.7 Pawn Transactions
§ 78.8 Pawn Transactions after BAPCPA

{472} ***In re Thompson*, No. 18-32609-BPC, 2019 WL 5485218 (Bankr. M.D. Ala. Oct. 24, 2019) (Creswell)** (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when redemption period in title pawn contract expired before the petition or the debtor failed to redeem within the redemption period as extended by § 108, no interest in the car came into the Chapter 13 estate or the estate's interest fell out of the estate and Title Max is entitled to stay relief or to a declaration that no stay applies. Title Max sufficiently complied with Alabama law by notation of its lien on the car title and use of electronic signatures for the debtor on the pawn tickets.).

{473} ***In re Thorpe*, No. 18-20082, 2019 WL 1785303, at *4 (Bankr. S.D. Ga. Mar. 29, 2019) (Kim)** (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when redemption period under title pawn contract expired prepetition, TitleMax became owner of car and no interest followed debtor into Chapter 13 case. Title pawn lender is not bound by confirmed plan that paid its claim in installments because no interest in car came into the Chapter 13 estate when redemption period expired before the petition. "[T]here are limits to the preclusive effect of a confirmed plan that is not perfectly legal. . . . Where the redemption period on a pawned vehicle expires *prior to the petition date*, the pawned vehicle does not become part of the debtor's bankruptcy estate, the Court has no jurisdiction over it, and the plan cannot include it. . . . Unfortunately for Debtor, the 2018 Plan attempted to created [*sic*] estate property that simply did not exist on the petition date . . . . The redemption period on the subject title pawn expired pre-petition. The Vehicle was not property of the bankruptcy estate . . . because Debtor's ownership interest in the Vehicle was automatically extinguished pre-petition by operation of [Georgia law] when the Vehicle became the property of TitleMax.").

6. HOME MORTGAGES: BEFORE AND AFTER BAPCPA

§ 79.1 Most Home Mortgages Cannot Be Modified: § 1322(b)(2) and *Nobelman*

{474} ***Jones v. U.S. Bank, N.A.*, No. 3:18-cv-01680, 2019 WL 5296993 (M.D. Pa. Oct. 18, 2019) (Mariani)** (Debtor's argument that mortgage can be bifurcated and plan can pay secured portion in full was rejected by the Supreme Court in *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (June 1, 1993), as a modification prohibited by § 1322(b)(2). District court rejects Chapter 13 debtor's argument that payment of the secured portion of the motion is "satisfaction" of the secured claim, not "modification" for purposes of the protection in § 1322(b)(2).).

§ 79.2 Principal Residence Redefined by BAPCPA
§ 79.3 "Best Practices" and the Protection from Modification in § 1322(b)(2)

{475} ***Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, No. 02-10605, 2009 WL 10714861, at *1–*5 (Bankr. S.D. Tex. Mar. 6, 2009) (Isgur)** (Bankruptcy court recommends that district court deny motion by Countrywide to withdraw reference of putative class action alleging misconduct by Countrywide in management of mortgages in confirmed Chapter 13 cases, including unlawful assessment of late charges, failure to inform debtors of postpetition fees, costs and other charges, failure to comply with Bankruptcy Rule 2016 noticing requirements and the like. "Plaintiffs' complaint essentially alleges that Countrywide has violated bankruptcy court orders and has deprived Plaintiffs of a fundamental chapter 13 purpose: a fresh start. . . . Plaintiffs allege . . . after Plaintiffs have received their discharge . . . , Countrywide is seeking to collect accrued fees and expenses. . . . Principal, interest, and arrearages provided for by the plan are not discharged. Nor are Reimbursable Expenses incurred (but not collected) discharged. Though the Reimbursable Expenses are provided for by the plan through § 1322(b)(2)'s incorporation of the contractual right to collect the expenses, mortgage debts provided for by the plan but not paid by the debtor are not discharged. The fact that the debts are not discharged does not mean that the debts are not satisfied. When the plan is fully performed according to its terms, the arrearage has been cured and the ongoing mortgage payments have been maintained. Sections 1322(b)(5) and 1322(c), allowing debtors to cure defaults and remain current on their mortgage obligations, and the court order that confirmed the plan and imposed the binding effect of a plan provided by § 1327(a), have the effect of bringing debtors current on their mortgage obligations. . . . [A] mortgage lender must file a Rule 2016 application before collecting any Reimbursable Expenses while a chapter 13 case remains pending. Absent the notice and court oversight triggered by Rule 2016(a), the debtor would have no knowledge of undisclosed, accruing fees charged to their account. The concepts of 'curing' an arrearage and 'maintenance of payments' would be ephemeral. Collecting Reimbursable Expenses without filing a Rule 2016 application or after the completion of a debtor's plan obligations would violate the order confirming the debtor's chapter 13 plan.

A mortgage lender may not disrupt the payment allocation scheme provided by the plan by diverting amounts dedicated to arrearages or principal and interest without court approval. Until the Court reviews a Rule 2016 application and issues an order modifying the payment allocation scheme provided by a chapter 13 plan, a mortgage lender may not collect Reimbursable Expenses without violating the order confirming the debtor's plan. Chapter 13 and the fresh start purpose do not allow a lender to place a former debtor in default and foreclose on a debtor's home for undisclosed charges that accrued during the course of the bankruptcy case."), *report and recommendation adopted*, 421 B.R. 341 (S.D. Tex. Dec. 3, 2009) (Hanen).

a. HOME MORTGAGES THAT ARE NOT PROTECTED FROM MODIFICATION

§ 80.1 In General: Claims That Are Not Secured Only by Security Interest in Real Property That Is the Debtor's Principal Residence
§ 80.2 Statutory Liens and Judgment Liens, Including Foreclosure Judgments

{476} ***Holmes v. Community Hills Condo. Ass'n (In re Holmes)*, 603 B.R. 757, 765–77 (D.N.J. May 21, 2019) (McNulty)** (On further appeal after remand, condominium association is secured by both a statutory lien and a consensual security interest and thus forfeits protection from modification in § 1322(b)(2). Small portion of association's statutory priority lien complies with state law and has priority that would entitle that portion to secured status. Balance of condominium association's lien—statutory and consensual—is unsecured and can be crammed down. "The case law has meandered as to whether a condominium lien like this one is a statutory or consensual one. . . . Courts, even within this District, are split on whether a claim for condominium assessments is secured by a statutory lien, a security interest, or both. . . . Community does have a state-law statutory lien on the Condo . . . . I also find that Community's claim is also supported by a security interest created by the Master Deed. . . . Two liens—one statutory, and the other a security interest—can coexist and support the same claim without violating the principle that any particular lien must be one thing or the other. . . . There is a statutory lien here. It follows that even if there is a security interest, I cannot find that Community's claim is 'only' secured by a security interest within the meaning of § 1322(b)(2). . . . Community's claim does not fall within the anti-modification clause of § 1322(b)(2). It is subject to modification, if appropriate, in a Chapter 13 plan.").

§ 80.3 Non-Purchase Money, "Short-Term" and Real Estate-Secured Loans for Purposes Other Than Acquiring Residence
§ 80.4 Timing Issues: Lien Waiver, Surrender or Avoidance
§ 80.5 Timing Issues: Prepetition Changes in Collateral or Use
§ 80.6 Rental Property, Farmland and Other Income-Producing Property

{477} ***Mead v. HSBC Bank USA, Nat'l Ass'n (In re Mead)*, No. CO-19-001, 2019 WL 5257957 (B.A.P. 10th Cir. Oct. 16, 2019) (not for publication) (Cornish, Hall, Loyd)** (In context of determining whether property was necessary for an effective reorganization for stay relief purposes under § 362(d)(2), property that contained a principal residence and several rental units was protected from modification by § 1322(b)(2).).

{478} ***In re Olsen*, 604 B.R. 790 (Bankr. W.D. Wis. July 22, 2019) (Furay)** (Note secured by single parcel of real property that includes residence and commercial building used by the debtor in restoration business is not protected from modification by § 1322(b)(2); plan can modify the note that matured before the petition to be paid in full through a combination of monthly payments and refinancing.).

§ 80.7 Mobile Homes

{479} ***In re Mills*, No. 18-42365, 2019 WL 2335844 (Bankr. N.D. Ohio May 31, 2019) (not for publication) (Kendig)** (Manufactured home with respect to which title has not been surrendered to the state cannot be real property under Ohio law and Chapter 13 plan can value and cram down the lienholder notwithstanding § 1322(b)(2) protection from modification.).

§ 80.8 Claims Secured by Bank Deposits, "Shares" or Escrow Account Balances
§ 80.9 Claims Secured by Insurance Policies, Proceeds or Premiums
§ 80.10 Claims Secured by an Assignment of Rents
§ 80.11 Claims Secured by Fixtures, Furniture, Equipment, Appliances, Machinery, Easements, Appurtenances, Mineral Rights, Water Rights and the Debtor's First Born
§ 80.12 Claims Secured by Miscellaneous Other Real or Personal Property
§ 80.13 Modification of Unsecured Home Mortgage: Before and After BAPCPA

{480} ***Asset Mgmt. Holdings, LLC v. Hernandez (In re Hernandez)*, No. CC-19-1013-FSTa, 2019 WL 5066745, at *4 (B.A.P. 9th Cir. Oct. 8, 2019) (not for publication) (Faris, Spraker, Taylor)** (Applying *Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris), stripped-off lienholder in Chapter 20 case does not have an allowable unsecured claim. That debtor delayed a year during which lienholder received distributions as an unsecured creditor does not change disallowance of the unsecured claim. "[A]fter a lien is 'stripped' in a chapter 13 case, 'the junior lienholder will

ordinarily be left with an allowed unsecured claim . . . .' . . . [T]he result is different when the debtor obtains a chapter 7 discharge, then avoids a wholly unsecured lien in a subsequent chapter 13 case . . . . [T]he chapter 7 discharge extinguishes the debtor's personal liability to the creditor, leaving the creditor with no allowed unsecured claim in the subsequent chapter 13 case.").

{481} ***Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710, 715–16 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris)** (Applying logic of *Free v. Malaier (In re Free)*, 542 B.R. 492 (B.A.P. 9th Cir. Dec. 17, 2015) (Jury, Kirscher, Faris), after discharge of personal liability in prior Chapter 7 case and strip-off of surviving lien under *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. Dec. 24, 2002) (D.W. Nelson, T.G. Nelson, Schwarzer), no allowable unsecured claim remains to be paid in the Chapter 13 case. "Under § 524, the chapter 7 discharge enjoins enforcement of the claim against the debtor personally, and nothing in the Bankruptcy Code authorizes resurrecting the creditor's in personam rights. . . . ' . . . Congress knows how to turn a nonrecourse claim into a recourse obligation (see § 1111(b)(1)), and no such text can be found in § 506(a)(1).' . . . [T]his Panel has held that, for eligibility purposes, debts for which in personam liability has been discharged in a prior chapter 7 case cannot be counted toward the unsecured debt limitation of § 109(e). . . . [I]n light of Ms. Washington's claim objection, the court was required to consider whether the unsecured claim was enforceable against the debtor. Because it was not, the claim should have been disallowed. There is simply no statutory basis for resurrecting the debtor's personal liability or for treating the claim as a claim against the estate."), *rev'g* 587 B.R. 349, 352-56 (Bankr. C.D. Cal. July 25, 2018) (Houle) (Notwithstanding discharge of personal liability in prior Chapter 7 case, after stripping off wholly unsecured junior lien an allowed unsecured claim results that must be paid through the Chapter 13 plan. "Because there is no *in personam* liability on the underlying debt, it could be argued that there is no unsecured claim after the § 506(a) valuation. If there is no unsecured claim, however, the debtor would be ineligible to use § 1322(b)(2) to avoid the lien. Therefore, lien avoidance is only statutorily permissible if § 506(a) is interpreted as 'creating' an unsecured claim for the purposes of the Chapter 13 bankruptcy. . . . [O]nly one of two things can be true: (1) lien stripping is unavailable in Chapter 20 cases; or (2) the wholly underwater junior lien becomes an unsecured claim upon lien avoidance.").

{482} ***Hamilton v. Pennsylvania Hous. Fin. Agency*, No. 18-5417, 2020 WL 1062240 (E.D. Pa. Mar. 5, 2020) (Savage)** (Declining to apply "equitable subordination," modification agreement with first mortgagee increased the first mortgage debt to the point where it exceeded value of property, rendering second mortgage wholly unsecured and subject to being stripped off in Chapter 13 case.).

{483} ***In re Hoggatt*, No. 19-11903, 2020 WL 1042028 (Bankr. E.D. La. Mar. 3, 2020) (Grabill)** (Objection to treatment of mortgage claim as unsecured is overruled when mortgagee failed to prove the extent of its mortgage lien and only evidence of value indicated that mortgagee's lien was junior to other liens that exceeded value of property, rendering objecting creditor's lien wholly unsecured under § 506(a).).

{484} ***In re Gomes*, No. 8:18-bk-07978-RCT, 2020 WL 556279 (Bankr. M.D. Fla. Feb. 3, 2020) (Colton)** (Debtor's attempt to strip off liens on partially built home in excess of $81,000 fails when court resolves competing appraisals and determines that property is worth $300,000.).

{485} ***Bartlett v. Mainstreet Credit Union (In re Bartlett)*, No. 19-07003, 2020 WL 290649 (Bankr. D. Kan. Jan. 14, 2020) (Somers)** (After resolving conflicting appraisals in favor of debtors' appraiser, second mortgage is unsupported by value and can be stripped off.).

{486} ***In re Milauckas*, No. 19-12388-B-13, 2019 WL 6332921 (Bankr. E.D. Cal. Nov. 22, 2019) (Lastreto)** (For lien-stripping purposes, after considering competing appraisals, first mortgage exceeds value of residence and junior mortgage is wholly unsecured and can be stripped off.).

{487} ***In re Graves*, No. 19-01345-NPO, 2019 WL 6170789 (Bankr. S.D. Miss. Nov. 19, 2019) (Olack)** (After dissecting competing appraisals and eliminating "entrepreneurial profit" from the calculation, property subject to two mortgages is valued at the midpoint of comparable sales for purposes of lien stripping in a Chapter 13 case. Lien stripping is reserved pending further discussion whether two loans secured by one deed of trust are one claim or two for lien-stripping purposes.).

{488} ***In re Hawkins*, 606 B.R. 632 (Bankr. E.D. Pa. Oct. 25, 2019) (Chan)** (After review of competing appraisals, debtor's appraiser used better comparables and the value of the debtor's home is fully consumed by the first mortgage; second mortgage is wholly unsecured under § 506(a) and not protected from modification by § 1322(b)(2).).

{489} ***In re Poole*, No. 4:16-bk-12638-SDR, 2019 WL 4805830 (Bankr. E.D. Tenn. Sept. 30, 2019) (Rucker)** (On remand, bank holds three notes secured by one deed of trust and each note is a separate claim; the absence of value to secure the second and third notes empowers the Chapter 13 debtor to treat the second and third claims as wholly unsecured to be stripped off through the plan.).

{490} ***In re Rumbin*, No. 18-31424 (AMN), 2019 WL 3890317, at *6–*7 (Bankr. D. Conn. Aug. 16, 2019) (Nevins)** (Embracing *Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris), and *In re Rosa*, 521 B.R. 337 (Bankr. N.D. Cal. Dec. 10, 2014) (Novack), unsecured portions of liens that survived discharge in prior Chapter 7 case are nonrecourse debts that are not counted for eligibility purposes in subsequent Chapter 13 case. "When a secured claim is non-recourse, although the lien holder may have a claim against the debtor's property, . . . the individual debtor, as opposed to his or

her property, does not have any liability on the underlying debt and has no unsecured 'debt' to the creditor as defined by § 101(12). . . . To the extent the Chapter 13 Trustee adopts the reasoning of several courts that conclude that a Chapter 13 debtor must treat the unsecured amount of a lien for which *in personam* liability was discharged in a prior Chapter 7 case as an unsecured claim for Chapter 13 plan purposes, I disagree. While many courts would resurrect *in personam* liability and require such treatment, I find a rationale recently articulated by the Bankruptcy Appellate Panel for the Ninth Circuit . . . to be more persuasive. . . . I will follow the *Rosa* decision and depart from contrary authority within this Circuit and elsewhere, recognizing there are many courts that disagree. As the *Rosa* court articulated, to hold otherwise would be to impose liability on a Chapter 13 estate when none exists for the Chapter 13 debtor.").

{491} ***In re Kim*, No. 18-26438-DER, 2019 WL 3557109 (Bankr. D. Md. Aug. 2, 2019) (Rice)** (Applying Maryland law, junior lienholder may have priority over senior lienholder to extent senior lienholder modified loan to exceed amount shown on face of deed of trust; to determine whether debtors can strip off junior lien, senior lienholder must be served and joined in lien-stripping litigation.).

{492} ***In re Preedy*, 603 B.R. 783 (Bankr. D.S.C. June 26, 2019) (Waites)** (Wholly unsecured junior mortgage lien must be released of record because lienholder is bound by confirmed plan that valued the lien at $0 and plan contained a provision that voided lien at completion of payments. After discharge mortgage holder made no effort to release the lien and debtor is correct that mortgage must be marked as void and cancelled by the registrar of deeds.).

{493} ***In re Leonidas*, No. 6:17-bk-19739-MH, 2019 WL 2527884, at *2–*6 (Bankr. C.D. Cal. June 19, 2019) (Houle)** (In Chapter 20 context, lienholder with respect to which the debtor discharged personal liability has an allowable unsecured claim after lien stripping. "The avoidance of a consensual lien in a Chapter 13 case is effectuated by a two-step process. . . . 'Section 506(a) . . . provides a valuation procedure and bifurcates creditors' claims into "secured claims" and "unsecured claims."' . . . Then the Court applies 11 U.S.C. § 1322(b)(2). . . . [T]he plan may modify the rights of the creditor under § 1322(b)(2), avoiding the lien. . . . If the debtor's personal liability on the underlying debt has been discharged in a previous bankruptcy case, however, the issue is more complex. Because there is no longer *in personam* liability on the underlying debt, it could be argued that there is no unsecured claim after the § 506(a) valuation. But if the lienholder is not left with any unsecured claim . . . the debtor would be ineligible to use § 1322(b)(2) to avoid the lien or otherwise modify the rights of the creditor. Therefore, lien avoidance can only be statutorily permissible in this situation if the § 506(a) valuation is interpreted as resulting in an unsecured claim irrespective of any prior discharge for purposes of the Chapter 13 bankruptcy. . . . [B]ecause the Ninth Circuit in [*HSBC Bank USA, Nat'l Ass'n v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. Oct. 1, 2015) (Paez, Bybee, Callahan),] has held that lien stripping is available to Chapter 20 debtors under § 1322, the § 506(a)(1) valuation must, therefore, essentially create, resurrect, or otherwise result in a claim which is considered an 'unsecured claim' for the purposes of the instant bankruptcy case—this result is logically unambiguous and simply unavoidable.").

{494} ***In re Barton*, No. 18-04342, 2019 WL 2352172 (Bankr. W.D. Mich. May 31, 2019) (Dales)** (Accepting valuation by debtor's expert, junior lienholder is wholly unsecured and Chapter 13 plan can strip off junior lien.).

{495} ***In re Hurtado*, No. 18 B 30248, 2019 WL 1977322 (Bankr. N.D. Ill. May 2, 2019)** (Wholly unsecured junior mortgage can be stripped off Chapter 13 debtor's residence.).

§ 80.14 Providing for and Accounting for an Unprotected Mortgage: Modifying, Curing Default, Maintaining Payments and Combinations

b. CURING DEFAULT AND MAINTAINING PAYMENTS ON HOME MORTGAGES

§ 81.1 Overview: General Rules for Saving Debtor's Home

1) WHAT DEFAULTS CAN BE CURED?

§ 82.1 Prepetition Defaults—When Is Property "Sold" at Foreclosure?

{496} ***U.S. Bank Nat'l Ass'n v. Vertullo (In re Vertullo)*, 610 B.R. 399 (B.A.P. 1st Cir. Jan. 10, 2020) (Bailey, Hoffman, Finkle)** (Declining to overrule *TD Bank, N.A. v. LaPointe (In re LaPointe)*, 505 B.R. 589, 595 (B.A.P. 1st Cir. Feb. 24, 2014) (Feeney, Tester, Finkle), and reaffirming gavel rule, prepetition foreclosure sale ended all legal or equitable interest of the debtor for purposes of mortgage rehabilitation under § 1322(c) and plan cannot be confirmed that purports to cure default and maintain payments.), *rev'g and remanding* 593 B.R. 92, 98 (Bankr. D.N.H. Oct. 1, 2018) (Harwood) (Embracing *In re Beeman*, 235 B.R. 519 (Bankr. D.N.H. June 21, 1999) (Deasy), and rejecting *TD Bank, N.A. v. LaPointe (In re LaPointe)*, 505 B.R. 589 (B.A.P. 1st Cir. Feb. 24, 2014) (Feeney, Tester, Finkle), Chapter 13 debtor can cure default under § 1322(c)(1) when foreclosure auction occurred prepetition but purchaser failed to complete foreclosure process by recording trustee's deed. Gavel rule is rejected in favor of "unambiguous" requirement that sale process be completed under state law by recording of trustee's deed. "The plain language of § 1322(c)(1) focuses on the sale of the debtor's residence, and not upon the debtor's rights in the residence. The operative moment when a debtor can no longer cure a default in a mortgage secured by the debtor's residence under § 1322(c)(1) is the sale of the debtor's residence itself—the trigger point being when 'such residence is sold'—not just when the foreclosure sale process is complete only as to the mortgagor.").

{497} ***In re Lagares Santana*, No. 18-07127 (ESL), 2020 WL 412185 (Bankr. D.P.R. Jan. 24, 2020) (Lamoutte)** (Applying Puerto Rico law, because judicial transfer deed was executed after foreclosure sale and before the Chapter 13 petition, no interest came into the Chapter 13 estate and foreclosing creditor did not violate the stay by obtaining confirmation of the sale after the petition.).

{498} ***In re Thompson*, No. 19 BK 06176, 2020 WL 728605 (Bankr. N.D. Ill. Jan. 15, 2020) (Schmetterer)** (Applying *In re LaMont*, 740 F.3d 397 (7th Cir. Jan. 7, 2014) (Manion, Kanne, Sykes), Chapter 13 debtor can modify claim of prepetition tax purchaser through plan under § 1322(b)(2) when petition is filed before expiration of redemption period under state law; however, no provision of the Bankruptcy Code tolls redemption period and that period expired during the Chapter 13 case. Plan cannot be confirmed that fails to pay tax purchaser's claim but dismissal is delayed to allow debtor another chance to propose confirmable plan.).

{499} ***In re Russell*, 608 B.R. 893, 899–901 (Bankr. S.D. Ala. Oct. 11, 2019) (Oldshue)** (Gavel rule codified in § 1322(c)(1) applies to determine whether a Chapter 13 debtor can manage a home mortgage when there has been a prepetition foreclosure; under Alabama law, Chapter 13 petition after foreclosure auction but before delivery of trustee's deed does not capture interest in property sufficient to support management through the Chapter 13 plan. "Interpreting the plain language [*sic*] § 1322(c)(1), most courts have concluded that the statutory language is not ambiguous and found that the debtor's right to cure expires when the foreclosure auction is concluded regardless of whether deed delivery or confirmation is subsequently required. . . . [W]hen the gavel falls at a foreclosure sale conducted in accordance with Alabama law, the foreclosed property is excluded from a subsequently filed chapter 13 bankruptcy estate of the mortgagor. . . . A determination that a debtor's ability to cure a mortgage default under section 1322(b) is terminated under section 1322(c)(1) at the close of a foreclosure sale is in accord with the policy of establishing a uniform set of laws governing consumer bankruptcy.").

{500} ***In re Christiano*, 605 B.R. 1, 6–9 (Bankr. D. Conn. Aug. 2, 2019) (Nevins)** (Applying Connecticut law, because tax sale purchaser takes title to property at tax sale, subject to six-month right of redemption in taxpayer, when Chapter 13 case was filed at end of redemption period, right of redemption came into Chapter 13 estate and was extended for 60 days by § 108(b) but right expired when not exercised during case and no interest remained to be modified by Chapter 13 plan. Purchaser does not have a claim in the Chapter 13 case and cannot be compelled to accept full payment of the redemption amount over life of Chapter 13 plan. "[T]he Debtor lost her fee simple interest in the Property when the Tax Sale occurred, subject only to her right to redeem. On the Petition Date, the Debtor's bankruptcy estate included the Debtor's personal right to redeem the Property, not the title to the Property itself. The Town, as the successful bidder at the Tax Sale, held title to the Property on the Petition Date, subject to the Debtor's right to redeem the Property by paying the Redemption Amount. . . . Debtor's right to redeem was not stayed by the filing of the bankruptcy petition, although it was extended until sixty (60) days after the Petition Date. . . . Courts in states in which the tax sale purchaser has a lien against the property on the petition date, generally find that the debtor may modify the 'claim' of the tax purchaser through a Chapter 13 plan pursuant to § 1322, since the property sold at a tax sale becomes a lien on property of the bankruptcy estate. . . . Courts in states where the tax purchaser acquires title to the property, similar to the procedure here . . . , generally determine that a tax sale purchaser did not hold a 'claim' on the petition date, but instead held title to the property subject to the relinquishment of title upon the payment of the redemption price.").

{501} ***In re Unacha*, 598 B.R. 693, 694–95 (Bankr. D. Mass. Apr. 23, 2019) (Katz)** ("Cure" of default for § 1322(b)(5) purposes can include modification of the loan that eliminates the default. "The Code does not define what constitutes the 'curing' of a default and does not dictate any particular method by which a default must be cured. . . . [T]he Court is not persuaded that a Chapter 13 plan cannot be confirmed over a creditor's objection solely on the grounds that a loan modification cannot constitute 'cure' under § 1322(b)(5).").

{502} ***In re Lieber*, 600 B.R. 408, 411–14 (Bankr. N.D. Iowa Apr. 22, 2019) (Collins)** (Adopting "gavel rule," Chapter 13 debtor's power under § 1322(c)(1) expired prepetition when sheriff sold property at foreclosure sale; one-year redemption right under state law came into Chapter 13 estate but was not tolled by automatic stay and expired without being exercised by the debtor. "Debtor possessed only the bare legal right of redemption and had no equitable interest in the foreclosed property when he filed bankruptcy. . . . The Court adopts the 'gavel rule' and the property is considered 'sold' on . . . the date of the foreclosure sale. The plain meaning of the language 'sold at a foreclosure sale' refers to a specific event and not a multi-step process.").

{503} ***In re Cass*, No. 18-3703, 2019 WL 7667445, at *2–*3 (Bankr. S.D. Ala. Feb. 4, 2019) (Callaway)** (Because debtors are still in possession of home, right of redemption from tax sale has not expired under Alabama law and debtors can pay redemption amount through Chapter 13 plan; however, tax sale purchasers are entitled to stay relief to pursue possession and debtors' opportunity to redeem from the tax sale may be short lived. "The debtor lives in the house and has been in possession of the property in question at all relevant times, continuing to date. In fact, the tax purchasers are seeking relief from stay from this court in order to eject her from possession of the property. . . . [T]he debtor's right of redemption has not expired and [ ] she can redeem until the tax purchasers have continuously adversely possessed the property for three years. The court notes the debtor's right to redeem may not do her much practical good if she cannot do so very quickly because the court is granting relief from stay on the ejectment claim and she may lose possession of her home shortly.").

§ 82.2 Postpetition Defaults
§ 82.3 Nonmonetary Defaults

§ 82.4 Reasonable Time to Cure Defaults

{504} ***In re Short*, No. 19-42701 CN, 2020 WL 1213207, at *1 (Bankr. N.D. Cal. Mar. 10, 2020) (Novack)** (Cure of arrears through step-plan in 60 months satisfies reasonable time requirement in § 1322(b)(5) notwithstanding that debtors will also pay more than $5,000 per month for private high school tuition. "The Bank's secured debt is a thirty year note . . . and its collateral is worth more than the note balance. . . . [C]onduit Plan . . . requires that they stay post-petition current on their secured debt. The Plan also contains feasible step increases which the Shorts will fund by redirecting the tuition payments as their children graduate. Simply, the Bank is in no worse position if this Plan is confirmed. In contrast, the Shorts' lives may be thrown into significant disarray if their four high school age children are forced to change schools.").

{505} ***In re Unacha*, 598 B.R. 693, 695 (Bankr. D. Mass. Apr. 23, 2019) (Katz)** ("Reasonable time" to cure default for § 1322(b)(5) purposes could be the time it takes to negotiate a loan modification that resolves the default. "[A] cure through loan modification may be attempted over the length of the plan, unless the objecting party presents a persuasive legal or evidentiary argument to support a contrary ruling.").

2) INTEREST AND OTHER CHARGES TO CURE DEFAULTS
§ 83.1 In General: *Rake* and Contracts before October 22, 1994
§ 83.2 Section 1322(e): Contracts after October 22, 1994

{506} ***In re Holmes*, No. 18-14513, 2019 WL 4187698, at *6–*7 (Bankr. S.D. Ohio Aug. 26, 2019) (Hopkins)** ("Disparate and confounding" treatment of secured claims that mature before completion of payments under the plan defeats confirmation because equal-payments provision in § 1325(a)(5)(B)(iii) applies to entire § 1322(c) claim and claim can't be bifurcated to avoid that result. Although not completely clear, proposed plan seemed to bifurcate claims that would mature during the plan with part of each claim paid pro rata to avoid the equal-payments requirement in § 1325(a)(5)(B)(iii). "[A]ny treatment of a single debt under § 1322(c) must satisfy *both subsections*. . . . This means the equal monthly payments to secured creditors provision of § 1325(a)(5), as incorporated by § 1322(c)(2), must apply to the entire amount of each claim. . . . [S]ince § 1322(c) does not authorize bifurcated treatment of debts and the entirety of the amounts owed to Bayview and US Bank are subject to the equal payments provision of § 1325(a)(5)(B)(iii)(I), the Debtor's disparate and confounding treatment of the two creditors . . . and his miscasting of § 1322(c) are not justified under the law.").

§ 83.3 Rate of Interest to Cure Default: Contracts before October 22, 1994
§ 83.4 Rate of Interest to Cure Default: Contracts after October 22, 1994
§ 83.5 Undersecured Mortgage and Interest to Cure Default
§ 83.6 Late Charges, Attorneys' Fees, Costs and Other Charges

{507} ***Bayview Loan Servicing, LLC v. Donnan (In re Donnan)*, No. EC-18-1106-BSL, 2019 WL 1922843, at *3–*4 (B.A.P. 9th Cir. Apr. 29, 2019) (not for publication) (Brand, Spraker, Lafferty)** (Prima facie validity of mortgagee's proof of claim that included arrears to be cured through the plan overcame debtor's naked objection with respect to late charges, NSF fees, broker's price opinion fees and property inspection fees; debtor's objection to foreclosure attorney's fees and costs overcame prima facie validity of proof of claim and bankruptcy court should have allowed an evidentiary hearing. "To overcome the Rule 3001(f) presumption, the objecting party must present evidence tending to rebut the claim—evidence with probative force equal to that of the creditor's proof of claim. . . . Bayview's Claim . . . was prima facie evidence of its validity and amount for the prepetition fees and costs. . . . [T]he Claim Objection . . . did specifically question, supported with the breakdown, whether some of the Foreclosure Attorney's Fees and Costs were incurred postpetition. The Donnans also questioned the reasonableness of these fees, which was a plausible complaint given that Bayview's claim for prepetition fees is subject to a reasonableness standard. . . . [T]he Donnans provided sufficient evidence to rebut the Claim's prima facie effect with respect to the Foreclosure Attorney's Fees and Costs.").

{508} ***In re Vega*, No. 19-20099-PRW, 2020 WL 211408 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** ($10,000 good-faith refundable deposit required by local law to insure that foreclosing mortgagee inspects and maintains property during foreclosure is disallowed as a component of mortgagee's arrearage claim. Mortgagee can file a 3002.1 notice if it is actually required to expend funds for inspections or maintenance during the case. Mortgagee is denied attorney's fees based on borderline frivolousness of claim that the $10,000 deposit is a recoverable advance.).

{509} ***In re Sheed*, 607 B.R. 470 (Bankr. E.D. Pa. Oct. 3, 2019) (Coleman)** (Chapter 13 debtor's objection to foreclosure fees and costs included in mortgagee's proof of claim is overruled based on *res judicata* effect of state court foreclosure judgment and ambiguous terms of mortgage modification agreement. Court seems to hold that attorney's fees and costs are not part of "mortgage arrearages" that were folded into the note as part of mortgage modification agreement.).

3) CALCULATING PAYMENTS TO CURE DEFAULT
§ 84.1 In General
§ 84.2 Calculating Plan Payments to Cure Default on Mortgages before October 22, 1994

§ 84.3 Calculating Plan Payments to Cure Default on Mortgages after October 22, 1994

c. OTHER HOME MORTGAGE ISSUES

§ 85.1 Demand, Matured and Balloon Loans; "Short-Term" Mortgages before October 22, 1994

§ 85.2 Demand, Matured and Balloon Loans; "Short-Term" Mortgages after October 22, 1994

{510} ***Hurlburt v. Black*, 925 F.3d 154, 160–63 (4th Cir. May 24, 2019) (en banc)** (Fourth Circuit *en banc* overrules *Witt v. United Companies Lending Corp. (In re Witt)*, 113 F.3d 508 (4th Cir. May 21, 1997): § 1322(c) creates a narrow exception to the anti-modification protection in § 1322(b)(2); a mortgage that ballooned before the Chapter 13 petition can be valued under § 506, bifurcated and then crammed down consistent with § 1325(a)(5)(B). "[T]he sole issue . . . is whether Black's claim falls into the narrow exception to Section 1322(b)(2) set forth in Section 1322(c)(2) . . . . [C]ourts universally have criticized *Witt*'s finding of ambiguity and attendant reliance on the statute's legislative history. . . . Although we do not lightly overrule our precedent, we agree . . . that Section 1322(c)(2) is best read to authorize modification of 'claim[s],' not just 'payment[s],' and therefore that a Chapter 13 plan may bifurcate a claim based on an undersecured homestead mortgage, the last payment for which is due prior to a debtor's final payment under a repayment plan, into secured and unsecured components and cram down the unsecured component. . . . 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."), *rev'd and remanding* 572 B.R. 160, 165–70 (Bankr. E.D.N.C. June 7, 2017) (Humrickhouse) (Failing to distinguish *Witt v. United Cos. Lending Corp. (In re Witt)*, 113 F.3d 508 (4th Cir. May 21, 1997) (Russell, Michael, Motz), fully matured deed of trust that is partially secured and with respect to which no deficiency can be collected from the debtor under North Carolina law is protected from modification by § 1322(b)(2) and must be paid in full during the plan—though the payment amount and interest rate can be modified under §§ 1322(c)(2) and 1325(a)(5). "The Fourth Circuit considered whether [§ 1322(c)(2)] allowed debtors to bifurcate the undersecured claims of residential mortgage holders into secured and unsecured claims . . . . The Fourth Circuit rejected the argument, holding that § 1322(c)(2) allowed only the modification of the 'payment' of the claim, rather than modification of the 'claim,' meaning that the remaining payments could be stretched out over time, but the debtors were still required to pay the full amount of the allowed claim. . . . *Witt* has been largely criticized, and other circuits have instead held that the plain language of § 1322(c)(2) permits the modification of home mortgages through the bifurcation of the claim into secured and unsecured components, with the unsecured component crammed down pursuant to § 1325(a)(5). . . . While this court is bound by the holding in *Witt*, this court has interpreted its holding narrowly, finding it permissible to modify the interest rate on a note that matured prepetition as a modification of only a payment term. . . . [T]he North Carolina anti-deficiency statute . . . applies . . . . While Mr. Hurlburt contends that he seeks only to modify the *payment* of the secured claim, in fact he seeks to modify the claim entirely, by reducing the principal and interest and by curtailing Ms. Black's right to foreclose unless he defaults on the payments on the modified claim.").

{511} ***Koola v. Ditech Fin. LLC*, 611 B.R. 251, 256–57 (D.S.C. Dec. 26, 2019) (Gergel)** (Section 1322(c)(2) does not apply to mortgage that was accelerated before the Chapter 13 petition but with respect to which "original" payment schedule called for a last payment in 2034. "[T]he loan originally had a last payment date of March 1, 2034 . . . , when [debtor] went into default . . . the loan was accelerated under the terms of the Note such that the new contractual due date for loan was November 1, 2009. . . . On March 20, 2018, [debtor] filed a Chapter 13 . . . . [T]he plain language of the statute . . . looks to the '*original* payment schedule' when determining whether a claim secured by an interest in a principal residence can be modified. . . . [Debtor's] default therefore did not change the last payment date on the *original* payment schedule. . . . [T]he Court affirms the bankruptcy court's holding that § 1322(c)(2) does not apply and the mortgage cannot be modified under § 1322(b)(2). . . . ").

{512} ***In re Schroeder*, 607 B.R. 329, 334 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Note payable on demand that includes a payment schedule that extends for decades is nonetheless immediately due in full under state law and falls within the power to modify in § 1322(c)(2); debt can be bifurcated and modified consistent with § 1325(a)(5). "Voss is right that the 'original payment schedule' on his claim ends after 'the date on which the final payment under the plan is due'. § 1322(c)(2). But he ignores that, under Wisconsin law, all of the payments on his claim were due when the loan was made, even if they were scheduled for later dates. . . . [Section] 1322(c)(2) applies. . . . [Section] 1322(b)(2) does not prohibit Schroeder from modifying Voss's rights under her chapter 13 plan.").

{513} ***In re Holmes*, No. 18-14513, 2019 WL 4187698, at *6–*7 (Bankr. S.D. Ohio Aug. 26, 2019) (Hopkins)** ("Disparate and confounding" treatment of secured claims that mature before completion of payments under the plan defeats confirmation because equal-payments provision in § 1325(a)(5)(B)(iii) applies to entire § 1322(c) claim and claim can't be bifurcated to avoid that result. Although not completely clear, proposed plan seemed to bifurcate claims that would mature during the plan with part of each claim paid pro rata to avoid the equal-payments requirement in § 1325(a)(5)(B)(iii). "[A]ny treatment of a single debt under § 1322(c) must satisfy *both subsections*. . . . This means the equal monthly payments to secured creditors provision of § 1325(a)(5), as incorporated by § 1322(c)(2), must apply to the entire amount of each claim. . . . [S]ince § 1322(c) does not authorize bifurcated treatment of debts and the entirety of the amounts owed to Bayview and US Bank are subject to the equal payments provision of § 1325(a)(5)(B)(iii)(I), the Debtor's disparate and confounding treatment of the two creditors . . . and his miscasting of § 1322(c) are not justified under the law.").

{514} ***In re Winstead*, No. 19-50307-KMS, 2019 WL 3491653, at *1–*2 (July 31, 2019) (Samson)** (Cause not shown for stay relief when reverse mortgage is a *Johnson* claim that matured before the petition when debtor's mother died and plan can manage the nonrecourse claim under § 1322(c)(2). Plan can bifurcate reverse mortgage and cram down amount of debt that exceeds value of house, subject only to compliance with § 1325(a)(5). "The Property is subject to a reverse mortgage . . . that became due and payable pre-petition on the death of Winstead's mother. . . . Winstead proposes to refinance the Property into his own name at an unspecified time during the 60-month Plan and then pay the Bank the Property's tax appraisal value . . . . Meanwhile, he would maintain insurance on the Property and make *Till*-rate interest-only adequate protection payments . . . . The controlling case is *Johnson v. Home State Bank*, in which the United States Supreme Court ruled that 'a creditor who . . . has a claim enforceable only against the debtor's property nonetheless has a "claim against the debtor" for purposes of the [Bankruptcy] Code.' . . . Winstead may therefore include the Mortgage in the Plan. . . . [Section] 1322(c)(2) sets out an exception . . . . This exception encompasses reverse mortgages that have become due and payable pre-petition because of the death of the borrower. . . . The modification is effected by joint operation of § 1322(c)(2) and § 1325(a)(5). . . . [I]f the value of the Property is less than the amount of the Bank's claim, Winstead may bifurcate the claim under § 1325(a)(5).").

{515} ***In re Lewis*, 607 B.R. 539 (Bankr. S.D. Miss. May 31, 2019) (Olack)** (Section 1322(c) does not apply because unrecorded mortgage modification extended maturity date beyond date of Chapter 13 plan. Failure to record mortgage modification may have consequences for mortgagee under Mississippi law but § 1322(c) does not incorporate those consequences into the concept of "short term" lending that the section was intended to address. Mortgage modification was effective between the debtor and mortgagee. Mortgage remains protected from modification by § 1322(b)(2) and cannot be crammed down under § 1322(c).).

{516} ***In re Mendez*, 600 B.R. 321, 329–33 (Bankr. D.N.J. Apr. 10, 2019) (Altenburg)** (When mortgage matured and state court entered prepetition foreclosure judgment that included limited attorney's fees, Chapter 13 debtor can use § 1322(c)(2) to either pay the foreclosure judgment in full over the life of the plan or cure default and reinstate the mortgage using § 1322(b)(3) and/or § 1322(b)(5). If debtor chooses to cure and reinstate, mortgagee can seek to recover additional attorney's fees that would be allowable by contract without regard to the foreclosure judgment which limited those fees. Bankruptcy court abstains from determining reasonableness of attorney's fees sought by mortgagee and grants stay relief to allow state court to make that determination. Mortgage contained balloon payment that matured several years before Chapter 13 petition. Mortgagee obtained a judgment of foreclosure that included only $1,766.39 of attorney's fees. Debtor filed Chapter 13 plan that proposed to address the mortgage claim through a loan modification. Mortgagee filed a proof of claim that included $32,839.81 in fees. "[I]t cannot be disputed that section 1322(c)(2) applies. . . . The mortgage matured years ago and the Final Judgment was entered well prepetition. . . . [U]nder section 1322(c)(2), the Debtor only has two options absent RKL's consent to a loan modification—payment over the duration of the plan of: 1) the Final Judgment; or 2) the entire amount of the fully matured, defaulted mortgage. . . . Should the Debtor choose to pay RKL under the Final Judgment, the law is clear: the Fees are limited solely to the amount set forth therein . . . . In lieu of paying a foreclosure judgment on a mortgage that fully matured prepetition, section 1322(c)(2) affords a debtor an opportunity to pay the default over the life of a plan. . . . Because a debtor seeks to cure the default rather than satisfy the judgment, the merger doctrine does not apply. Consequently, a debtor is bound by all terms of the mortgage including payment of attorney fees. . . . Debtor's plan proposes a loan modification . . . . [I]n order to do a loan modification, a loan would have to exist. . . . [F]or a loan to exist, the Debtor must acknowledge the existence of the mortgage and seek to address the default thereunder. Payment of the default under the mortgage means reinstatement of all of the mortgage terms, including RKL's right to the Fees.").

§ 85.3 Prepetition Foreclosure Judgment: Curing Default, Payment in Full or Modification under § 1322(c)(2)?

{517} ***Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 609 B.R. 133, 151-53 (Bankr. E.D. Pa. Oct. 24, 2019), *amended and superseded by*, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019), *vacated in part on reconsideration*, 610 B.R. 787 (Bankr. E.D. Pa. Dec. 20, 2019) (Frank)** (Mortgage reduced to foreclosure judgment before the petition does not wedge into § 1322(c)(2) and remains protected from modification by § 1322(b)(2); plan cannot bifurcate mortgage. "[T]he question is whether the Foreclosure Judgment effectively transforms a long-term debt into a short-term debt because the judgment rendered the debt immediately payable, bringing it within the scope of § 1322(c)(2). . . . The language 'original payment schedule' is plain and clear. It can only refer to the last payment due *under the original note* rather than to the date the accelerated debt is due. Otherwise, the words 'original payment schedule' would be rendered meaningless. . . . [H]ad Congress intended § 1322(c)(2) to include accelerated loans and foreclosure judgments so that the last payment of those types of debts became 'due before the date on which the final payment under the plan is due,' the phrase 'original payment schedule'—referring to the unaltered remittance timetable—would have been omitted. . . . Debtor cannot wedge U.S. Bank's long-term mortgage debt into § 1322(c)(2) simply because the debt was accelerated and reduced to judgment pre-petition.").

§ 85.4 Accelerating Payment of a Home Mortgage

§ 85.5 Debts Discharged in Prior Bankruptcy and Nonrecourse Debts

{518} ***Craig v. Bendall*, No. 4:19cv00048, 2020 WL 1234947, at *3 (W.D. Va. Mar. 13, 2020) (Kiser)** (Bankruptcy court order granting relief from stay is stayed pending appeal when debtor is owner of property, debtor is not personally liable on mortgage but

debtor has good argument that *Johnson v. Home State Bank*, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (June 10, 1991), claim of mortgagee can be managed through plan under § 1322. Debtor owns real property pursuant to quitclaim deed. Property is subject to mortgage and Chapter 13 plan proposes to modify note under § 1322(b)(2) to make monthly payments until property is sold or refinanced. Bankruptcy court granted stay relief, questioning whether a Chapter 13 debtor could modify note to which the debtor was not a party. "I believe Craig has made an adequate, preliminary showing that the *in rem* action against the property she owns could be a claim subject to the bankruptcy court's authority under 11 U.S.C. § 1322, and which is subject to the automatic stay, even if the bankruptcy court has no authority to adjust the note between [nondebtor] and the [mortgagee].").

{519} ***O'Hara v. Napolitano*, No. 3:18-cv-01899 (JAM), 2019 WL 2066962 (D. Conn. May 10, 2019) (Meyer)** (Debtor's challenge to dismissal of Chapter 13 case is denied when basis for challenge is that Ocwen's nonrecourse claim based on debtor signing mortgage but not note should not have been allowed. Bankruptcy court dismissed the Chapter 13 case and denied the debtor's objection to the nonrecourse claim. On appeal the district court affirmed that the debtor had stated no ground for disallowance of the nonrecourse claim.).

{520} ***In re Pugh*, No. 19-20696-beh, 2019 WL 4180281 (Bankr. E.D. Wis. Sept. 3, 2019) (Hanan)** (After two failed Chapter 13s and two failed efforts at mortgage modification, son to whom property was quitclaimed by mother after father died is not in privity to the mortgage and cannot force another effort at modification; confirmation is denied of plan that is dependent on consensual modification of mortgage.).

{521} ***In re Rumbin*, No. 18-31424 (AMN), 2019 WL 3890317, at *6–*7 (Bankr. D. Conn. Aug. 16, 2019) (Nevins)** (Embracing *Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris), and *In re Rosa*, 521 B.R. 337 (Bankr. N.D. Cal. Dec. 10, 2014) (Novack), unsecured portions of liens that survived discharge in prior Chapter 7 case are nonrecourse debts that are not counted for eligibility purposes in subsequent Chapter 13 case. "When a secured claim is non-recourse, although the lien holder may have a claim against the debtor's property, . . . the individual debtor, as opposed to his or her property, does not have any liability on the underlying debt and has no unsecured 'debt' to the creditor as defined by § 101(12). . . . To the extent the Chapter 13 Trustee adopts the reasoning of several courts that conclude that a Chapter 13 debtor must treat the unsecured amount of a lien for which *in personam* liability was discharged in a prior Chapter 7 case as an unsecured claim for Chapter 13 plan purposes, I disagree. While many courts would resurrect *in personam* liability and require such treatment, I find a rationale recently articulated by the Bankruptcy Appellate Panel for the Ninth Circuit . . . to be more persuasive. . . . I will follow the *Rosa* decision and depart from contrary authority within this Circuit and elsewhere, recognizing there are many courts that disagree. As the *Rosa* court articulated, to hold otherwise would be to impose liability on a Chapter 13 estate when none exists for the Chapter 13 debtor.").

{522} ***In re Winstead*, No. 19-50307-KMS, 2019 WL 3491653, at *1–*2 (July 31, 2019) (Samson)** (Cause not shown for stay relief when reverse mortgage is a *Johnson* claim that matured before the petition when debtor's mother died and plan can manage the nonrecourse claim under § 1322(c)(2). Plan can bifurcate reverse mortgage and cram down amount of debt that exceeds value of house, subject only to compliance with § 1325(a)(5). "The Property is subject to a reverse mortgage . . . that became due and payable pre-petition on the death of Winstead's mother. . . . Winstead proposes to refinance the Property into his own name at an unspecified time during the 60-month Plan and then pay the Bank the Property's tax appraisal value . . . . Meanwhile, he would maintain insurance on the Property and make *Till*-rate interest-only adequate protection payments . . . . The controlling case is *Johnson v. Home State Bank*, in which the United States Supreme Court ruled that 'a creditor who . . . has a claim enforceable only against the debtor's property nonetheless has a "claim against the debtor" for purposes of the [Bankruptcy] Code.' . . . Winstead may therefore include the Mortgage in the Plan. . . . [Section] 1322(c)(2) sets out an exception . . . . This exception encompasses reverse mortgages that have become due and payable pre-petition because of the death of the borrower. . . . The modification is effected by joint operation of § 1322(c)(2) and § 1325(a)(5). . . . [I]f the value of the Property is less than the amount of the Bank's claim, Winstead may bifurcate the claim under § 1325(a)(5).").

§ 85.6 Direct Payment of Mortgage or Payment by Trustee

{523} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not

modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

{524} ***In re Simmons*, 608 B.R. 602, 606–13 (Bankr. S.D. Ga. Sept. 30, 2019) (Barrett)** (Direct payment of home mortgage is payment "outside" the Chapter 13 plan and default in postconfirmation direct payments is not a ground for dismissal or for denial of discharge. Trustee filed notice of completion of plan payments and notice of final cure payment. BONY responded that the debtor was delinquent on postpetition direct mortgage payments in the amount of $47,334.88. Stay relief was granted and the trustee, previously unaware of the default in direct payments, moved to dismiss. "The Southern District of Georgia, like many districts, is a non-conduit jurisdiction allowing debtors to pay their post-petition mortgage payments directly to the lender . . . . Debtors are current in their payments to the Trustee but have not made all their post-petition payments to their respective lenders. . . . [T]he current majority [concludes] that 'payments under the plan' includes direct post-petition mortgage payments. . . . The minority position, and the one adopted by this Court, finds that post-petition mortgage payments paid directly by debtor are not 'payments under the plan' and a debtor's failure to make such payments standing alone does not merit the dismissal of a debtor's bankruptcy case, the denial of their discharge, and most likely the loss of their home. . . . [D]irect post-petition mortgage payments are debts paid outside of the bankruptcy and a debtor's failure to make all of these payments, standing alone does not constitute a material default with respect to a term of a plan under § 1307(c)(6) and is not per se grounds for a denial of discharge.").

E. PROVIDING FOR UNSECURED CLAIMS

1. GENERAL RULES BEFORE AND AFTER BAPCPA

§ 86.1 In General

{525} ***In re Miller*, No. 19-41236, 2019 WL 6002189, at *1–*2 (Bankr. N.D. Ohio Nov. 12, 2019) (not for publication) (Kendig)** (Unsecured claim holder that states an interest rate on the face of its proof of claim is not entitled to postpetition interest in a Chapter 13 case; it is not necessary for the debtor or trustee to object to every claim that contains an interest rate in order to disallow postpetition interest. "The dilemma for the court, the chapter 13 trustee, and debtors arises because section nine of the official claim form contains a field for interest . . . . Frequently, unsecured creditors complete this section, raising the question of whether inclusion of the interest rate is a request for payment of interest on an unsecured claim or simply a recitation of the contractual terms of the debt at the time the case was filed? Without a clear answer, the chapter 13 trustee cautiously requires an objection to disallow interest on an unsecured claim. . . . Reading the Code to require a claim objection permits a creditor to file a claim for interest to which it is not entitled with the hope that it will benefit from an unwary debtor or trustee. It also burdens the trustee or debtor with filing objections to disallow payment of unauthorized interest. . . . When a creditor files a proof of claim setting forth an unsecured claim, it is not entitled to interest. Exceptions to the rule are inapplicable and do not support forcing a claim objection. From here forward, the court will not require debtors and/or trustees to file claim objections that simply seek to disallow the payment of interest[.]").

§ 86.2 Less Money after BAPCPA

§ 86.3 What Claims Are Unsecured Claims?

§ 86.4 What Claims Are Unsecured: The Hanging-Sentence Enigma after BAPCPA

2. CLASSIFICATION OF UNSECURED CLAIMS BEFORE AND AFTER BAPCPA

§ 87.1 Power to Classify Unsecured Claims: Tests for Unfair Discrimination

{526} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (Plan unfairly discriminates for § 1322(b)(1) purposes when creditor is treated as partially secured but creditor filed wholly unsecured proof of claim. No discrimination is necessary given that creditor has waived secured status.).

§ 87.2 Classification after BAPCPA
§ 87.3 Co-signed Debts

{527} ***In re Brown*, No. 19-20011, 2019 WL 6119774, at *2–*3 (Bankr. E.D. Ky. Nov. 15, 2019) (Wise)** (Unsecured portion of a cosigned car claim can be separately classified for full payment and unfair discrimination test does not apply. Plan that treats undersecured car loan as fully secured cannot be confirmed because plan has to bifurcate the claim under § 506(a). Secured portion of the claim can be paid with interest through the plan and unsecured portion can be classified separately from other unsecured debts for more favorable treatment. "Section 1322(b)(1) creates an unambiguous exception to the prohibition against unfair discrimination in plan claim treatment of individual creditors who are liable with the debtor on a consumer debt . . . . Some courts believe that the unfair discrimination test . . . should be applied to co-signed loans. . . . This Court does not agree with that approach. It renders the addition of the 'however clause' meaningless and 'does not account for the special treatment Congress allowed in the case of co-signed debts.'").

{528} ***In re Morrison*, No. 18-05791-5-DMW, 2019 WL 4732375, at *2–*3 (Bankr. E.D.N.C. Sept. 26, 2019) (Warren)** (Student loans incurred by the debtor's daughter and cosigned by the debtor cannot be separately classified for payment in full through Chapter 13 plan when general unsecured creditors will only receive 13% of their claims. "Debtor asserts that the proposed treatment is permitted under 11 U.S.C. § 1322(b)(1) . . . . Debtor argues that Chapter 13 does not prohibit unfair discrimination if the separate classification is the Debtor's consumer debt for which another individual is liable. . . . ' . . . The majority of courts, however, have rejected the view that § 1322(b)(1) grants carte blanche to pay 100% of cosigned debts without regard to the effect of that treatment on the nonpreferred creditors. . . . ' . . . Daughter is the primary beneficiary . . . . For a debtor to claim a benefit from co-signing a consumer debt, a debtor must receive some tangible and measurable benefit. . . . The Debtor has not shown that tangible and measurable benefit, and the separate and distinctive classification of the Claim is inappropriate and cannot survive plan confirmation.").

§ 87.4 Priority Claims
§ 87.5 Priority Claims after BAPCPA
§ 87.6 Pension Loan Repayment: § 1322(f) after BAPCPA
§ 87.7 910-Day PMSI Car Claims after BAPCPA: A Reprise

a. NONDISCHARGEABLE CLAIMS

§ 88.1 In General
§ 88.2 Nondischargeable Claims after BAPCPA
§ 88.3 Postpetition Interest on Nondischargeable Claims after BAPCPA: § 1322(b)(10)
§ 88.4 Alimony, Maintenance and Support
§ 88.5 Domestic Support Obligations Assigned or Payable to Government: § 1322(a)(4) after BAPCPA
§ 88.6 Student Loans

{529} ***In re Morrison*, No. 18-05791-5-DMW, 2019 WL 4732375, at *2–*3 (Bankr. E.D.N.C. Sept. 26, 2019) (Warren)** (Student loans incurred by the debtor's daughter and cosigned by the debtor cannot be separately classified for payment in full through Chapter 13 plan when general unsecured creditors will only receive 13% of their claims. "Debtor asserts that the proposed treatment is permitted under 11 U.S.C. § 1322(b)(1) . . . . Debtor argues that Chapter 13 does not prohibit unfair discrimination if the separate classification is the Debtor's consumer debt for which another individual is liable. . . . ' . . . The majority of courts, however, have rejected the view that § 1322(b)(1) grants carte blanche to pay 100% of cosigned debts without regard to the effect of that treatment on the nonpreferred creditors. . . . ' . . . Daughter is the primary beneficiary . . . . For a debtor to claim a benefit from co-signing a consumer debt, a debtor must receive some tangible and measurable benefit. . . . The Debtor has not shown that tangible and measurable benefit, and the separate and distinctive classification of the Claim is inappropriate and cannot survive plan confirmation.").

{530} ***In re Kane*, 603 B.R. 491, 497 (Bankr. D. Kan. June 18, 2019) (Somers)** (Applying test from *Bentley v. Boyajian* (*In re Bentley*), 266 B.R. 229 (B.A.P. 1st Cir. Sept. 5, 2001) (Kenner, Feeney, Boroff), and rejecting test in *AMFAC Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510 (B.A.P. 9th Cir. June 29, 1982) (Hughes, Katz, George), plan unfairly discriminates for § 1322(b)(1) purposes that would pay student loans in full and 14% of general unsecured debt. Level payment plan would pay 71% of all unsecured claims. "Congress, however wisely, has chosen to make student loans nonpriority debt, despite being presumptively nondischargeable. As a result, there is nothing in the Code that justifies treating the student loan claims more favorably than other claims . . . .").

§ 88.7 Restitution, Fines and Other Criminal Problems
§ 88.8 Driving, Boating or Flying while Intoxicated
§ 88.9 Long-Term Debts
§ 88.10 Claims That Are or Might Be Nondischargeable Only in a Chapter 7 (Chapter 12, or Individual Chapter 11) Case

b. OTHER CLASSIFICATIONS

§ 89.1 Direct Payments by Debtor

§ 89.2 Medical Providers

{531} ***In re Merry*, No. 18-32904-WRS, 2019 WL 7041862, at *1 (Bankr. M.D. Ala. Dec. 20, 2019) (Sawyer)** (Postpetition settlement of prepetition auto accident claim is approved with exception of payment of chiropractic bills from proceeds. Chiropractic bills are prepetition debts that would be paid in full under settlement while other unsecured creditors are paid nothing through the Chapter 13 plan. This classification results in unfair discrimination under § 1322(b)(1) and cannot be approved. "As a pre-petition, unsecured debt, the Healthstar Chiropractic debt should receive the same treatment under the plan as any of the Debtor's other unsecured debt it held as of the filing of the petition. In this case, no effort was made to show why the chiropractor should be favored over other unsecured creditors and the Court is aware of none.").

§ 89.3 Landlords and Lessors
§ 89.4 Suppliers or Other Business-Related Creditors
§ 89.5 To Satisfy an Objecting Unsecured Claim Holder
§ 89.6 Contingent and Unliquidated Claims
§ 89.7 Based on the Size of the Claim
§ 89.8 Postpetition Claims
§ 89.9 Miscellaneous Classes of Unsecured Claims
§ 89.10 A Proposal: Simpler Rules for Classification of Unsecured Claims
3. BEST-INTERESTS-OF-CREDITORS TEST: BEFORE AND AFTER BAPCPA
§ 90.1 In General: Plan Payments vs. Hypothetical Liquidation

{532} ***In re Cloninger*, 613 B.R. 461 (Bankr. E.D. Ark. Feb. 24, 2020) (Jones)** (Applying best-interests-of-creditors analysis from *Education Assistance Corp. v. Zellner*, 827 F.2d 1222 (8th Cir. Sept. 3, 1987) (Arnold, Gibson, Wright), plan proposal to distribute $13,826.34 to unsecured creditors satisfies liquidation analysis that shows $11,045 would be available in a hypothetical Chapter 7 case. "Effective date" for § 1325(a)(4) purposes is date of confirmation. Hypothetical liquidation analysis includes deductions for costs of sale, trustee fees and administrative expenses for attorneys and the like and special adjustments for specific assets such as a life estate and fractional ownership.).

{533} ***In re Carballo*, No. 19-11266-LMI, 2019 WL 6340220 (Bankr. S.D. Fla. Nov. 26, 2019) (Isicoff)** (For purpose of best-interests-of-creditors test, debtor held only bare legal title and no equitable interest in real property owned jointly with mother and grandparent. Debtor's name was on titles to accommodate his mother and grandparent but debtor exercised no responsibility for or control over the properties. In contrast, joint bank account with grandparent that debtor occasionally used to pay personal loan for a boat was property of Chapter 13 estate and had to be accounted for in an amended plan.).

§ 90.2 Exemption Issues

{534} ***In re Plevyak*, 599 B.R. 786 (Bankr. M.D. Pa. May 24, 2019) (Opel)** (Plan fails best-interests-of-creditors test when, after denial of exemption in musical instruments, plan does not pay present value of instruments to unsecured creditors.).

§ 90.3 Exclusions and Exemptions after BAPCPA
§ 90.4 Nondischargeable Claims, Guaranteed Claims and Tardy Claims
§ 90.5 Discount Rates and Interest If Liquidation Would Produce Dividend
§ 90.6 Discount Rates and Interest after BAPCPA
4. PROJECTED DISPOSABLE INCOME TEST: BEFORE BAPCPA
§ 91.1 In General
§ 91.2 Projected (Disposable) Income
§ 91.3 Reasonably Necessary for Maintenance or Support
§ 91.4 Debtor or Dependent
§ 91.5 Counting the Three-Year Period
§ 91.6 Debtor Engaged in Business
§ 91.7 Payment-in-Full Option

{535} ***In re Harrington*, No. 19-47539, 2019 WL 6881328, at *2 (Bankr. E.D. Mich. Dec. 16, 2019) (Randon)** (Acknowledging split of authority, § 1325(b)(1)(A) requires payment of interest to unsecured creditors when debtor has excess projected disposable income and could pay unsecured creditors in full in less than the 60 months proposed by the plan. "Harrington has a choice: (A) pay his unsecured creditors in full, or (B) provide all of his disposable income to the plan for five years. Harrington rejects option B, because that would mean his unsecured creditors get paid much sooner, and he doesn't benefit from the time value of the extra money in his pocket. Instead, he chooses to stretch out the repayment period, without providing interest. Harrington cannot have it both ways. Interest must be paid under 11 U.S.C. § 1325(b)(1)(A).").

5. PROJECTED DISPOSABLE INCOME TEST: AFTER BAPCPA

§ 92.1 In General

{536} ***In re Harrington*, No. 19-47539, 2019 WL 6881328, at *2 (Bankr. E.D. Mich. Dec. 16, 2019) (Randon)** (Acknowledging split of authority, § 1325(b)(1)(A) requires payment of interest to unsecured creditors when debtor has excess projected disposable income and could pay unsecured creditors in full in less than the 60 months proposed by the plan. "Harrington has a choice: (A) pay his unsecured creditors in full, or (B) provide all of his disposable income to the plan for five years. Harrington rejects option B, because that would mean his unsecured creditors get paid much sooner, and he doesn't benefit from the time value of the extra money in his pocket. Instead, he chooses to stretch out the repayment period, without providing interest. Harrington cannot have it both ways. Interest must be paid under 11 U.S.C. § 1325(b)(1)(A).").

§ 92.2 Projected Disposable Income: All Debtors

{537} ***In re Price*, 609 B.R. 475, 477–81 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** (Not bad faith for § 1325(a)(3) purposes that debtors with CMI greater than applicable median family income propose to pay unsecured creditors all projected disposable income as determined on Official Forms 122C-1 and 122C-2 notwithstanding that Schedule J reveals that debtors will also pay $222 per month for whole life insurance policies that are not deducted as expenses on Form 122C-2. "The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. . . . The trustee suggests that joint debtors must contribute all their 'actual' disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable income. . . . The Court rejects this suggestion. The determination of disposable income under the statute 'supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis.' *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 ([Jan. 11,] 2011). . . . Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith. The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component . . . . But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.").

§ 92.3 Current Monthly Income: The Baseline

{538} ***Vega-Lara v. Viegelahn (In re Vega-Lara)*, No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth)** (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form]."), *aff'g*, No. 17-52553, 2018 WL 2422427 (Bankr. W.D. Tex. May 4, 2018) (Gargotta) (Same holding as *In re Orozco*, No. 17-52818-CAG, 2018 WL 2425971 (Bankr. W.D. Tex. May 10, 2018) (Gargotta).).

{539} ***In re Johnson*, No. 19-00033-GS, 2020 WL 265914, at *4–*8 (Bankr. D. Alaska Jan. 17, 2020) (Spraker)** (Applying *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), because Alaska Permanent Fund Dividend is virtually certain to be received by Chapter 13 debtor during each year of plan—though amount is not known—plan cannot be confirmed that applies PFD in excess of $1,000 per year already accounted for as current monthly income as a credit against future monthly payments of projected disposable income. Plan cannot vest excess PFD in debtor at confirmation. Debtor included $166.67 in monthly income derived from PFDs to calculate monthly disposable income on Official Form 122C-2. "In 2002, the Local Rules Committee for the United States Bankruptcy Court, District of Alaska, revised [local rules and forms] to account for the inability to determine in advance the amount of annual PFD payments a debtor would receive during a chapter 13 plan commitment period. . . . The combination of [local rules and forms] commits all PFDs received within the plan term to distribution through the plan, and requires the use of a placeholder estimate of $1,000.00 for the annual PFDs as additional payments to the monthly plan payments. . . . The Rules Committee's stated reason for excluding the PFD from the regular periodic payments and providing for turnover in a lump sum was simple: to prevent

debtors from understating their disposable income while ensuring performance. . . . The PFD is akin to a tax refund, as at the time of confirmation it is highly likely that Debtor will continue to receive it during the term of her Plan. But like an inheritance, PFDs are not derived from a debtor's labor and resulting wages. In short, at confirmation Alaskan chapter 13 debtors are 'virtually certain' to receive future PFDs in an unknown amount. Utilizing the analysis set forth in *Hamilton*, the court concludes that Debtor's future PFDs constitute projected disposable income. . . . Because Debtor attempts to limit the amount of the future PFDs payable to her Plan, the proposed chapter 13 Plan fails to comply with § 1325(b)(1)(B). . . . Because the local chapter 13 plan excepts future PFDs from vesting in a debtor upon confirmation, § 1327(b) does not remove them from property of the estate . . . . Instead, it commits the future PFDs as projected disposable income to a debtor's plan recognizing that while they may be uncertain in amount, it is sufficiently certain that a PFD shall be paid to necessitate its inclusion in the chapter 13 plan. Debtor may not circumvent the requirement to pay all projected disposable income by capping the amount of future PFDs available to the chapter 13 estate and having any excess amount revest in her.").

{540} ***In re Orozco*, 613 B.R. 23, 29–32 (Bankr. D. Or. Jan. 15, 2020) (McKittrick)** (Upon objection under § 1325(b), Chapter 13 debtor must commit future tax refunds to the trustee or the budget must accurately account for both overwithholding and future tax credits as either actual expense amounts or prorated additions to income. "For all debtors, the income portion of disposable monthly income is the current monthly income shown on their Official Form 122C-1 . . . . Although there are certain exclusions from the 'all sources' definition, tax refunds are not one of those exclusions. . . . Tax refunds resulting from over-withholding are not additional income; they are a portion of the debtor's gross pay, which has been reported on Form 122C-1. A portion of that gross pay is returned to the debtor who has withheld more in taxes than is actually owed. It does not matter whether the refund is received in the six months before bankruptcy; the gross pay that is reflected on the Form 122C-1 is all that is required in calculating current monthly income. Refunds that are based on tax credits, on the other hand, are not derived from a debtor's work income, and so do not show up as part of the gross pay on the Form 122C-1. Because they are a source of income that is not excluded from the definition of current monthly income in § 101(10A), they must somehow be included in the calculation of current monthly income, if received in the six months before bankruptcy. . . . Tax refunds must be factored into the calculation of projected disposable income, whether a result of tax credits or of over-withholding. . . . The question is how tax refunds should be accounted for . . . . The answer depends on whether the tax refunds are a result of over-withholding or are tax credit refunds. . . . For below-median debtors, the expenses used to reduce their current monthly income to determine disposable income are generally set out in Schedule J. That schedule, however, does not include a line item for tax withholding. Payroll deductions, including tax withholding, are reported on Schedule I. Therefore, in calculating disposable income, below-median debtors must take their current monthly income from Form 122C-1 and reduce it by the tax withholding shown in Schedule I and their other reasonably necessary expenses shown in Schedule J. The practical issue is that withholding reported on Schedule I can be actual withholding or it can be withholding calculated based on actual tax liability, which are not necessarily the same thing. If a debtor uses actual tax withholding as an expense to reduce her gross income, and that withholding has in the past and is likely in the future to result in a tax refund because it is more than is needed to pay actual tax liability, reducing gross income by that figure will artificially inflate the reasonably necessary expense deduction and consequently artificially reduce the reported disposable income. In that case, any tax refund would then be income that has not been included in calculating disposable income, and the debtor would need to provide for payment of tax refunds into the plan. The correct approach is for a debtor to report tax withholding on Schedule I based on actual anticipated tax liability. This results in an accurate expense calculation of the debtor's reasonably necessary expenses and accurately determines disposable income for purposes of calculating the amount of a plan payment. Because the disposable income calculation takes into account actual tax liability, any tax refund based on over-withholding has been accounted for and need not be paid to the trustee during the life of the plan. In summary, . . . [a] plan that accurately reflects anticipated tax liability on Schedule I as an expense need not provide for payment to the trustee of tax refunds based on over-withholding, because no such refunds are expected. If the debtor is over-withholding and instead reports on Schedule I actual tax withholding, which is known or virtually certain to result in a tax refund, and then deducts that actual over-withholding in calculating reasonably necessary expenses, the debtor will need to provide for payment of the tax refund into the plan, because the debtor's income has been artificially reduced by over-withholding. . . . [A]bove-median debtors use . . . Form 122C-2. Form 122C-2 expressly includes a line item for taxes. . . . If a debtor correctly completes this line item, the tax refunds based on over-withholding are accounted for in the plan and need not be paid to the trustee. . . . Tax credit refunds are income in addition to income from wages or salary. Form 122C-1 does not include a line specifically for tax credit refunds. Therefore, a debtor must include tax credit refunds that were received within six months before bankruptcy on Form 122C-1 in Line 10 . . . . If the refund was not received within the six-month look-back period, it is not required to be included in the Form 122C-1 current monthly income calculation. If the debtor did not receive a refund within the six-month look-back period, but it is known or virtually certain that the debtor will receive tax credit refunds during the life of the plan, a reasonable estimate of the amount of anticipated tax credit refunds must be included as income on Schedule I and used to project disposable income over the life of the plan. For debtors who did receive their refund within the six months before bankruptcy, the full amount of the refund was pro-rated over six months to calculate current monthly income. Any known or virtually certain future tax credit refunds will need to be pro-rated over the full calendar year. . . . If a debtor accurately reports refunds based on tax credits on Schedule I, she need not provide for payment of those refunds in the plan, because they have already been accounted for in determining projected disposable income.").

{541} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Possibility of bonus income in future years is not known or virtually certain for *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), purposes and is not included in projected disposable income on trustee's objection under § 1325(b).).

{542} ***In re Price*, 609 B.R. 475, 481 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** ("Mr. Price receives $964.36 in VA disability payments each month. At the time of this bankruptcy filing . . . , the HAVEN Act had only been introduced in the House. . . . [O]n August 23, 2019, the HAVEN Act was signed into law by the President. The Act was effective immediately upon enactment. There is a strong argument that this law applies to pending chapter 13 cases with unconfirmed plans. . . . Additionally, on October 1, 2019, new forms for bankruptcy became effective that conform with the HAVEN Act changes, including Official Form 122C-1 . . . . Here, Mr. Price receives payments that are excluded from current monthly income calculations under the new law. While the Court need not decide whether the HAVEN Act applies to pending chapter 13 cases with unconfirmed plans, the inclusion of such payments, where modification is possible, weighs in favor of the debtors' good faith.").

{543} ***DeHart v. Isaacs (In re Isaacs)*, 605 B.R. 669, 674-75 (Bankr. M.D. Pa. Aug. 26, 2019) (Van Eck)** (Embracing *Adinolfi v. Meyer (In re Adinolfi)*, 543 B.R. 612 (B.A.P. 9th Cir. Jan. 19, 2016) (Faris, Dunn, Jury), adoption assistance payments are payments under the Social Security Act that are excluded from current monthly income for purposes of projected disposable income analysis in a Chapter 13 case. "Significantly, and as observed by the BAP in *Adinolfi*, the Social Security Act provides for the funding and oversight of many benefit programs, including the Adoption Assistance Program at issue here, with a huge variety of funding formulae and administrative mechanisms. . . . Importantly, many of the SSA programs, including the Adoption Assistance Program, are jointly funded and operated by both the federal and state governments. . . . The Adoption Assistance Payments received by the Debtors in this case, though paid to them by the county government, remain subject to the federal program requirements and standards of . . . federal oversight. . . . [T]he Adoption Assistance Payments that the Debtors receive in this case are 'benefits received under the Social Security Act' and are therefore excluded from their 'current monthly income.'").

§ 92.4 Household Size and Comparison of CMI to Median Family Income: § 1325(b)(3)

a. CMI LESS THAN MEDIAN FAMILY INCOME: "AMOUNTS REASONABLY NECESSARY TO BE EXPENDED—"

§ 93.1 Section 1325(b)(2)(A) and (B): "Amounts Reasonably Necessary to Be Expended—" When CMI Is Less Than Median Family Income

{544} ***Vega-Lara v. Viegelahn (In re Vega-Lara)*, No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth)** (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form].").

{545} ***In re Orozco*, 613 B.R. 23, 29–32 (Bankr. D. Or. Jan. 15, 2020) (McKittrick)** (Upon objection under § 1325(b), Chapter 13 debtor must commit future tax refunds to the trustee or the budget must accurately account for both overwithholding and future tax credits as either actual expense amounts or prorated additions to income. "For all debtors, the income portion of disposable monthly income is the current monthly income shown on their Official Form 122C-1 . . . . Although there are certain exclusions from the 'all sources' definition, tax refunds are not one of those exclusions. . . . Tax refunds resulting from over-withholding are not additional income; they are a portion of the debtor's gross pay, which has been reported on Form 122C-1. A portion of that gross pay is returned to the debtor who has withheld more in taxes than is actually owed. It does not matter whether the refund is received in the six months before bankruptcy; the gross pay that is reflected on the Form 122C-1 is all that is required in calculating current monthly income. Refunds that are based on tax credits, on the other hand, are not derived from a debtor's work income, and so do not show up as part of the gross pay on the Form 122C-1. Because they are a source of income that is not excluded from the definition of current monthly income in § 101(10A), they must somehow be included in the calculation of current monthly income, if received in the six months before bankruptcy. . . . Tax refunds must be factored into the calculation of projected disposable income, whether a result of tax credits or of over-withholding. . . . The question is how tax refunds should be accounted for . . . . The answer depends on whether the tax refunds are a result of over-withholding or are tax credit refunds. . . . For below-median debtors, the expenses used to reduce their current monthly income to determine disposable income are generally set out in Schedule J. That schedule, however, does not include a line item for tax withholding. Payroll deductions, including tax withholding, are reported on Schedule I. Therefore, in calculating disposable income, below-median debtors must take their current monthly income from Form 122C-1 and reduce it by the tax withholding shown

in Schedule I and their other reasonably necessary expenses shown in Schedule J. The practical issue is that withholding reported on Schedule I can be actual withholding or it can be withholding calculated based on actual tax liability, which are not necessarily the same thing. If a debtor uses actual tax withholding as an expense to reduce her gross income, and that withholding has in the past and is likely in the future to result in a tax refund because it is more than is needed to pay actual tax liability, reducing gross income by that figure will artificially inflate the reasonably necessary expense deduction and consequently artificially reduce the reported disposable income. In that case, any tax refund would then be income that has not been included in calculating disposable income, and the debtor would need to provide for payment of tax refunds into the plan. The correct approach is for a debtor to report tax withholding on Schedule I based on actual anticipated tax liability. This results in an accurate expense calculation of the debtor's reasonably necessary expenses and accurately determines disposable income for purposes of calculating the amount of a plan payment. Because the disposable income calculation takes into account actual tax liability, any tax refund based on over-withholding has been accounted for and need not be paid to the trustee during the life of the plan. In summary, . . . [a] plan that accurately reflects anticipated tax liability on Schedule I as an expense need not provide for payment to the trustee of tax refunds based on over-withholding, because no such refunds are expected. If the debtor is over-withholding and instead reports on Schedule I actual tax withholding, which is known or virtually certain to result in a tax refund, and then deducts that actual over-withholding in calculating reasonably necessary expenses, the debtor will need to provide for payment of the tax refund into the plan, because the debtor's income has been artificially reduced by over-withholding. . . . [A]bove-median debtors use . . . Form 122C-2. Form 122C-2 expressly includes a line item for taxes. . . . If a debtor correctly completes this line item, the tax refunds based on over-withholding are accounted for in the plan and need not be paid to the trustee. . . . Tax credit refunds are income in addition to income from wages or salary. Form 122C-1 does not include a line specifically for tax credit refunds. Therefore, a debtor must include tax credit refunds that were received within six months before bankruptcy on Form 122C-1 in Line 10 . . . . If the refund was not received within the six-month look-back period, it is not required to be included in the Form 122C-1 current monthly income calculation. If the debtor did not receive a refund within the six-month look-back period, but it is known or virtually certain that the debtor will receive tax credit refunds during the life of the plan, a reasonable estimate of the amount of anticipated tax credit refunds must be included as income on Schedule I and used to project disposable income over the life of the plan. For debtors who did receive their refund within the six months before bankruptcy, the full amount of the refund was pro-rated over six months to calculate current monthly income. Any known or virtually certain future tax credit refunds will need to be pro-rated over the full calendar year. . . . If a debtor accurately reports refunds based on tax credits on Schedule I, she need not provide for payment of those refunds in the plan, because they have already been accounted for in determining projected disposable income.").

{546} ***In re Rodriguez*, No. 19-11512-B-13, 2019 WL 3956128, at *3–*4 (Bankr. E.D. Cal. Aug. 21, 2019) (Lastreto)** (Debtor with current monthly income less than applicable median family income in household of seven persons proved that reasonable and necessary expenses for purposes of projected disposable income test were greater than amounts that would otherwise be allowed a debtor with CMI greater than applicable median family income. Bankruptcy court takes exception to $500-per-month expense for entertainment, to $80-per-month contribution to other family members and to extra $150 per month for childcare and education that was not explained. "'[When] a below median income debtor, seeks to deduct from income a higher expense amount than that of an above median debtor, there is no basis in law or public policy to restrict below median debtors to the same expenses authorized above median income debtors.' . . . The size of the household explains some aspects of the expense. . . . The census figures are not proven to be either relevant or applicable in determining 'disposable income' for below median debtors. When heads of a family are in bankruptcy is it germane what 'the average family' spends on entertainment? . . . [C]omparing what an average family may spend . . . to what a family in bankruptcy may be allowed to deduct from current income in a month is not the proper standard.").

b. CMI GREATER THAN MEDIAN FAMILY INCOME: "AMOUNTS REASONABLY NECESSARY TO BE EXPENDED—"

1) GENERAL CONSIDERATIONS

§ 94.1 Big Picture: Too Many Issues
§ 94.2 Netting Issues, Including Exclusion of Payments for Debts
§ 94.3 Accounting for Spouses

2) MONTHLY EXPENSES: § 707(b)(2)(A)(ii)

§ 95.1 In General
§ 95.2 National Standards
§ 95.3 Local Standards: Housing and Transportation

{547} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Distinguishing dicta in *Ransom*, when actual mortgage payment exceeds Local Standards ownership amount, debtor enters $0 for Local Standards ownership deduction and enters entire monthly mortgage payment as secured debt. This outcome allows actual mortgage expense in excess of Local Standards amount by reconciling §§ 707(b)(2)(A)(ii)(I) with § 707(b)(2)(A)(iii). Same analysis applies to vehicle ownership expense that exceeds Local Standards transportation ownership amount—debtor gets larger actual monthly expense as a secured debt payment after netting against Local Standards allowance elsewhere on Official Form 122C-2.).

{548} ***In re Anderson*, 604 B.R. 717, 719–25 (Bankr. N.D. Tex. Aug. 9, 2019) (Mullin)** (Rejecting trustee's contrary arguments, debtor with small remaining purchase-money balance on car loan is entitled to entire Local Standards ownership expense deduction, net of monthly proration of secured debt remaining to be paid. Applying *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 131 S. Ct. 716,

178 L. Ed. 2d 603 (Jan. 11, 2011), limiting transportation ownership deduction to lesser of debt or Local Standards amount would be inconsistent with the Code and contrary to the instructions of the Supreme Court to avoid IRS guidelines that are inconsistent with the Bankruptcy Code. "[T]he Debtors are entitled to (i) a net monthly deduction of $431.62 as their transportation ownership cost under the Local Standards incorporated in § 707(b)(2)(A)(ii)(I), and (ii) a monthly debt payment deduction of $65.38 under § 707(b)(2)(A)(iii). . . . Listed on the Debtors' schedules is . . . a remaining outstanding purchase money secured debt of $3,922.88 owed to Wells Fargo Dealer Services. . . . [T]hey deducted the full transportation ownership cost of $497.00 . . . as opposed to limiting their deduction to their *actual* monthly transportation ownership cost of $65.38. . . . Because the Debtors' Vehicle was subject to an outstanding purchase money secured debt on the date of their bankruptcy filing, the Debtors are entitled to a deduction for transportation 'ownership cost' under the Local Standards. . . . *Ransom* unambiguously stated . . . that (a) the 'Local Standards' referenced in § 707(b)(2)(A)(ii)(I) are the Allowable Expense Tables, (b) the statute *does not* incorporate the IRS guidelines, and (c) courts may consult the guidelines when interpreting the Allowable Expense Tables, *unless* the guidelines are at odds with the statutory language. . . . [U]nder clause (ii), the Debtors are allowed the full $497.00 monthly vehicle transportation ownership cost provided in the Allowable Expense Tables, but then the Debtors are required to deduct their applicable 'payments for debts,' which in this case is $65.38, resulting in a net deduction of $431.62. . . . [T]he IRS guidelines for tax collection purposes are at odds with the plain language of § 707(b)(2)(A)(ii)(I) for bankruptcy purposes. . . . [T]he IRS guidelines for tax collection purposes (limiting the expenses covered by the Local Standards to the lesser of the Local Standards or actual monthly expenses) are directly at odds with the plain language of § 707(b)(2)(A)(ii)(I), which applies in bankruptcy cases. . . . The Court views Form 122C-2 as an advisory opinion on how to interpret § 707(b)(2)(A)(ii)(I) and 707(b)(2)(A)(iii).").

§ 95.4 Other [Necessary] Expenses—In General; All Categories
§ 95.5 Other [Necessary] Expenses—Accounting and Legal Fees
§ 95.6 Other [Necessary] Expenses—Charitable Contributions
§ 95.7 Other [Necessary] Expenses—Child Care
§ 95.8 Other [Necessary] Expenses—Court-Ordered Payments
§ 95.9 Other [Necessary] Expenses—Dependent Care
§ 95.10 Other [Necessary] Expenses—Education
§ 95.11 Other [Necessary] Expenses—Health Care
§ 95.12 Other [Necessary] Expenses—Involuntary Deductions
§ 95.13 Other [Necessary] Expenses—Life Insurance

{549} ***In re Price*, 609 B.R. 475, 477–81 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** (Not bad faith for § 1325(a)(3) purposes that debtors with CMI greater than applicable median family income propose to pay unsecured creditors all projected disposable income as determined on Official Forms 122C-1 and 122C-2 notwithstanding that Schedule J reveals that debtors will also pay $222 per month for whole life insurance policies that are not deducted as expenses on Form 122C-2. "The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. . . . The trustee suggests that joint debtors must contribute all their 'actual' disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable income. . . . The Court rejects this suggestion. The determination of disposable income under the statute 'supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis.' *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 ([Jan. 11,] 2011). . . . Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith. The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component . . . . But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.").

§ 95.14 Other [Necessary] Expenses—Secured or Legally Perfected Debts
§ 95.15 Other [Necessary] Expenses—Unsecured Debts
§ 95.16 Other [Necessary] Expenses—Taxes

{550} ***Vega-Lara v. Viegelahn (In re Vega-Lara)*, No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth)** (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the

supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form].”), *aff'g*, No. 17-52553, 2018 WL 2422427 (Bankr. W.D. Tex. May 4, 2018) (Gargotta) (Same holding as *In re Orozco*, No. 17-52818-CAG, 2018 WL 2425971 (Bankr. W.D. Tex. May 10, 2018) (Gargotta).).

{551} ***In re Orozco*, 613 B.R. 23, 29–32 (Bankr. D. Or. Jan. 15, 2020) (McKittrick)** (Upon objection under § 1325(b), Chapter 13 debtor must commit future tax refunds to the trustee or the budget must accurately account for both overwithholding and future tax credits as either actual expense amounts or prorated additions to income. “For all debtors, the income portion of disposable monthly income is the current monthly income shown on their Official Form 122C-1 . . . . Although there are certain exclusions from the ‘all sources’ definition, tax refunds are not one of those exclusions. . . . Tax refunds resulting from over-withholding are not additional income; they are a portion of the debtor’s gross pay, which has been reported on Form 122C-1. A portion of that gross pay is returned to the debtor who has withheld more in taxes than is actually owed. It does not matter whether the refund is received in the six months before bankruptcy; the gross pay that is reflected on the Form 122C-1 is all that is required in calculating current monthly income. Refunds that are based on tax credits, on the other hand, are not derived from a debtor’s work income, and so do not show up as part of the gross pay on the Form 122C-1. Because they are a source of income that is not excluded from the definition of current monthly income in § 101(10A), they must somehow be included in the calculation of current monthly income, if received in the six months before bankruptcy. . . . Tax refunds must be factored into the calculation of projected disposable income, whether a result of tax credits or of over-withholding. . . . The question is how tax refunds should be accounted for . . . . The answer depends on whether the tax refunds are a result of over-withholding or are tax credit refunds. . . . For below-median debtors, the expenses used to reduce their current monthly income to determine disposable income are generally set out in Schedule J. That schedule, however, does not include a line item for tax withholding. Payroll deductions, including tax withholding, are reported on Schedule I. Therefore, in calculating disposable income, below-median debtors must take their current monthly income from Form 122C-1 and reduce it by the tax withholding shown in Schedule I and their other reasonably necessary expenses shown in Schedule J. The practical issue is that withholding reported on Schedule I can be actual withholding or it can be withholding calculated based on actual tax liability, which are not necessarily the same thing. If a debtor uses actual tax withholding as an expense to reduce her gross income, and that withholding has in the past and is likely in the future to result in a tax refund because it is more than is needed to pay actual tax liability, reducing gross income by that figure will artificially inflate the reasonably necessary expense deduction and consequently artificially reduce the reported disposable income. In that case, any tax refund would then be income that has not been included in calculating disposable income, and the debtor would need to provide for payment of tax refunds into the plan. The correct approach is for a debtor to report tax withholding on Schedule I based on actual anticipated tax liability. This results in an accurate expense calculation of the debtor’s reasonably necessary expenses and accurately determines disposable income for purposes of calculating the amount of a plan payment. Because the disposable income calculation takes into account actual tax liability, any tax refund based on over-withholding has been accounted for and need not be paid to the trustee during the life of the plan. In summary, . . . [a] plan that accurately reflects anticipated tax liability on Schedule I as an expense need not provide for payment to the trustee of tax refunds based on over-withholding, because no such refunds are expected. If the debtor is over-withholding and instead reports on Schedule I actual tax withholding, which is known or virtually certain to result in a tax refund, and then deducts that actual over-withholding in calculating reasonably necessary expenses, the debtor will need to provide for payment of the tax refund into the plan, because the debtor’s income has been artificially reduced by over-withholding. . . . [A]bove-median debtors use . . . Form 122C-2. Form 122C-2 expressly includes a line item for taxes. . . . If a debtor correctly completes this line item, the tax refunds based on over-withholding are accounted for in the plan and need not be paid to the trustee. . . . Tax credit refunds are income in addition to income from wages or salary. Form 122C-1 does not include a line specifically for tax credit refunds. Therefore, a debtor must include tax credit refunds that were received within six months before bankruptcy on Form 122C-1 in Line 10 . . . . If the refund was not received within the six-month look-back period, it is not required to be included in the Form 122C-1 current monthly income calculation. If the debtor did not receive a refund within the six-month look-back period, but it is known or virtually certain that the debtor will receive tax credit refunds during the life of the plan, a reasonable estimate of the amount of anticipated tax credit refunds must be included as income on Schedule I and used to project disposable income over the life of the plan. For debtors who did receive their refund within the six months before bankruptcy, the full amount of the refund was pro-rated over six months to calculate current monthly income. Any known or virtually certain future tax credit refunds will need to be pro-rated over the full calendar year. . . . If a debtor accurately reports refunds based on tax credits on Schedule I, she need not provide for payment of those refunds in the plan, because they have already been accounted for in determining projected disposable income.”).

{552} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Trustee’s objection that debtor’s miscalculated deduction for taxes in calculation of disposable income is overcome by evidence that the debtor’s reduced withholding at the trustee’s urging to reduce the likelihood of future tax refunds.).

§ 95.17 Other [Necessary] Expenses—Optional Telephones and Services

{553} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Evidence supported debtor's additional $50-per-month expense for enhanced telephone and internet service—above amount included in Local Standards—when debtor's work required enhanced texting and broadband internet connectivity.).

§ 95.18 Other [Necessary] Expenses—Student Loans
§ 95.19 Other [Necessary] Expenses—Internet Provider/E-mail
§ 95.20 Other [Necessary] Expenses—Repayment of Loans to Pay Federal Taxes
§ 95.21 Health and Disability Insurance
§ 95.22 Family Violence Expenses
§ 95.23 Five Percent More Food and Clothing
§ 95.24 Elderly, Ill or Disabled
§ 95.25 Administrative Expenses, Sorta

{554} ***In re Dumas*, 608 B.R. 902, 918–19 (Bankr. N.D. Ga. Oct. 1, 2019) (Cavender)** (Perhaps *in dicta*, the separate deduction from current monthly income in the calculation of projected disposable income for expenses of administration includes trustee fees in Chapter 13 cases. "The separate deduction for trustee fees in chapter 13 cases may further be explained by the fact that standing chapter 13 trustee fees work differently than other administrative expenses. In fact, standing trustee fees technically may not even be administrative expenses because they are statutorily mandated and not subject to allowance by the Court . . . . [S]tanding chapter 13 fees . . . never come before the Court for allowance but . . . still enjoy priority through § 1326(b)(2). . . . Thus, the means test allows for a separate deduction of all trustee fees that are likely to arise over the course of a plan, even though they will never be allowed by the Court and remain hypothetical at the time of confirmation. Even if the separate deduction for the 'administrative expense' of chapter 13 trustee fees in the means test creates a small redundancy *vis-à-vis* the deduction for 'priority claims,' the Court finds any mild redundancy to be the unfortunate result of inartful drafting and the wholesale incorporation of the chapter 7 means test into chapter 13.").

§ 95.26 Education Expenses
§ 95.27 Home Energy Costs
§ 95.28 ABLE Program Contributions
3) MONTHLY PAYMENTS OF SECURED DEBTS: § 707(b)(2)(A)(iii)
§ 96.1 Average Monthly Payments on Account of Secured Debts

{555} ***In re Anderson*, 604 B.R. 717, 719–25 (Bankr. N.D. Tex. Aug. 9, 2019) (Mullin)** (Rejecting trustee's contrary arguments, debtor with small remaining purchase-money balance on car loan is entitled to entire Local Standards ownership expense deduction, net of monthly proration of secured debt remaining to be paid. Applying *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 131 S. Ct. 716, 178 L. Ed. 2d 603 (Jan. 11, 2011), limiting transportation ownership deduction to lesser of debt or Local Standards amount would be inconsistent with the Code and contrary to the instructions of the Supreme Court to avoid IRS guidelines that are inconsistent with the Bankruptcy Code. "[T]he Court overrules the Trustee's objection regarding transportation ownership cost. . . . [T]he Debtors are entitled to (i) a net monthly deduction of $431.62 as their transportation ownership cost under the Local Standards incorporated in § 707(b)(2)(A)(ii)(I), and (ii) a monthly debt payment deduction of $65.38 under § 707(b)(2)(A)(iii). . . . Listed on the Debtors' schedules is . . . a remaining outstanding purchase money secured debt of $3,922.88 owed to Wells Fargo Dealer Services. . . . [T]hey deducted the full transportation ownership cost of $497.00 . . . as opposed to limiting their deduction to their *actual* monthly transportation ownership cost of $65.38. . . . Because the Debtors' Vehicle was subject to an outstanding purchase money secured debt on the date of their bankruptcy filing, the Debtors are entitled to a deduction for transportation 'ownership cost' under the Local Standards. . . . *Ransom* unambiguously stated . . . that (a) the 'Local Standards' referenced in § 707(b)(2)(A)(ii)(I) are the Allowable Expense Tables, (b) the statute *does not* incorporate the IRS guidelines, and (c) courts may consult the guidelines when interpreting the Allowable Expense Tables, *unless* the guidelines are at odds with the statutory language. . . . [U]nder clause (ii), the Debtors are allowed the full $497.00 monthly vehicle transportation ownership cost provided in the Allowable Expense Tables, but then the Debtors are required to deduct their applicable 'payments for debts,' which in this case is $65.38, resulting in a net deduction of $431.62. . . . [T]he IRS guidelines for tax collection purposes are at odds with the plain language of § 707(b)(2)(A)(ii)(I) for bankruptcy purposes. . . . [T]he IRS guidelines for tax collection purposes (limiting the expenses covered by the Local Standards to the lesser of the Local Standards or actual monthly expenses) are directly at odds with the plain language of § 707(b)(2)(A)(ii)(I), which applies in bankruptcy cases. . . . The Court views Form 122C-2 as an advisory opinion on how to interpret § 707(b)(2)(A)(ii)(I) and 707(b)(2)(A)(iii).").

4) PAYMENT OF ALL PRIORITY CLAIMS: § 707(b)(2)(A)(iv)
§ 97.1 Total Priority Debts and Divide by 60

{556} ***In re Dumas*, 608 B.R. 902, 908–23 (Bankr. N.D. Ga. Oct. 1, 2019) (Cavender)** (Chapter 13 debtor with CMI greater than applicable median family income includes attorney's fees in the priority claims that are deductible to determine projected disposable income; attorney's fees are administrative expenses that are priority claims which reduce CMI in the calculation of projected disposable income. "Trustee contends that neither Form 122C-2 nor the Code allow [*sic*] any deduction for attorney's fees when calculating

disposable income. Trustee is correct that line 35 of Form 122C-2 excludes chapter 13 attorney's fees, as the Committee Notes make clear . . . . [B]ut a clear majority has emerged allowing a deduction for attorney's fees for above-median debtors. Most of these cases have adopted or endorsed the pot deduction for attorney's fees. . . . Several cases, however, have adopted, or at least acknowledged the propriety of, the means test deduction. . . . Most of the frustration stems from inclusion of a deduction for 'priority claims' in § 707(b)(2)(A)(iv) of the means test coupled with the use of the term 'unsecured creditors' in § 1325(b)(1)(B). Many courts have held the plain meaning of 'unsecured creditors' normally includes both priority and nonpriority unsecured creditors. Applying that plain meaning in the context of § 1325(b)(1)(B), however, would allow debtors to deduct priority claims in calculating PDI . . . while simultaneously paying those same priority claims with PDI . . . . This would allow debtors to double count priority claims to the detriment of nonpriority unsecured claims, . . . an absurd result. Thus, most cases have interpreted 'unsecured creditors' as used in § 1325(b)(1)(B) to mean nonpriority unsecured creditors. . . . Some courts have expressed concern that interpreting 'unsecured creditors' to include only nonpriority unsecured creditors may lead to the conclusion that below-median debtors may not pay priority claims with projected disposable income, meaning their plans would never be feasible without some source of payment outside of income. . . . The solution to the dueling absurdities . . . is to somehow read the statute so that 'the effective result [should be] the same for all debtors—priority unsecured claims can be counted once, no more, no less, in determining which funds are left for nonpriority unsecured creditors.' . . . [T]he Court . . . concurs with the majority conclusion that attorney's fees should be deducted before calculating the minimum amount to be paid to nonpriority unsecured creditors. . . . [Section] 507 is titled 'Priorities' and provides . . . as the second priority category 'administrative expenses allowed under section 503(b) of this title . . . .' . . . Section 503(b), in turn, . . . provides that ' . . . allowed administrative expenses [includes] . . . compensation and reimbursement awarded under section 330(a) . . . .' . . . Attorney's Fees . . . will therefore be an allowed administrative expense under § 503(b)(2) entitled to priority under § 507(a)(2). . . . Attorney's Fees easily fall within the meaning of 'priority claims' and may be deducted pursuant to § 707(b)(2)(A)(iv). . . . The Code is clear that administrative expenses are in fact claims despite the distinction between claims and expenses in § 507. . . . [T]he Court will not read 'priority claims' to erode the pre-BAPCPA practice of allowing debtor's [*sic*] to pay attorney's fees before calculating payments to nonpriority unsecured creditors. . . . If Congress intended to exclude the actual administrative expenses of a chapter 13 debtor in § 707(b)(2)(A)(iv), it could have done so explicitly in several different ways . . . . The Court concludes that 'priority claim' as used in § 707(b)(2)(A)(iv) includes actual attorney's fees of a chapter 13 debtor allowed as an administrative expense and entitled to priority under § 507(a)(2), and such expenses may be deducted as a reasonably necessary expense when calculating an above-median debtor's PDI. . . . Form 122C-2 . . . clearly limits the deduction for priority claims at line 35 to priority claims 'that are past due as of the filing date of your bankruptcy case.' The limitation to 'past due' claims generally excludes attorney's fees and other administrative expenses, and the Committee Notes to Form 122, last updated in 2015, clearly indicate that the deduction for priority claims excludes chapter 13 attorney's fees. . . . [T]he Court disagrees that the deduction is limited to 'past due priority debt.' Nothing in the language of § 707(b)(2)(A)(iv) creates such a limitation, nor is it clear how the committee arrived at its conclusion that only past due priority debts are deductible. . . . By eliminating known, undisputed, and allowed administrative expenses such as attorney's fees, Form 122C-2 ignores the plain language of the Code that allows for a deduction of all priority claims, regardless of when they may be 'due.' . . . [T]he better approach is to interpret the language of § 707(b)(1)(A)(iv) as written and allow a deduction for 'all priority claims' 'as of the effective date of the plan' regardless of the omission on Form 122C-2. . . . [O]ne important caveat: the pot deduction may not be used to double count attorney's fees or any other claim deducted in the PDI calculation. Priority claims, including attorney's fees, may be deducted 'once, no more, no less.' . . . Nothing in the plain language of BAPCPA or its legislative history suggests a goal of making it harder for above-median debtors to hire counsel. . . . If the primary goal of the means test is to ensure that debtors are channeled into chapter 13 cases instead of chapter 7 for the benefit of unsecured creditors, then it makes sense for unsecured creditors to pay the extra freight that comes with a chapter 13 case meant to serve them.").

5) SPECIAL CIRCUMSTANCES: § 707(b)(2)(B)
§ 98.1 Additional Expenses or Adjustments to CMI

{557} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Lawn maintenance of $60 per month is not a "special circumstance" for purposes of § 707(b)(2)(A)(ii)(V) when debtors have "reasonable alternative" of acquiring mower and trimmer and maintaining lawn themselves. Overages on utilities and home insurance in excess of Local Standards amounts are a "special circumstance" that is allowed as additional expense deduction in the disposable income calculation. Additional expense deduction of $81 per month for actual vehicle transportation and maintenance is reasonable and necessary and is allowable as a special circumstance deduction in excess of the $504 allowed by Local Standards tables.).

{558} ***In re Andrick*, 604 B.R. 577, 579–82 (Bankr. D. Colo. July 25, 2019) (Rosania)** (Expense deduction for medical marijuana for treatment of chronic and severe pain violates projected disposable income test because marijuana use for any purposes is illegal under federal law. "The Debtors' Form 122C-2 claims two additional deductions for special circumstances totalling $1,110: expenses for cigarettes in the amount of $210 and expenses for medical marijuana in the amount of $900. . . . [T]he Tenth Circuit Bankruptcy Appellate Panel succinctly stated: 'Can a debtor in the marijuana business obtain relief in the federal bankruptcy court? No.' *Arenas v. United States Tr. (In re Arenas)*, 535 B.R. 845, 847 [(B.A.P. 10th Cir. Aug. 21, 2015) (Cornish, Nugent, Somers)]. . . . ' . . . Debtor suffers from a chronic and severely painful medical condition for which marijuana is the only effective remedy. . . . ' . . . Marijuana use, whether for medical or recreational purposes, remains illegal under federal law. The deduction of a medical marijuana expense cannot be allowed as either an ongoing out-of-pocket medical expense or as a deduction for special circumstances. . . . [B]ecause the Debtors'

proposed Plan does not contribute all projected disposable income as required under 11 U.S.C. § 1325(b)(1)(B), it cannot be confirmed.").

c. DEDUCTIONS FROM CMI FOR ALL DEBTORS

§ 99.1 In General
§ 99.2 Amounts Paid by Others under § 101(10A)(B)
§ 99.3 Child Support, Foster Care and Disability Payments
§ 99.4 Pension Loan Repayments

{559} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (When 401(k) loans are repaid during plan, monthly payment amount becomes known and virtually certain to be available to increase payments to unsecured creditors; failure to kick up payments after 401(k) loans are paid off precludes confirmation. Debtor cannot use the possibility of future increase in expenses to offset known disposable income that will become available when 401(k) loans are paid off. Possible future medical expenses, car repairs and home maintenance do not meet the *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), standard.).

{560} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Section 403(b) retirement account loan is a deductible expense to arrive at disposable income if the expense is documented by debtors.).

{561} ***Vargas Moya v. Administracion Sistemas de Retiro de los Empleados del Gobierno y la Judicatura (In re Vargas Moya)*, 601 B.R. 845, 857–63 (Bankr. D.P.R. May 16, 2019) (Lamoutte)** (Applying § 362(b)(19), claim of government retirement plan for loan used to acquire real estate is not a perfected security interest because it was not properly registered but the claim is a statutory lien on the debtor's postpetition contributions. The stay exception allowed the retirement plan to continue to receive contributions postpetition to which its statutory lien attached. Section 552(a) did not defeat the plan's statutory lien on after-acquired property and the plan's lien survived discharge notwithstanding that § 523(a)(18) does not apply. Debtor's personal liability was discharged. "Retiro's statutory lien specifically states that it attaches to future property, that is, all the contributions accrued or to be accrued in the System. . . . [S]ection 552(a) only refers to security interests and not to statutory liens. . . . Section 362(b)(19) states that the filing of a petition . . . does not operate as a stay . . . 'of withholding of income from a debtor's wages and collection of amounts withheld . . . .' . . . Retiro has affirmatively alleged their compliance with § 362(b)(19) . . . . Retiro's statutory lien attaches to contributions acquired post-petition by the Debtor. . . . [A]lthough the Debtors released the personal liability of Retiro' loan through the discharge, the Defendant's lien continues to attach to the post-petition contributions to the retirement system, as established by the statutory lien.").

§ 99.5 Employee Benefit Plan Contributions

{562} ***Penfound v. Ruskin*, No. 18-13333, 2019 WL 4573841, at *3–*5 (E.D. Mich. Sept. 20, 2019) (Cohn)** (Citing dicta in *Seafort v. Burden (In re Seafort)*, 669 F.3d 662 (6th Cir. Feb. 15, 2012) (Suhrheinrich), and acknowledging at least three contrary views, voluntary contributions to 401(k) plan are not a deductible expense in the projected disposable income calculation for a Chapter 13 debtor. "[T]he Sixth Circuit [in *Seafort*] held that income made available once a debtor's 401(k) loan repayments are fully repaid may not be used to make voluntary retirement contributions. Rather, those funds must be committed to the debtor's Chapter 13 plan for distribution to unsecured creditors. . . . Significantly, the Sixth Circuit concluded . . . ' . . . that Congress intended to exclude from disposable income and projected disposable income available for unsecured creditors only voluntary retirement contributions already in existence at the time the petition is filed.' . . . Debtors are correct that [footnote 7 in *Seafort*] is dicta. However, it is very persuasive dicta. . . . Debtors' voluntary post-petition contributions to a 401(k) account are part of disposable income. . . . ' . . . Debtors' voluntary contributions to their 401(k) plan are not an expense which is necessary for the maintenance, support of Debtor or Debtors' dependents.'").

{563} ***In re Whitt*, No. 19-03801-NPO, 2020 WL 833808, at *3–*6 (Bankr. S.D. Miss. Feb. 19, 2020) (Olack)** (Continued voluntary contributions to 401(k) retirement account are excluded from disposable income in a Chapter 13 case. "Neither § 1325 nor § 707 explicitly authorizes 401(k) contributions as an allowable expense in calculating disposable income. . . . Prior to BAPCPA, 401(k) contributions were considered disposable income and were not a necessary expense. . . . There are three distinct approaches to analyzing the relationship between § 541(b)(7) and § 1325(b)(2). . . . The first view holds that all voluntary retirement contributions, both prepetition and postpetition, are permitted under § 541(b)(7), limited only by the good faith requirement . . . . The second view holds that § 541(b)(7) does not permit postpetition voluntary retirement contributions in any amount regardless of whether the debtor was making prepetition retirement contributions. . . . The third view reads § 541(a) and § 541(b)(7) as limiting voluntary contributions to those amounts being made as of the petition date and holds that § 541(b)(7) does not permit a debtor to commence voluntary contributions postpetition. . . . [T]he Court joins the majority and other courts within the Fifth Circuit that have held that postpetition retirement contributions are not considered disposable income. . . . Congress included the hanging paragraph in BAPCPA to exclude retirement contributions of this sort from a debtor's disposable income. . . . [C]hapter 13 debtors may continue to contribute to a retirement plan and need not instead devote the income used for voluntary contributions to unsecured creditors . . . . [I]t is unnecessary to consider if a voluntary contribution satisfies the 'reasonable or necessary' standard of § 1325(b) since that determination is made by § 541(b)(7).").

§ 99.6 § 1325(b)(2)(A)(ii): Charitable Contributions (Again?)

{564} ***In re Wade*, 612 B.R. 70, 73–75 (Bankr. E.D.N.C. Dec. 30, 2019) (Warren)** (Plan provision to tithe $756 per month is not proposed in good faith and precludes confirmation of 39% plan. "Beginning shortly after they filed the Petition, the Debtors began tithing regularly to the Church. . . . Debtors had not contributed to the Church for two or three years before the Debtors filed the Petition, and they have not contributed ten percent of their income in approximately nine years. He characterized the Debtors' failure to tithe as religious 'disobedience.' . . . Congress added the language excluding charitable contributions from disposable income as part of the Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183, 112 Stat. 517 (1998). . . . The purpose of the 1998 Act, as stated in the House Report for the bill which became the Act, was to 'protect[ ] the rights of debtors to *continue* to make religious and charitable contributions after they file for bankruptcy relief.' . . . [T]he court does not question the sincerity of the Debtors' belief that they should tithe; however, the Debtors' testimony established a prolonged history of choosing not to contribute to the Church in order to pay for other expenses or endeavors which culminated in the Debtors' Petition. . . . [A] plan that proposes to contribute the amount of $756.00 to the Church each month to the detriment of unsecured creditors, when the Debtors did not contribute regularly before filing the Petition, is not proposed in good faith. The Debtors should not be permitted to pursue their salvation on the backs of their unsecured creditors.").

{565} ***In re Styerwalt*, 610 B.R. 356, 377–79 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Evidence supported charitable and religious donations totaling less than 3 percent of debtor's gross annual income. "Reasonably necessary" standard applies to charitable contributions less than 15 percent. Here test is satisfied by evidence of regular church going with modest contributions in cash and attendance at AA meetings. "The Court is tempted to follow the [*Drummond v. Cavanagh (In re Cavanagh)*, 250 B.R. 107 (B.A.P. 9th June 30, 2000) (Ryan, Klein, Russell),] line which establishes a *per se* rule that Chapter 13 debtors may always make charitable contributions so long as the amount is less than 15% of gross annual income. . . . But, the problem is that such approach simply is contrary to the statutory text . . . . [A] simple and plain reading dictates that qualified charitable contributions are subject to the 'reasonably necessary' requirement even if below the 15% of gross annual income cap. . . . [W]e now know that charitable contributions, including religious donations, can be 'reasonably necessary' and used in the projected disposable income calculation even though they are not economically justified. . . . [C]haritable giving, by definition, does not result in an excessive lifestyle. . . . [T]he Court elects to look toward neutral factors such as: the historical pattern of charitable giving . . . ; the proposed charitable contributions in relation to the proposed Chapter 13 trustee payments; the proposed charitable contributions in relation to proposed distributions to general unsecured creditors; the nature and extent of objections; any evidence suggesting that the proposed charitable contributions are proposed primarily to harm creditors; and the totality of the circumstances.").

d. APPLICABLE COMMITMENT PERIOD—ALL DEBTORS
§ 100.1 Applicable Commitment Period Calculation
6. MISCELLANEOUS UNSECURED CLAIMS ISSUES
§ 101.1 What Do Unsecured Creditors Get?
§ 101.2 Good Faith toward Unsecured Claim Holders?
§ 101.3 Methods of Paying Unsecured Claims
§ 101.4 Curing Default and Maintaining Payments on Unsecured Debt
F. LEASES, RENTAL AGREEMENTS AND OTHER EXECUTORY CONTRACTS
§ 102.1 Debtor Can Assume, Assign or Reject Executory Contracts

{566} ***In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. Dec. 4, 2019) (Thuma)** (Code ambiguously allows trustee and Chapter 13 debtor to assume executory contract to purchase land. Failure to assume undisclosed contract in prior Chapter 7 case may have rejected the contract but did not affect automatic abandonment. Undisclosed contract remains asset of prior Chapter 7 case that cannot be assumed or otherwise managed in current Chapter 13 case. Debtors must reopen Chapter 7 case and seek abandonment of the contract to then be able to assume the contract in current Chapter 13 case.).

{567} ***Aire Serv LLC v. Roberts (In re Roberts)*, 607 B.R. 635 (Bankr. N.D. Ill. Oct. 10, 2019) (Barnes)** (On motion for preliminary injunction, franchisor failed to prove likelihood of success against Chapter 13 debtor because covenant not to compete was a claim under Seventh Circuit law which must be asserted by proof of claim, not by plenary action for injunction.).

{568} ***Davidson v. Barstad (In re Barstad)*, No. 17-00027-TLM, 2019 WL 2479311 (Bankr. D. Mont. June 12, 2019) (Myers)** (Prepetition state court judgment for specific performance of buy-sell agreement after prepetition auction of real property rendered contract not executory. Chapter 13 debtor cannot reject the contract under §§ 365 and 1322(b)(7). Judgment for specific performance cannot be satisfied with a money alternative and is not a "claim" for purposes of preference avoidance under § 547(b)(1).).

§ 102.2 Debtor Must Cure Defaults and Assure Future Performance

{569} ***In re Manz*, No. 19-30090 (JNP), 2020 WL 1180752 (Bankr. D.N.J. Mar. 10, 2020) (Poslusny)** ("Mutual home ownership" contract between debtor and Audubon Mutual Housing Corporation is an executory contract that can be assumed in Chapter 13 case but

debtor must propose prompt cure of arrears, including attorney's fees. Forty-four months proposed in Chapter 13 plan is not prompt; only one year to cure arrears is allowable.).

{570} ***In re Haynes*, No. 19-20601-PRW, 2019 WL 7945834 (Bankr. W.D.N.Y. Aug. 1, 2019) (Warren)** (Hardship deferment agreement with respect to payment of delinquent taxes expired by its terms before Chapter 13 petition and is not an executory contract that could be assumed through plan. Even if executory, Chapter 13 debtor's proposal to cure default in part in 22 months and in part in 60 months is not a prompt cure for purposes of § 365(b)(1). Debtor is otherwise incapable of a prompt cure.).

§ 102.3 Leases and Executory Contracts after BAPCPA
§ 102.4 Nonresidential Lease of Real Property
§ 102.5 Rejection Generates Unsecured Claim
§ 102.6 Lessor Can Demand Adequate Protection
§ 102.7 Lessor Can Accelerate Assumption or Rejection
§ 102.8 Fake Leases and Rental Agreements
§ 102.9 Land Sales Contracts and Contracts to Make a Deed

{571} ***In re Manz*, No. 19-30090 (JNP), 2020 WL 1180752 (Bankr. D.N.J. Mar. 10, 2020) (Poslusny)** ("Mutual home ownership" contract between debtor and Audubon Mutual Housing Corporation is an executory contract that can be assumed in Chapter 13 case but debtor must propose prompt cure of arrears, including attorney's fees. Forty-four months proposed in Chapter 13 plan is not prompt; only one year to cure arrears is allowable.).

{572} ***In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. Dec. 4, 2019) (Thuma)** (Code ambiguously allows trustee and Chapter 13 debtor to assume executory contract to purchase land. Failure to assume undisclosed contract in prior Chapter 7 case may have rejected contract but did not affect an automatic abandonment. Undisclosed contract remains asset of prior Chapter 7 case that cannot be assumed or otherwise managed in current Chapter 13 case. Debtors must reopen Chapter 7 case and seek abandonment of the contract to then be able to assume the contract in current Chapter 13 case.).

{573} ***In re Atchley*, 604 B.R. 255 (Bankr. D.S.C. July 30, 2019) (Waites)** (Equity of redemption under installment land sale contract was a sufficient property interest to permit Chapter 13 debtor to assume land sale contract and cure default through the plan. Stay relief denied when equity of redemption remained in Chapter 13 debtor at time of petition because state court eviction action was not completed and proposed plan assumed the contract and made provision for curing all defaults in payments.).

{574} ***In re Edwards*, 606 B.R. 356 (Bankr. E.D. Ark. July 3, 2019) (Jones)** (Applying Arkansas law, contract to make a deed was a security device that can be treated as a long-term mortgage. That acceleration clause was exercised before the Chapter 13 petition does not remove the property from the estate and does not render the agreement forfeited before the petition.).

{575} ***In re Nolan*, No. 17-03706, 2018 WL 10345331 (Bankr. S.D. Ala. Apr. 2, 2018) (Callaway)** (Stay relief denied based on finding that contract for deed made in 2003 with respect to real property and mobile home was a secured transaction, not a true lease; debtor can cure default and maintain payments consistent with § 1322(b)(5) and need not assume the lease under § 365 and § 1322(b)(7).).

§ 102.10 When Purpose of Plan Is to Deal with an Unfavorable Contract or Lease

{576} ***Davidson v. Barstad (In re Barstad)*, No. 17-00027-TLM, 2019 WL 2479311 (Bankr. D. Mont. June 12, 2019) (Myers)** (Cause for dismissal under § 1307(c) that Chapter 13 case was filed to defeat state court judgment for specific performance of buy-sell agreement after prepetition auction of debtor's real property.).

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{577} ***In re Walker*, No. 3:19-bk-33182-SHB, 2020 WL 1696097 (Bankr. E.D. Tenn. Apr. 2, 2020) (Bauknight)** (Third Chapter 13 case was filed in bad faith and plan was proposed in bad faith when each case and the current plan were engineered to defeat collection rights of former spouse. Debtor lied to domestic relations court, ignored divorce decree with respect to sale of property and refinancing of property, misappropriated assets and admitted to defrauding the state with respect to food stamps.).

{578} ***In re Pittman*, No. 19-41057, 2020 WL 859435 (Bankr. D. Kan. Feb. 20, 2020) (Somers)** (Chapter 13 filing two days after settlement agreement in state court divorce was not filed in bad faith notwithstanding that settlement agreement recites inaccurately that "even-up" provision will be nondischargeable in bankruptcy and Chapter 13 plan recites inconsistently that even-up provision will be discharged at completion of payments. At time settlement agreement was filed, both debtor and former spouse believed that even-up provision would be nondischargeable. They were both wrong but no bad-faith motive could be ascribed to debtor.).

{579} ***In re Hopkins*, No. 18-28111-ABA, 2019 WL 6357249 (Bankr. D.N.J. Nov. 19, 2019) (Altenburg)** (Chapter 13 debtor and attorney are sanctioned for bad-faith abuse of bankruptcy process that included sale of property without court authorization, failure to properly conduct Chapter 13 case, failure to file documents and failure to adequately represent the debtor. Sanctions included ordering the Chapter 13 trustee to use funds on hand in unconfirmed case to pay unsecured creditors in full, dismissal with two-year bar to refiling and denial of fees to counsel.).

{580} ***In re Pappas*, No. 18-20179, 2019 WL 4554511 (Bankr. D. Me. Sept. 19, 2019) (Fagone)** (In years-long litigation between debtor and creditor with large judgment from a civil rights action against the debtor, disputed material facts preclude summary judgment with respect to claims of bad faith under § 1325(a)(3) and § 1325(a)(5).).

{581} ***In re Beasley*, No. 18-04268-DSC13, 2019 WL 3403361 (Bankr. N.D. Ala. July 3, 2019) (Crawford)** (Debtor was not particularly honest or worthy in dealings with former spouse but Chapter 13 case appears to have been filed in good faith for § 1325(a)(7) purposes in an effort to fix bad behavior and clean up financial problems created by debtor's bad behavior during prepetition domestic relations litigation.).

{582} ***In re Lopez*, No. 15-04334, 2019 WL 2406937, at *6 (Bankr. D.P.R. June 6, 2019) (Tester)** (Creditor failed to prove that theft of car 15 years before Chapter 13 petition was part of a fraudulent scheme or otherwise indicative of bad faith for § 1307(c) or § 1325(a)(7) purposes. That almost all debt was owed to one objecting creditor and that petition was filed on the eve of state court foreclosure of judgment lien was not indicative of bad faith when filing Chapter 13 enabled the debtor to void the judgment lien under § 522(f) and debtor could then claim exemption in property. "[T]his court has not found a single case in the First Circuit that holds that a Debtor filing one petition for relief in order to save their property from a public auction is grounds for a finding of bad faith. . . . Debtor's use of the Code's protections and privileges under sections 506 and 522 . . . does not constitute bad faith. It is the right of every debtor who seeks bankruptcy relief. . . . Debtor's act of filing the petition on the eve of a public auction does not reflect an improper motive for seeking bankruptcy relief. A debtor may appropriately resort to chapter 13 to resolve financial difficulties caused by the debtor's own mistakes."), *motion to amend denied*, No. 15-04334, 2019 WL 4879131 (Bankr. D.P.R. Oct. 1, 2019) (Tester).

§ 110.2 Good-Faith Plans after BAPCPA

{583} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*,

560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

{584} ***In re Walker*, No. 3:19-bk-33182-SHB, 2020 WL 1696097 (Bankr. E.D. Tenn. Apr. 2, 2020) (Bauknight)** (Third Chapter 13 case was filed in bad faith and plan was proposed in bad faith when each case and the current plan were engineered to defeat collection rights of former spouse. Debtor lied to domestic relations court, ignored divorce decree with respect to sale of property and refinancing of property, misappropriated assets and admitted to defrauding the state with respect to food stamps.).

{585} ***In re Whitt*, No. 19-03801-NPO, 2020 WL 833808 (Bankr. S.D. Miss. Feb. 19, 2020) (Olack)** (Not bad faith for plan to pay zero percent to unsecured creditors while debtor continues to make permissible voluntary contributions to 401(k) retirement account.).

{586} ***In re Wade*, 612 B.R. 70, 73–75 (Bankr. E.D.N.C. Dec. 30, 2019) (Warren)** (Plan provision to tithe $756 per month is not proposed in good faith and precludes confirmation of 39% plan. "Beginning shortly after they filed the Petition, the Debtors began tithing regularly to the Church. . . . Debtors had not contributed to the Church for two or three years before the Debtors filed the Petition, and they have not contributed ten percent of their income in approximately nine years. He characterized the Debtors' failure to tithe as religious 'disobedience.' . . . Congress added the language excluding charitable contributions from disposable income as part of the Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183, 112 Stat. 517 (1998). . . . The purpose of the 1998 Act, as stated in the House Report for the bill which became the Act, was to 'protect[ ] the rights of debtors to *continue* to make religious and charitable contributions after they file for bankruptcy relief.' . . . [T]he court does not question the sincerity of the Debtors' belief that they should tithe; however, the Debtors' testimony established a prolonged history of choosing not to contribute to the Church in order to pay for other expenses or endeavors which culminated in the Debtors' Petition. . . . [A] plan that proposes to contribute the amount of $756.00 to the Church each month to the detriment of unsecured creditors, when the Debtors did not contribute regularly before filing the Petition, is not proposed in good faith. The Debtors should not be permitted to pursue their salvation on the backs of their unsecured creditors.").

{587} ***In re Price*, 609 B.R. 475, 477–81 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** (Not bad faith for § 1325(a)(3) purposes that debtors with current monthly income greater than applicable median family income propose to pay unsecured creditors all projected disposable income as determined on Official Forms 122C-1 and 122C-2 notwithstanding that Schedule J reveals that debtors will also pay $222 per month for whole life insurance policies that are not deducted as expenses on Form 122C-2. "The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. . . . The trustee suggests that joint debtors must contribute all their 'actual' disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable income. . . . The Court rejects this suggestion. The determination of disposable income under the statute 'supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis.' *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 ([Jan. 11,] 2011). . . . Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith. The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component . . . . But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.").

{588} ***In re Sharp*, 608 B.R. 546 (Bankr. D. Kan. Oct. 23, 2019) (Somers)** (Not bad faith for § 1325(a)(3) purposes that debtor filed Chapter 13 petition 21 days after buying a used car with 200,000 miles when proposed plan would pay car lender in full with *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (May 17, 2004), interest.).

{589} ***In re Broder*, 607 B.R. 774 (Bankr. D. Me. Oct. 3, 2019) (Cary)** (Plan lacks good faith for § 1325(a)(3) purposes when debtors would keep a $15,000 "luxury" boat and pay unsecureds only 14%. Didn't help that debtors mysteriously amended budget three times to increase money available to pay certain creditors each time an objection to confirmation appeared.).

{590} ***In re Pappas*, No. 18-20179, 2019 WL 4554511 (Bankr. D. Me. Sept. 19, 2019) (Fagone)** (In years-long litigation between debtor and creditor with large judgment from a civil rights action against the debtor, disputed material facts preclude summary judgment with respect to claims of bad faith under § 1325(a)(3) and § 1325(a)(5).).

{591} ***In re Green*, No. 18-80768, 2019 WL 3943670 (Bankr. W.D. La. Aug. 20, 2019) (Wheelis)** (Citing *Booker v. Johns (In re Booker)*, 753 F. App'x 316 (5th Cir. Feb. 11, 2019) (Jolly, Jones, Dennis), not bad faith for above-median-income debtors to keep a $5,000 hunting vehicle when they are surrendering $200,000 of other collateral and otherwise paying unsecured creditors 21%—more than they would get in a liquidation case.).

{592} ***In re Beasley*, No. 18-04268-DSC13, 2019 WL 3403361 (Bankr. N.D. Ala. July 3, 2019) (Crawford)** (Although filing of Chapter 13 case was not in bad faith for § 1325(a)(7) purposes, plan was not proposed in good faith and must be denied confirmation under totality-of-circumstances analysis required by § 1325(a)(3). Too many inconsistencies in testimony, too much prepetition misconduct in domestic relations litigation, missing assets and inconsistent income information added up to denial of confirmation but court grants one additional chance to get it right by amending the plan to deal with large DSO and other matters.).

{593} ***Beesley v. Beesley (In re Beesley)*, No. 17-00021, 2018 WL 10345325 (Bankr. S.D. Ala. Jan. 8, 2018) (Callaway)** (Chapter 13 plan that would minimize payments to former spouse while protecting suspicious transfers of property to debtor's mother was not proposed in good faith and could not be confirmed. A portion of debt to former spouse was nondischargeable DSO and plan proposed to treat the entire debt as dischargeable. Bankruptcy court granted stay relief to allow state domestic relations court to determine what portion of "property settlement" was actually DSO and at that point debtor could try to propose a confirmable plan.).

H. FEASIBILITY

§ 111.1 Able to Make Payments and Comply with Plan
§ 111.2 Feasibility Turned on Its Head after BAPCPA

{594} ***In re Taylor*, No. 19-30351-tmb13, 2019 WL 3713666 (Bankr. D. Or. Aug. 6, 2019) (not for publication) (Brown)** (Feasibility objection is overcome in part by debtor's commitment to use Social Security income to fill in budget deficit.).

{595} ***In re Olsen*, 604 B.R. 790 (Bankr. W.D. Wis. July 22, 2019) (Furay)** (Plan that proposes to refinance real estate–secured note that matured and was reduced to foreclosure judgment before the Chapter 13 petition is feasible based on evidence of substantial equity in property, long track record of current payments, substantial reliable income and inequitable conduct by lender.).

I. LENGTH OF PLAN

§ 112.1 General Rule: Three Years, More or Less
§ 112.2 Length of Plan after BAPCPA

{596} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

§ 112.3 How to Calculate the Length of the Plan
§ 112.4 Cause for Extension beyond Three Years

§ 112.5 Payment of Claims beyond Length of Plan

{597} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

J. MISCELLANEOUS PLAN PROVISIONS AND CONFIRMATION CONSIDERATIONS

§ 113.1 Plan Complies with Bankruptcy Code

{598} ***In re Mank*, No. 19-04199-5-SWH, 2020 WL 1228671, at *2–*4 (Bankr. E.D.N.C. Mar. 3, 2020) (Humrickhouse)** (Nonstandard provision that all property vests in debtor at confirmation and that debtor can dispose of property after confirmation without complying with motion practice requirements in § 363(b) is not appropriate for § 1322(b)(11) purposes. The first part—about vesting in the debtor—is redundant of other provisions in the local plan form. The provision about § 363(b) seeks to resolve a legal uncertainty that is not based on actual circumstances in this case. Nonstandard provision that would prohibit the Chapter 13 trustee from seeking approval of a compromise or settlement under Bankruptcy Rule 9019 unless the trustee is the plaintiff is also rejected as "not appropriate" for purposes of § 1322(b)(11). "While nonstandard provisions may be included in a plan under section 1322(b)(11), those provisions must be 'appropriate' and 'not inconsistent' with the Bankruptcy Code. . . . [E]ven if a nonstandard provision is an accurate reflection of the law, or at least 'not inconsistent' with the Bankruptcy Code, that provision could still be inappropriate. . . . A nonstandard provision is not appropriate if it requires the court to clarify the law on an issue that does not specifically affect the debtor. . . . [I]ncluding unnecessary nonstandard provisions only increases the cost of administration and impedes efficient administration of the plan. . . . [A]llowing debtors' attorneys to create 'standard nonstandard' provisions in chapter 13 plans would enable debtors' attorneys to create a new form plan without complying with the procedure for altering the Local Form. . . . Restating the law in a nonstandard provision is unnecessary . . . .").

§ 113.2 Filing Fee Payment Requirement

§ 113.3 Domestic Support Obligations Must Be Current

{599} ***In re Beasley*, No. 18-04268-DSC13, 2019 WL 3403361 (Bankr. N.D. Ala. July 3, 2019) (Crawford)** (Because Chapter 13 debtor was current in payment of postpetition support obligations, § 1325(a)(8) did not preclude confirmation and dismissal was not appropriate under § 1307(c)(11).).

§ 113.4 All Tax Returns Must Be Filed

{600} ***In re Souter*, No. 19-21582-gmh, 2019 WL 5887174, at *1–*2 (Bankr. E.D. Wis. Sept. 17, 2019) (Halfenger)** (The requirement in § 1325(a)(9) is mandatory—the court cannot confirm a Chapter 13 unless the debtor affirmatively proves that all required tax returns have been filed consistent with § 1308. "The debtors contend that, unless someone objects, the court can confirm a plan in this case even though they did not (and cannot now) satisfy § 1325(a)(9) because they failed to file all of their applicable tax returns as required by § 1308. . . . The Supreme Court has repeatedly read § 1325(a) to permit confirmation only if all of the subsection's requirements are met.").

{601} ***In re Long*, 603 B.R. 812, 815–21 (Bankr. E.D. Wis. July 22, 2019) (Halfenger)** (Rejecting *In re French*, 354 B.R. 258 (Bankr. E.D. Wis. Mar. 21, 2006) (Pepper), in a Chapter 13 case filed in January in which meeting of creditors was first scheduled in February, because tax return for prior year was not due for § 1308(a) purposes, § 1325(a)(9) did not preclude confirmation. "[Section] 1308(a)'s past-tense use of 'file' in its middle clause suggests that it covers only those returns that the debtor was required to file before the date on which the meeting of creditors was first scheduled to be held . . . . [T]he best reading of § 1308(a), as informed by federal-tax-law usage, is that it requires a debtor in a chapter 13 case to file only those returns that are due to be filed before the date on which the meeting of creditors is first scheduled to be held, whether the returns at issue are federal, state, or local returns. . . . Section 1308(b)(1)(B)(i) applies where a debtor fails to file a tax return that becomes due after the petition is filed but before the first date on which the meeting of creditors is scheduled to be held. . . . This reading . . . may render § 1308(b)(1)(B)(ii) superfluous. . . . That clause is not superfluous, however, if an automatic extension is understood to simply permit the late filing of a return that nonbankruptcy law requires the debtor to file by the ordinary statutory deadline. . . . If *French*'s reading of § 1308(a) were correct, then debtors in circumstances like those here could never satisfy § 1325(a)(9), which would preclude plan confirmation. The debtors in this case filed their petition in January 2019, but they did not file their 2018 federal income-tax returns with the Internal Revenue Service before the date on which the meeting of creditors was first scheduled to be held. The trustee did not hold open that meeting to allow them any additional time to file those returns, so the court could not extend the filing period. . . . [I]f § 1308(a) requires chapter 13 debtors to file tax returns that are not yet due under nonbankruptcy law, as *French* holds and the trustee insists, then the chapter 13 trustee has unchecked authority to scuttle a debt-adjustment case filed early in the year by declining to hold open the meeting of creditors to afford a debtor additional time to meet a supposed Bankruptcy Code deadline to file with taxing authorities tax returns not yet due under the tax laws that govern timely filing of those returns with those taxing authorities. . . . *French*'s reading of § 1308(a) places debtors who file chapter 13 petitions early in the year at the mercy of the trustee and leaves them with no recourse where the trustee, by action or omission, requires them to file tax returns . . . before those returns are due under applicable nonbankruptcy law.").

§ 113.5 Submission of Future Income
§ 113.6 Providing for Postpetition Claims
§ 113.7 Order of Payments to Creditors before BAPCPA
§ 113.8 Order of Payments to Creditors after BAPCPA

{602} ***Credit Acceptance Corp. v. Thompson*, No. 1:19-cv-1802-JMS-TAB, 2019 WL 4860971, at *4–*6 (S.D. Ind. Oct. 2, 2019) (Magnus-Stinson)** (Embracing *In re DeSardi*, 340 B.R. 790 (Bankr. S.D. Tex. Apr. 21, 2006) (Isgur), Chapter 13 plan can make adequate protection payments to secured creditor for 21 months after confirmation while attorney's fees are paid in full and then make equal monthly payments to secured claimholder without violating equal-payment requirement in § 1325(a)(5)(B)(iii)(I). Equal monthly payments need not begin at confirmation and administrative expenses must be paid in full before or at the same time that equal monthly payments begin. "[A]dequate protection payments under § 1326(a)(1)(C) are independent of the plan, as they can begin before any plan is approved . . . . Accordingly, 'any unpaid claim' for attorney's fees 'shall be paid' either 'before or at the time of each' [equal monthly amount] payment required by the confirmed plan. . . . [T]he most natural reading of the phrases 'any unpaid claim' and 'shall be paid' is that any outstanding balance owed must be satisfied in full. . . . Accordingly, § 1326(b)(1) requires that an administrative claim for the debtor's attorney's fees be paid in full before or at the same time as EMA payments to secured creditors begin. . . . [T]he equal payment provision is silent as to the time at which EMA payments are to begin or end . . . . [W]hile the equal payment provision requires that EMA payments must be equal to each other, such payments need not be equal to the § 1326(a)(1)(C) adequate protection payments paid to the creditor until the EMA payments begin. . . . If a debtor were required to both commence EMA payments upon confirmation and pay his attorney's fees in full before or at the time of the first EMA payment, then the attorney's fee would effectively be due in full upon confirmation. . . . [I]nterpreting the equal payment provision to require that EMA payments begin at confirmation would be inconsistent with the attorney's fee provision and would create an absurd and infeasible result . . . . [T]he above interpretation of the equal payment provision is consistent with its purpose of protecting secured creditors' interests against depreciation in the value of their collateral during the bankruptcy proceeding.").

{603} ***In re Begoun*, No. 13 B 27604, 2019 WL 3763935, at *2–*4 (Bankr. N.D. Ill. Aug. 6, 2019) (Goldgar)** (Distributions inexplicably refused by an unsecured creditor and returned to the trustee are part of the "pot" and are payable to other unsecured creditors, not returned to the debtor. "The Trustee disbursed Begoun's monthly payments to creditors according to her plan without incident from confirmation until April 2016. That month, for reasons that remain unclear, Chase Bank stopped accepting payments on its claim, payments it had been accepting for more than a year, and began returning them to the Trustee. Chase Bank never amended or withdrew its claim; it simply sent the payments back. Although the Trustee repeatedly contacted Chase Bank to find out where to send payments, he never received an answer. . . . Chase returned to the Trustee a total of $16,436.49. Begoun completed her plan payments in September 2018 . . . and received her discharge . . . . The Trustee deposited the funds Chase Bank had returned with the clerk of the bankruptcy court . . . . Begoun moved to withdraw those funds under 28 U.S.C. § 2042. . . . Because she had made all the payments her plan required and her creditors had received more than the minimum dividend, Begoun contended that the funds Chase Bank had returned belonged to her. . . . Begoun's motion will be denied. . . . The funds Chase Bank rejected belong first to Chase Bank and then to Begoun's unsecured creditors. . . . Begoun's plan was a pot plan. . . . The funds the Trustee sent to Chase Bank belonged to the pot from which Begoun was paying her creditors. When Chase Bank refused the funds and returned them to the Trustee, they were still part of the pot. Therefore, they are available for the Trustee to distribute to Begoun's remaining unsecured creditors. . . . Once those creditors

are paid, Begoun will be entitled to the balance, not before. Any other result would change the terms of her confirmed plan by lowering the pot.").

§ 113.9 Special Drafting Considerations for Debtor Engaged in Business
§ 113.10 Special Drafting Considerations for Debtor with Seasonal or Irregular Income
§ 113.11 Retention of Property of the Estate: Overcoming 11 U.S.C. § 1327(b)

{604} ***In re Mank*, No. 19-04199-5-SWH, 2020 WL 1228671, at *2–*4 (Bankr. E.D.N.C. Mar. 3, 2020) (Humrickhouse)** (Nonstandard provision that all property vests in debtor at confirmation and that debtor can dispose of property after confirmation without complying with motion practice requirements in § 363(b) is not appropriate for § 1322(b)(11) purposes. The first part—about vesting in the debtor—is redundant of other provisions in the local plan form. The provision about § 363(b) seeks to resolve a legal uncertainty that is not based on actual circumstances in this case. Nonstandard provision that would prohibit the Chapter 13 trustee from seeking approval of a compromise or settlement under Bankruptcy Rule 9019 unless the trustee is the plaintiff is also rejected as "not appropriate" for purposes of § 1322(b)(11). "While nonstandard provisions may be included in a plan under section 1322(b)(11), those provisions must be 'appropriate' and 'not inconsistent' with the Bankruptcy Code. . . . [E]ven if a nonstandard provision is an accurate reflection of the law, or at least 'not inconsistent' with the Bankruptcy Code, that provision could still be inappropriate. . . . A nonstandard provision is not appropriate if it requires the court to clarify the law on an issue that does not specifically affect the debtor. . . . [I]ncluding unnecessary nonstandard provisions only increases the cost of administration and impedes efficient administration of the plan. . . . [A]llowing debtors' attorneys to create 'standard nonstandard' provisions in chapter 13 plans would enable debtors' attorneys to create a new form plan without complying with the procedure for altering the Local Form. . . . Restating the law in a nonstandard provision is unnecessary . . . .").

{605} ***In re Johnson*, No. 19-00033-GS, 2020 WL 265914, at *4–*8 (Bankr. D. Alaska Jan. 17, 2020) (Spraker)** (Applying *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), because Alaska Permanent Fund Dividend is virtually certain to be received by Chapter 13 debtor during each year of plan—though amount is not known—plan cannot be confirmed that applies PFD in excess of $1,000 per year already accounted for as current monthly income as a credit against future monthly payments of projected disposable income. Plan cannot vest excess PFD in debtor at confirmation. Debtor included $166.67 in monthly income derived from PFDs to calculate monthly disposable income on Official Form 122C-2. "In 2002, the Local Rules Committee for the United States Bankruptcy Court, District of Alaska, revised [local rules and forms] to account for the inability to determine in advance the amount of annual PFD payments a debtor would receive during a chapter 13 plan commitment period. . . . The combination of [local rules and forms] commits all PFDs received within the plan term to distribution through the plan, and requires the use of a placeholder estimate of $1,000.00 for the annual PFDs as additional payments to the monthly plan payments. . . . The Rules Committee's stated reason for excluding the PFD from the regular periodic payments and providing for turnover in a lump sum was simple: to prevent debtors from understating their disposable income while ensuring performance. . . . The PFD is akin to a tax refund, as at the time of confirmation it is highly likely that Debtor will continue to receive it during the term of her Plan. But like an inheritance, PFDs are not derived from a debtor's labor and resulting wages. In short, at confirmation Alaskan chapter 13 debtors are 'virtually certain' to receive future PFDs in an unknown amount. Utilizing the analysis set forth in *Hamilton*, the court concludes that Debtor's future PFDs constitute projected disposable income. . . . Because Debtor attempts to limit the amount of the future PFDs payable to her Plan, the proposed chapter 13 Plan fails to comply with § 1325(b)(1)(B). . . . Because the local chapter 13 plan excepts future PFDs from vesting in a debtor upon confirmation, § 1327(b) does not remove them from property of the estate . . . . Instead, it commits the future PFDs as projected disposable income to a debtor's plan recognizing that while they may be uncertain in amount, it is sufficiently certain that a PFD shall be paid to necessitate its inclusion in the chapter 13 plan. Debtor may not circumvent the requirement to pay all projected disposable income by capping the amount of future PFDs available to the chapter 13 estate and having any excess amount revest in her.").

{606} ***CitiMortgage, Inc. v. Davis (In re Davis)*, 609 B.R. 324 (Bankr. N.D. Ill. Oct. 28, 2019) (Lynch)** (State court foreclosure removed to bankruptcy court by Chapter 13 debtor is properly remanded to state court. Bankruptcy court has no jurisdiction to consider foreclosure after property vested in the debtor at confirmation and debtor received discharge of debts other than the mortgage. Bankruptcy court previously rejected multiple challenges by debtor to mortgage held by foreclosing creditor.).

§ 113.12 Miscellaneous Objections to Confirmation

{607} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

§ 113.13 Miscellaneous Confirmation Issues Added by BAPCPA
K. PRECONFIRMATION MODIFICATION OF PLAN
§ 114.1 Timing, Procedure and Form

{608} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817, at *4 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (Plan must be renoticed to creditors when prior to confirmation creditors provided for as partially secured are determined to be wholly unsecured based on proofs of claim that do not claim secured status. "In chapter 13, notice to all creditors of the debtor's proposed plan and the creditor's opportunity to object are required by Rule 2002 and 3015 of the Federal Rules of Bankruptcy Procedure . . . . Failure to give notice of a material change to a creditor's treatment under a plan and an opportunity to object to confirmation may make such a plan vulnerable to a later challenge by the creditor as to the binding effect of a plan under 11 U.S.C. § 1327(a). . . . [T]hese creditors have not received notice that they are being treated as unsecured.").

§ 114.2 To Correct Errors in Original Plan
§ 114.3 To Reflect Changed Circumstances
§ 114.4 To Deal with Objections to Original Plan
§ 114.5 To Provide for Postpetition Creditors
§ 114.6 Effect of Preconfirmation Modification on Prior Acceptance or Rejection of the Plan

{609} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817, at *4 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (Plan must be renoticed to creditors when prior to confirmation creditors provided for as partially secured are determined to be wholly unsecured based on proofs of claim that do not claim secured status. "In chapter 13, notice to all creditors of the debtor's proposed plan and the creditor's opportunity to object are required by Rule 2002 and 3015 of the Federal Rules of Bankruptcy Procedure . . . . Failure to give notice of a material change to a creditor's treatment under a plan and an opportunity to object to confirmation may make such a plan vulnerable to a later challenge by the creditor as to the binding effect of a plan under 11 U.S.C. § 1327(a). . . . [T]hese creditors have not received notice that they are being treated as unsecured.").

§ 114.7 Opposing a Preconfirmation Modification of the Plan
L. CONFIRMATION PRACTICE AND PROCEDURE
1. HEARING ON CONFIRMATION
§ 115.1 Timing of Hearing on Confirmation before BAPCPA
§ 115.2 Timing of Hearing on Confirmation after BAPCPA
§ 115.3 Burden of Proof
§ 115.4 Discovery and Preparation for Confirmation Hearing
2. OBJECTING TO CONFIRMATION
§ 116.1 Standing to Object

{610} ***In re Revels*, No. 19-01583-5-SWH, 2020 WL 1456502 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Failure of trustee to object to nonstandard provision of first Chapter 13 plan does not preclude bankruptcy court from consideration of trustee's objection to same nonstandard provision in third amended plan. Bankruptcy court has an "independent duty" to consider confirmation of third amended plan.).

{611} ***In re Coats-Califf*, No. 19-04310-JW, 2020 WL 257315 (Bankr. D.S.C. Jan. 8, 2020) (Waites)** (Lienholder, Cathedral Baptist Church of the Grand Strand, Inc., cannot appear to contest confirmation through its minister, who is not a licensed attorney.).

§ 116.2 Time for Filing Objections
§ 116.3 Time for Filing Objections after BAPCPA
§ 116.4 Form of Objection
3. CHALLENGING THE GRANT OR DENIAL OF CONFIRMATION
§ 117.1 Too Many Choices
§ 117.2 Relief from Confirmation Order: Bankruptcy Rules 9023 and 9024
§ 117.3 Revocation of Confirmation

{612} ***In re Brothers*, No. 19-3310, 2020 WL 1157185, at *3 (E.D. Pa. Mar. 10, 2020) (Sánchez)** (Dismissal of underlying Chapter 13 case renders moot tax purchaser's appeal of order denying stay relief and denying revocation of confirmation. Motion to revoke confirmation was untimely filed several years after the 180-day deadline in § 1330. "Madigan filed his motion seeking to invalidate the confirmed plan . . . more than four years after the plan was confirmed. Madigan's attempt to invalidate the plan under § 1330(a) was well past the 180-day limit imposed by that statute and is untimely. Regardless, Madigan has failed to demonstrate by clear and convincing evidence that the plan was confirmed by fraud.").

{613} ***Banco Popular De P.R. v. Rosario (In re Rosario)*, No. 18-00016, 2019 WL 6627479 (Bankr. D.P.R. Dec. 5, 2019) (Tester)** (Material disputed facts with respect to allegations of fraud preclude summary judgment in adversary proceeding to revoke confirmation under § 1330 and to determine debt nondischargeable under § 523(a)(2)(A). Contested facts include home purchase on behalf of an under-aged baseball player and an unrecorded mortgage.).

§ 117.4 Appeal of Grant or Denial of Confirmation
§ 117.5 Appeal of Grant or Denial of Confirmation after BAPCPA

{614} ***Penn v. Viegelahn (In re Penn)*, 779 F. App'x 278 (5th Cir. Oct. 9, 2019) (Clement, Elrod, Duncan)** (District court lacked jurisdiction to review bankruptcy court order denying confirmation of plan based on nonstandard provision allowing debtor to keep more than $2,000 of tax refund. Ironically, debtor defeated appellate jurisdiction by requesting voluntary dismissal rather than suffering confirmation of undesirable plan and then appealing confirmation.).

{615} ***Jones v. U.S. Bank, N.A.*, No. 3:18-cv-01680, 2019 WL 5296993 (M.D. Pa. Oct. 18, 2019) (Mariani)** (Order denying confirmation with leave to file an amended plan is not a final appealable order under *Bullard v. Blue Hills Bank*, __ U.S. __, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (May 4, 2015).).

{616} ***Jones v. U.S. Bank, N.A.*, No. 3:18-cv-01680, 2019 WL 5109746 (M.D. Pa. Oct. 11, 2019) (Mariani)** (Stay pending appeal of denial of confirmation of Chapter 13 plan is denied because order denying confirmation with leave to amend is not final under *Bullard v. Blue Hills Bank*, __ U.S. __, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (May 4, 2015), leave to appeal the interlocutory order has not been granted and debtor is unlikely to prevail on merits. Debtor argued that cramdown of mortgage was "satisfaction" of the secured claim, not "modification" prohibited by § 1322(b)(2). District court observes that the Supreme Court resolved that issue against the debtor in *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (June 1, 1993).).

PART 6: POSTCONFIRMATION PRACTICE

§ 118.1 Summary of Part 6

A. STATUTES AND RULES DISCUSSED IN PART 6

§ 119.1 11 U.S.C. § 1325(c): Income Deduction Orders
§ 119.2 11 U.S.C. § 1327: Effects of Confirmation
§ 119.3 11 U.S.C. § 1329: Modification after Confirmation
§ 119.4 Bankruptcy Rule 1016: Death or Incompetency of Debtor
§ 119.5 Bankruptcy Rule 2002(a)(5): Notice of Plan Modification
§ 119.6 Bankruptcy Rule 4001: Stay Relief Procedure

B. EFFECTS OF CONFIRMATION

1. POWERFUL STATUTORY EFFECTS

§ 120.1 11 U.S.C. § 1327: Overview
§ 120.2 11 U.S.C. § 1327(a): Binding Effect on Creditors and Debtors

{617} ***In re Edwards*, 604 B.R. 417, 420–26 (Bankr. S.D. Fla. Aug. 1, 2019) (Kimball)** (Wells Fargo is bound by modified plan that cured defaults—notwithstanding mistake in amount of arrearage in modified plan—and Wells Fargo can't use objection to final cure notice under Bankruptcy Rule 3002.1 as an end run around the binding effect of confirmation. Wells Fargo is forbidden to collect the difference between the actual arrearage and the amount paid under the confirmed modified plan. "Inexplicably, the [modified plan] provided yet a different treatment for Wells Fargo compared with both the confirmed [plan] and the five modified plans previously filed . . . . [T]here is no reason for the change in the ongoing monthly payment amounts provided for Wells Fargo, and the parties agree that the payment amounts for Wells Fargo in the [modified plan] represent an unintended drafting error by the Debtor's prior counsel. Unfortunately, the [modified plan] presents regular payments to Wells Fargo aggregating . . . $5,433.42 less than the total amount presented in the [confirmed plan]. . . . The [modified plan] was served on Wells Fargo but Wells Fargo took no action. . . . [N]either the chapter 13 trustee nor the Court realized that the [modified plan] included changes to the treatment of Wells Fargo's claim that were not addressed in the motion to modify or otherwise . . . . [N]early four years after the Court confirmed the [modified plan], the chapter 13 trustee filed the notice of plan completion and notice of final cure payment. . . . Wells Fargo filed an objection to the trustee's notice of final cure payment, stating that the Debtor is not current on post-petition mortgage payments consistent with section 1322(b)(5). . . . This Court cannot ignore the broad holding of *Espinosa*. . . . [T]he chapter 13 trustee is required to file 'a notice stating that the debtor has paid in full the amount required to cure any default on the [mortgage] claim.' Fed. R. Bankr. P. 3002.1(f). This component of Bankruptcy Rule 3002.1 addresses only the cure of pre-bankruptcy defaults, not the payment of post-petition mortgage payments. In this case, there is no dispute that Wells Fargo's prepetition arrears were paid in full. Within 21 days after service of the trustee's notice, the holder of the mortgage claim may file an objection. Fed. R. Bankr. P. [3002.1(g)]. The holder can raise two categories of objections. First, the holder may challenge whether its pre-petition deficiency was cured. . . . Second, the holder may address 'whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code.' . . . Wells Fargo argues that Bankruptcy Rule 3002.1 gives it an opportunity to complain that the payments set out in the [modified plan], confirmed by an order of this Court four years ago, were not correct, and that the Court may now rule, in effect, that the [modified plan] should not have been confirmed. . . . Bankruptcy Rule 3002.1

itself does not support Wells Fargo's argument. Bankruptcy Rule 3002.1(h) permits the Court to determine whether a debtor has 'paid all required postpetition amounts' in order to resolve disputes arising from application of that same rule. . . . Subsections (g) and (h) provide a procedure to address . . . disputes . . . . The dispute resolution provisions of Bankruptcy Rule 3002.1 encompass only those differences arising from the notices of payment change permitted by that rule. Nothing in Bankruptcy Rule 3002.1 suggests that its application results in modification of a confirmed plan. . . . [N]othing in the Bankruptcy Code or applicable law suggests that a creditor may collaterally attack a confirmation order, otherwise final and no longer subject to appeal, by the procedure provided in Bankruptcy Rule 3002.1.").

{618} ***In re Venanzio*, 602 B.R. 921 (Bankr. W.D. Pa. July 30, 2019) (Böhm)** (Mortgage holder's proof of claim is disallowed on trustee's objection for two reasons: proof of claim was untimely filed one year after bar date; confirmed plan is res judicata with respect to amount of arrears that may be collected by mortgage holder. Confirmed plan provided for arrearage claim of $4,895—an amount paid by the confirmed plan. Untimely filed claim was for $10,453. Court order states that mortgagee is "disallowed" from collecting larger amount in any action or proceeding.).

{619} ***In re Preedy*, 603 B.R. 783 (Bankr. D.S.C. June 26, 2019) (Waites)** (Wholly unsecured junior mortgage lien must be released of record because lienholder is bound by confirmed plan that valued the lien at $0 and plan contained a provision that voided lien at completion of payments. After discharge mortgage holder made no effort to release the lien and debtor is correct that mortgage must be marked as void and cancelled by the registrar of deeds.).

{620} ***Fraser v. CitiMortgage, Inc. (In re Fraser)*, 599 B.R. 830 (Bankr. W.D. Pa. Apr. 26, 2019) (Böhm)** (Confirmed plan that treated first mortgage as fully secured and allowed 90 days after confirmation within which debtor could challenge filed claim is binding and precludes adversary proceeding 18 months after confirmation seeking to value property and bifurcate the mortgage.).

§ 120.3 11 U.S.C. § 1327(b): Vesting Effect on Property of Estate

{621} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 528–29 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (When confirmation vested property of the estate in debtor, postpetition appreciation belongs to debtor and cannot be captured by trustee's motion to modify plan to require sale proceeds to be paid to creditors. Confirmed plan required debtor to pay creditors $45,000 from proceeds of sale of property. Property vested in debtor at confirmation and was sold three years later for $107,000. Trustee cannot force excess proceeds to be paid to creditors. Proceeds are not disposable income and appreciation belongs to the debtor. "The Property was property of the estate when Mr. Black commenced his case. But when the bankruptcy court confirmed the plan, the Property was revested in Mr. Black. . . . Revesting means that Mr. Black owned the property outright, free of his creditors' claims. *See Cal. Franchise Tax Bd. v. Jones (In re Jones)*, 420 B.R. 506, 515 [(B.A.P. 9th Cir. Nov. 24, 2009) (Baum, Dunn, Jury).] . . . We acknowledge that there is a split in authority on this point. . . . In our view, the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation. . . . [W]e squarely rejected [the *Barbosa v. Solomon*, 235 F.3d 31 (1st Cir. Dec. 21, 2000) (Torruella, Selya, Casellas,] approach in *Jones*. We . . . opted instead for the 'estate termination approach,' which provides that 'all property of the estate vests in the debtor at confirmation[.]'").

{622} ***In re Hernandez*, 612 B.R. 20, 22–23 (Bankr. D. Conn. Jan. 17, 2020) (Manning)** (Because all property of the Chapter 13 estate vested in debtor at confirmation under § 1327(b), at dismissal after confirmation § 349(b)(3) has no application and all funds held by the trustee must be returned to the debtor. *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), supports this outcome and contrary cases have overlooked vesting effect under § 1327(b). "In this case, as will be true in virtually all Chapter 13 plans confirmed by this Court, the property of the estate vested in the Debtor upon confirmation . . . pursuant to section 1327(b) . . . . The Court finds it is not necessary to turn to section 349(b)(3) because section 1327(b) establishes that the funds vested with the Debtor when the First Amended Plan was confirmed. The cases that rely on section 349(b)(3) to establish a trustee's authority to distribute funds to a debtor in a confirmed but subsequently dismissed Chapter 13 case have not directly addressed the vesting language in section 1327(b). . . . Because property of the estate has already vested in a debtor upon confirmation pursuant to section 1327(b), there is no property to *revest* in the debtor . . . pursuant to section 349(b)(3). Therefore, there is no question that the funds must be returned to the Debtor. . . . Although *Harris* involved conversion rather than dismissal of a case, *Harris* recognizes that section 1327(b) vests all property of the estate in the debtor unless a plan or confirmation order provides otherwise. . . . [I]f the case is subsequently converted or dismissed, that vested property remains that of the debtor.").

{623} ***CitiMortgage, Inc. v. Davis (In re Davis)*, 609 B.R. 324 (Bankr. N.D. Ill. Oct. 28, 2019) (Lynch)** (State court foreclosure removed to bankruptcy court by Chapter 13 debtor is properly remanded to state court. Bankruptcy court has no jurisdiction to consider foreclosure after property vested in the debtor at confirmation and debtor received discharge of debts other than the mortgage. Bankruptcy court previously rejected multiple challenges by debtor to mortgage held by foreclosing creditor.).

{624} ***Lee v. Nationstar Mortg. LLC*, No. 19-3019-pcm, 2019 WL 3521626 (Bankr. D. Or. Aug. 1, 2019) (McKittrick)** (Nationstar did not violate the automatic stay by paying property taxes which became a lien under reverse mortgage because property vested in debtor at confirmation under § 1327(b) and there was no estate remaining for § 362(a)(3) or § 362(a)(4) purposes.).

§ 120.4 11 U.S.C. § 1327(c): Free and Clear Effect on Liens
§ 120.5 Effects of Confirmation after BAPCPA
2. LIMITATIONS ON EFFECTS OF CONFIRMATION
§ 121.1 Overview
§ 121.2 Notice and Due Process Considerations, Including Claims Allowance and Valuation

{625} ***Walkama v. Nellams*, No. C19-1207-JCC, 2020 WL 995853, at *2–*4 (W.D. Wash. Mar. 2, 2020) (Coughenour)** (Plaintiff in discrimination lawsuit against Chapter 13 debtor is entitled to stay relief to liquidate claim against debtor based on findings that notice of bankruptcy was insufficient to bind plaintiff to confirmed plan and lack of notice renders plaintiff's claim nondischargeable in the Chapter 13 case. "Discharging a debt in a Chapter 13 bankruptcy proceeding requires that the plan specifically 'provide for' the debt. . . . Even if the Chapter 13 plan refers to the debt, the plan does not sufficiently provide for that debt unless the creditor to whom the debt is owed is timely notified of the bankruptcy proceeding. . . . Accordingly, if the notice to the creditor is deemed inadequate, then the debt is not dischargeable. . . . Appellee never received formal, statutorily required notice . . . . Appellee was not notified that his claim was subject to discharge under Appellants' proposed Chapter 13 plan. . . . Appellee had no opportunity to be heard or to contest the proposed plan before it was confirmed. . . . Appellee's claim was not subject to discharge in Appellants' proposed plan.").

{626} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

{627} ***In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. Dec. 4, 2019) (Thuma)** (Failure to properly serve seller under contract for purchase of undeveloped lot means confirmed plan does not bind seller and motion to assume contract does not resolve rights in lot.).

{628} ***In re Bruce*, 610 B.R. 603, 609–15 (Bankr. E.D. Wis. Sept. 27, 2019) (Hanan)** (Because Bankruptcy Rule 2002(f)(7) does not require the court to serve a confirmation order in a Chapter 13 case and the debtor's attorney did not do so for several months, the state child support collection agency cannot be held in contempt of the confirmation order for knowingly or recklessly failing to respect the confirmation order that dealt with the claim. "A violation of the confirmation order is an act of contempt, which, like a violation of the discharge injunction, may be remedied by the court's authority under 11 U.S.C. § 105(a). . . . Rule 2002(f)(7) conspicuously does not require the Clerk of Bankruptcy Court (or BNC) to serve the Chapter 13 plan confirmation order, even though it requires the Clerk to serve confirmation orders of plans issued under other chapters of the Code. There are no advisory committee notes explaining this exception. . . . Given the lack of provision for service of Chapter 13 plan confirmation orders in Rule 2002(f)(7), the debtor's counsel should have undertaken to mail the confirmation order at least to those creditors who . . . do not receive ECF notification, and whose prepetition automatic deductions from the debtor's payroll were to be altered after plan confirmation. . . . There is no clear and convincing evidence to show the Agency knowingly or recklessly disregarded the confirmation order by failing to adjust the child support orders . . . , and thus there is no basis to impose sanctions for contempt.").

{629} ***In re Gilmore*, No. 13-bk-1311, 2019 WL 4673429 (Bankr. N.D. W. Va. Sept. 24, 2019) (Flatley)** (Distinguishing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and embracing *Reuland v. IRS (In re Reuland)*, 591 B.R. 342 (Bankr. N.D. Ill. Oct. 26, 2018) (Baer), confirmed plan that cured mortgage arrearage and provided for

ongoing installment that was less than stated on proof of claim is binding on mortgagee and debtor is current on mortgage at completion of payments but difference between monthly payments made through the Chapter 13 plan and amounts required by loan is nondischargeable. Discrepancy was discovered when trustee made final cure notice under Bankruptcy Rule 3002.1 and U.S. Bank responded that a substantial postconfirmation arrearage developed as a result of the difference between payments under the confirmed plan and the monthly installments stated on the bank's proof of claim. Court orders party to "reconcile payment figures" in light of holding that loan is current but the bank's nondischargeable claim includes discrepancy in monthly installment amount.).

{630} ***In re Waldschmidt*, 605 B.R. 860, 864–66 (Bankr. N.D. Ind. Sept. 24, 2019) (Grant)** (Late-filed claim by car lender is disallowed on objection from Chapter 13 trustee notwithstanding confirmed plan approved by trustee, debtor and car lender that would have paid claim in full with agreed-upon interest had a timely claim been filed. Outcome is not changed by fact that confirmation occurred after claims bar date and treatment of car lender in plan was approved by debtor and trustee. "No statute or rule requires claim objections to precede confirmation . . . . [T]he validity of a claim objection should not turn on the happenstance of when the confirmation hearing was held in relation to the claims bar date. . . . The court is not inclined to read the provisions of the national form plan as either dispensing with the need to file claims or precluding objections to untimely claims.").

{631} ***In re Simon*, No. 15-12181, 2019 WL 3759555 (Bankr. W.D. La. Aug. 8, 2019) (Hodge)** (Confirmed plan provided that timely filed proof of claim controlled over contrary provision of confirmed plan; specification of amount of car claim in plan was overcome by inconsistent provision of timely filed claim notwithstanding binding effect of confirmation under § 1327.).

{632} ***In re Edwards,* 603 B.R. 516, 522–24 (Bankr. S.D. Fla. May 21, 2019) (Kimball), *reconsideration denied*, 604 B.R. 417 (Bankr. S.D. Fla. Aug. 1, 2019) (Kimball)** (Citing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and distinguishing *Universal American Mortgage Co. v. Bateman (In re Bateman)*, 331 F.3d 821 (11th Cir. May 22, 2003) (Birch, Dubina, Kravitch), Wells Fargo is bound by confirmed modified plan that fixed mortgage arrearage amount $5,433.42 less than amount stated in Wells Fargo's proof of claim; difference is unenforceable against the debtor. "[T]he Eleventh Circuit's determination in *Bateman* that the anti-modification provision of section 1322(b)(2) prevails over the binding effect of a confirmed plan under section 1327(a) is not consistent with the Supreme Court's subsequent decision in *Espinosa*. . . . The ruling in *Espinosa* confirms the Eleventh Circuit's determination in *Bateman* that . . . 'a secured creditor cannot collaterally attack a confirmed Chapter 13 plan, even though the plan conflicted with the mandatory provisions of the bankruptcy code, when the secured creditor failed to object to the plan's confirmation or appeal the confirmation.' . . . However, the Supreme Court's analysis in *Espinosa* displaced the Eleventh Circuit's other ruling in *Bateman*, that the anti-modification provision of section 1322(b)(2) prevails over the binding effect of a confirmed plan under section 1327(a). . . . Pursuant to section 1327(a) and consistent with *Espinosa*, Wells Fargo is bound by the terms of the [modified plan], even though the [modified plan] violates the anti-modification provision of section 1322(b)(2). . . . Wells Fargo is deemed to have been paid all post-petition mortgage payments . . . . [T]he post-petition delinquency . . . is unenforceable against the Debtor.).

§ 121.3 Failure to Provide For

{633} ***In re Livingston*, No. 17-14400, 2019 WL 3934394 (Bankr. N.D. Miss. June 28, 2019) (Maddox)** (Junior lienholder not provided for by confirmed plan is not entitled to stay relief but its lien rides through the Chapter 13 case and will be enforceable after completion of payments and discharge. Lien is not "eviscerated" by the absence of provision in the confirmed plan. Creditor's failure to object to confirmation leaves it bound by plan that does not pay its junior lien but does not strip that lien from the property.).

§ 121.4 Other Limitations

{634} ***Sandigo v. Ocwen Loan Servicing, LLC*, No. 17-cv-02727-BLF, 2019 WL 2233051 (N.D. Cal. May 23, 2019) (Freeman)** (On summary judgment, district court rejects Ocwen's nonsensical argument that the binding effect of confirmation under § 1327 bars debtor's argument that de-escrowing of loan changed the monthly payment amount from that stated in the confirmed plan.).

{635} ***In re Thorpe*, No. 18-20082, 2019 WL 1785303, at *4 (Bankr. S.D. Ga. Mar. 29, 2019) (Kim)** (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when redemption period under title pawn contract expired prepetition, TitleMax became owner of car and no interest followed debtor into Chapter 13 case. Title pawn lender is not bound by confirmed plan that paid its claim in installments because no interest in car came into the Chapter 13 estate when redemption period expired before the petition. "[T]here are limits to the preclusive effect of a confirmed plan that is not perfectly legal. . . . Where the redemption period on a pawned vehicle expires *prior to the petition date*, the pawned vehicle does not become part of the debtor's bankruptcy estate, the Court has no jurisdiction over it, and the plan cannot include it. . . . Unfortunately for Debtor, the 2018 Plan attempted to created [*sic*] estate property that simply did not exist on the petition date . . . . The redemption period on the subject title pawn expired pre-petition. The Vehicle was not property of the bankruptcy estate . . . because Debtor's ownership interest in the Vehicle was automatically extinguished pre-petition by operation of [Georgia law] when the Vehicle became the property of TitleMax.").

{636} ***Quintao v. Deutsche Bank Nat'l Tr. Co. (In re Quintao)*, No. 15-1063, 2018 WL 9990318 (Bankr. D. Mass. July 16, 2018) (Bailey)** (Mortgage servicer did not violate automatic stay or confirmed plan by paying taxes and utility arrearages after confirmation when plan did not prohibit mortgagee or servicer from doing so. That plan provided for payment of delinquent taxes and utilities did not preclude the mortgagee from exercising its contract right to pay those amounts, especially after the mortgagee obtained stay relief to foreclose. Neither the mortgagee nor the servicer violated stay or confirmed plan by making internal records of amounts owed by Chapter 13 debtor, notwithstanding confirmed plan that would cure default and maintain installment payments during the case. Sending account statements after the grant of stay relief could not violate the stay. Mortgagee did not violate stay by accurately reporting to credit agency amounts owed by debtor after mortgagee paid taxes and utilities on behalf of the debtor.).

3. SPECIAL EFFECTS OF CONFIRMATION

§ 122.1 Tax Refunds
§ 122.2 Windfalls, Inheritances, Lotteries and the Like
§ 122.3 Loss, Destruction or Surrender of Property after Confirmation

{637} ***Johnson v. Apex Mortg. (In re Johnson)*, No. 18-00178-TOM, 2020 WL 961892 (Bankr. N.D. Ala. Feb. 27, 2020) (Mitchell)** (Mortgagee did not violate automatic stay when it received and kept insurance proceeds paid to it when car crashed into debtor's business property. Mortgage clause in insurance contract was not property of Chapter 13 estate but belonged to mortgagee and proceeds of that insurance policy never became property of the Chapter 13 estate.).

{638} ***In re Scholl*, 605 B.R. 163 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (Insurance proceeds are property of Chapter 13 estate when rental property is destroyed in last month of Chapter 13 case and insurance company tenders $150,000 to debtors.).

{639} ***In re Alvarez*, 605 B.R. 716 (Bankr. D.S.C. July 16, 2019) (Waites)** (When car is totaled after confirmation and primary insurer tenders value of wreck, those proceeds are cash collateral that the Chapter 13 debtor can use to buy replacement car with replacement lien; when GAP insurer tenders additional funds, car lender is obligated by GAP contract to reduce the amount of its secured claim to the value of the wrecked car—the amount tendered by primary insurer—but debtor cannot use the GAP insurance to help pay for replacement car because there are no proceeds payable to the debtor under the GAP policy, only a contract right to be free of any deficiency. Secured debt is reduced to amount paid by primary insurer without regard to whether car lender accepts amount paid to it by GAP insurer.).

{640} ***In re Shealy*, 599 B.R. 397, 404 (Bankr. M.D. Ga. May 6, 2019) (Carter)** (When car is destroyed after confirmation and insurer tenders more than balance due on car lender's secured claim, plan can be modified under § 1329(a)(1) or § 1329(a)(3) to pay balance of secured claim from insurance proceeds and to pay debtor excess proceeds. Car lender's claim amendment to add pendency interest that was omitted from the plan and omitted from original claim is rejected. "Under [§ 1329], only the debtor, the trustee, and holders of unsecured claims may propose a post-confirmation plan modification. . . . Secured creditors such as Action . . . are not permitted to pursue modification of a confirmed plan. . . . Even if Action were permitted to seek modification under § 1329, the Court is aware of no cases . . . where a secured creditor had interest added to its claim under one of the § 1329 grounds for plan modification. In contrast, the Debtor is statutorily permitted to modify the Plan to provide for payment in full of Action's claim under either § 1329(a)(1) or (a)(3).").

§ 122.4 Effects of Confirmation on Postpetition Claims

C. REPRESENTING CREDITORS AFTER CONFIRMATION

1. PROBLEMS WITH THE PLAN

§ 123.1 What to Do If Creditor Is Not Receiving Payments
§ 123.2 What to Do If Debtor Defaults
§ 123.3 What to Do If Debtor's Financial Condition Improves
§ 123.4 Representing a Postpetition Claim Holder

2. POSTCONFIRMATION STAY RELIEF PRACTICE

§ 124.1 Procedure
§ 124.2 Confirmation as a Defense to Relief from the Stay
§ 124.3 Does Confirmation Dissolve the Stay?

{641} ***Lee v. Nationstar Mortg. LLC*, No. 19-3019-pcm, 2019 WL 3521626 (Bankr. D. Or. Aug. 1, 2019) (McKittrick)** (Nationstar did not violate automatic stay by paying property taxes which became a lien under reverse mortgage because property vested in debtor at confirmation and there was no estate remaining for § 362(a)(3) or § 362(a)(4) purposes.).

§ 124.4 Postconfirmation Default and Relief from the Stay

{642} ***In re Genrette*, 797 F. App'x 739 (3d Cir. Mar. 17, 2020) (Shwartz, Restrepo, Nygaard)** (Pro se appeal of stay relief after default under confirmed plan and default under stipulation with respect to relief from the stay is rejected as completely groundless.), *aff'g* No. 18-920 (MN), 2019 WL 4740053 (D. Del. Sept. 27, 2019) (Noreika) (Untimely pro se petition for rehearing denied with respect

to appeal of grant of stay relief based on debtor's postconfirmation default in mortgage payments. Debtor's objection to loan modification—a loan modification that debtor sought and agreed to—confused the district court and everyone else.).

{643} ***Martinez v. Wells Fargo Bank, N.A. (In re Martinez)*, No. CC-19-1037-FSTa, 2019 WL 5066773 (B.A.P. 9th Cir. Oct. 8, 2019) (not for publication) (Faris, Spraker, Taylor)** (Confirmed plan that required debtor to make ongoing maintenance payments directly to Wells Fargo was not preclusive of motion for stay relief based on postconfirmation default in direct payments; stay relief with adequate protection requirement was appropriate remedy for postconfirmation default in ongoing maintenance payments.).

§ 124.5 Postpetition Claims and Relief from the Stay

{644} ***Lee v. Nationstar Mortg. LLC*, No. 19-3019-pcm, 2019 WL 3521626 (Bankr. D. Or. Aug. 1, 2019) (McKittrick)** (Nationstar did not violate stay by paying property taxes which became a lien under reverse mortgage because § 362(a)(5) did not apply when taxes paid were not prepetition debts—they were property taxes that arose after the petition.).

§ 124.6 Alimony and Support Collection after Confirmation
§ 124.7 Effect of Failure to File Proof of Claim on Postconfirmation Relief from the Stay

{645} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

D. INCOME DEDUCTION ORDERS

§ 125.1 Order to Debtor's Employer
§ 125.2 Can Employer Charge a Fee?
§ 125.3 Direct-Pay Orders
§ 125.4 Changing Employers or Source of Income
§ 125.5 Modification and Suspension of Income Deduction Orders
§ 125.6 Failure to Deduct or Remit
§ 125.7 Special Deduction Order Problems: Entitlements, Pensions and Government Employers

E. MODIFICATION OF PLAN AFTER CONFIRMATION

1. PROCEDURE AND STANDARDS FOR MODIFIED PLAN

§ 126.1 Standing, Timing and Procedure

{646} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 524–25 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (Completion of payments that would cut off trustee's motion to modify under § 1329 had not occurred when confirmed plan provided for 59 monthly payments and debtor tendered total amount from sale of property in 48th month; payments are not complete unless debtor modifies the plan to shorten plan term. Citing *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. Dec. 18, 2007) (Klein, Montali, Jury), "[w]e have held that, as a general proposition, payments are not 'complete' when the debtor pays them early, unless the debtor modifies

the plan pursuant to § 1329 to shorten its term . . . . We have also rejected a chapter 13 plan with an indefinite duration, which would have allowed the debtor to 'complete' his plan whenever he paid off all priority and secured claims. *In re Escarcega*, 573 B.R. 219 [(B.A.P. 9th Cir. Sept. 6, 2017) (Jury, Faris, Brand)]. . . . Mr. Black's plan payments were not 'complete' when he made the lump-sum payment, because he did not modify his plan to shorten its duration. . . . Because Mr. Black's income is less than the applicable median, his 'applicable commitment period' was thirty-six months. . . . But he proposed a fifty-nine month term, probably because he could not afford a larger monthly payment and therefore needed more time to generate plan funding sufficient to meet other confirmation requirements. . . . [T]he statute does not tie the plan modification time limit to the 'applicable commitment period.' Section 1329(a) cuts off the right to modify a plan upon 'completion of payments under such [i.e., the original] plan.' If Congress meant to terminate the modification right upon expiration of the applicable commitment period, it could and would have said exactly that.").

{647} ***Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 77–84 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)** (For purposes of modification under § 1329 and discharge under § 1328, direct payments to mortgagee are payments "under the plan" and default in direct payments means payments have not been completed—notwithstanding that debtor has completed payments required by the plan to be paid to the trustee. Because direct payments were not made and thus payments under the plan were not complete, debtor's motion to modify plan to surrender residence was timely. However, because 67 months passed since the first payment was due and surrender is a "payment" for § 1329(c) purposes, plan cannot be amended to surrender residence to mortgagee. Confirmed plan provided that $65,000 prepetition mortgage arrears would be cured by loan modification or plan would be modified to pay arrears in some other fashion. Plan also provided for direct payment of all postpetition mortgage payments to Wells Fargo. Debtors failed to make postpetition mortgage payments, increasing default to $123,819. No loan modification occurred and no other provision was made for the pre- or postpetition arrears. Debtor ultimately moved to modify the plan to surrender the residence to Wells Fargo 67 months after the first plan payment was due. "[C]ourts have held in the discharge context of § 1328(a) . . . that a debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan. Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.' . . . [T]he overwhelming majority of courts . . . have interpreted the term 'payments' in § 1328(a) to include direct payments by the debtor to a creditor. . . . While the question of whether a debtor has completed 'all payments under the plan' was not at issue in [*Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (June 7, 1993)], construing this language in § 1328(a) narrowly to include only those payments made to the chapter 13 trustee proves difficult given the Supreme Court's broad construction of 'provided for by the plan,' in that same section, to include claims that are merely referred to in the plan. . . . Only two courts have held that a debtor's direct payments on a nonmodifiable, nondischargeable residential mortgage loan under § 1322(b)(5) are not 'payments under the plan' for purposes of § 1328(a). . . . *In re Gibson*, 582 B.R. 15, 24 ([Bankr. C.D. Ill. Mar. 5, 2018) (Perkins)]. . . . *In re Rivera*, [599 B.R. 335, 339–42 (Bankr. D. Ariz. Mar. 29, 2019) (Wanslee)]. . . . While *Gibson* and *Rivera* are thoughtful and well-intended decisions, we respectfully disagree. And we perceive some flaws with interpreting the phrase 'payments under the plan' to include only those payments made to the trustee. One is the different outcomes that would result in conduit versus non-conduit jurisdictions. . . . [W]hether postpetition mortgage payments are paid directly by the debtor or paid by the chapter 13 trustee should not be dispositive of granting a discharge under § 1328(a). . . . A direct-pay debtor should not receive a discharge that a conduit debtor would not. . . . [T]he promise to maintain postpetition payments to a mortgage creditor is a mandatory element of the treatment of claims subject to § 1322(b)(5), and it is not severable. . . . We have difficulty reconciling that a debtor can receive a discharge after failing to make maintenance payments under § 1322(b)(5), when that same failure is grounds for case dismissal. . . . [S]imply because debtors prior to 2011 were flying under the radar and receiving discharges despite not making all maintenance payments as required under § 1322(b)(5), does not mean that such practice was correct or give it any legitimacy. Perhaps as an unintended consequence, Rule 3002.1 has merely exposed the problem at a point in the case where modification to cure the postpetition arrears is no longer an option. . . . The computation of disposable income to pay creditors under § 1325(b) takes into account the promised direct payments for housing, including § 1322(b)(5) maintenance payments. Debtors who fail to make these payments, which often amount to tens of thousands of dollars, benefit from years of living without mortgage payments at the expense of creditors. . . . [W]e join the overwhelming majority of courts holding that a chapter 13 debtor's direct payments to creditors, if provided for in the plan, are 'payments under the plan' for purposes of a discharge under § 1328(a) and hold that this same rule should apply in the context of post-confirmation plan modifications under § 1329(a). . . . Because the Mrdutts failed to satisfy the obligation of their prepetition arrears, and also failed to make their direct postpetition mortgage payments, their Plan payments were not 'complete' under § 1329(a). . . . [S]urrender is a form of payment for purposes of § 1329(c). . . . The court had no authority to modify a plan that allowed for payment beyond the 60-month time limit.").

{648} ***In re Jones*, No. 17-03500-5-SWH, 2020 WL 907802, at *3 (Bankr. E.D.N.C. Feb. 25, 2020) (Humrickhouse)** (Local rule and practice that permitted Chapter 13 trustee to change "base" and to increase required payments into a plan when attorney's fee was allowed after confirmation are inconsistent with requirements for plan modification in § 1329. Local rule allowed trustee "without application to the court" to modify a Chapter 13 plan to generate funds necessary to pay attorney's fees that might be allowed during term of plan. When allowed fees required plan modification, the trustee could issue a "notice of plan payment change." "[T]he Notice filed by the trustee cannot, and does not, operate to modify the debtor's chapter 13 plan. . . . [T]he local rule, while expedient and practical in terms of case administration, is at odds with the plain language of 11 U.S.C. § 1329(a), which sets out the process by which a plan may be modified after confirmation[.]").

{649} ***In re Scholl*, 605 B.R. 163 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (Modification after confirmation under § 1329 was timely requested by trustee in 59th month of 60-month plan notwithstanding that debtors quickly tendered last payment in effort to cut

off modification. Trustee's objection to debtor's motion concerning distribution of insurance proceeds tendered when fire destroyed rental property late in the plan was in the nature of a motion to modify under § 1329 and was timely filed. Debtors delayed telling trustee about the fire insurance proceeds and otherwise appeared to manipulate the timing of motion to modify to reduce payments to unsecureds without telling trustee about $150,000 of insurance proceeds.).

§ 126.2 Application of Tests for Confirmation

{650} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *3 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 trustee's motion to modify confirmed plan to capture nonexempt proceeds of postconfirmation personal injury action is granted. Distinguishing *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. June 23, 2016) (Bauer, Williams, Adelman), debtors' objection that only proceeds actually received within 60-month term of plan need be turned over to trustee is rejected. To satisfy best-interests-of-creditors test at modification after confirmation, Chapter 13 debtors must turn over nonexempt proceeds from postconfirmation personal injury action even if proceeds are received after 60 months after first payment under original plan. "[T]he modified plan here is not 'providing for' further plan payments by the Lugos. All the order does is establish a mechanism for the Lugos to turn over estate property for the Trustee to distribute to creditors according to the confirmed plan. . . . [T]he Lugos now have an additional asset to account for in calculating what their creditors are entitled to receive in a chapter 13 case.").

{651} ***In re Scholl*, 605 B.R. 163, 178–87 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (In 59th month of plan when rental property was destroyed and insurance company tendered $150,000 to debtors, agreed modification offered by debtors and trustee that would pay $80,000 to debtors and $70,000 to creditors cannot be confirmed because best-interests-of-creditors test in § 1325(a)(4) requires larger payment to unsecured creditors and debtors have not proposed modified plan in good faith. "[A] post-confirmation fire that results in a total loss of the Debtors' Rental Property, which has appreciated in value and leads to a substantial payment from an insurer, constitutes the sort of financial change that justifies a request for an increase in the payments unsecured creditors should receive. . . . In considering whether a proposed modification comports with § 1325(a)(3) good faith requirement, it is appropriate for the Court to consider the standards of § 1325(b) . . . . Coupled with the fact that the Debtors would be retaining an $80,000 windfall from the excess Insurance Proceeds while unsecured creditors would receive only 32 cents on the dollar, the Court believes that the modification as proposed by the parties in the settlement agreement perverts the good faith test under § 1325(a)(3), rather than demonstrating fidelity to it. . . . '[T]he appropriate date for performing the liquidation analysis required by §§ 1329(b) and 1325(a)(4) is the effective date of the modified plan.' . . . The compromise reached between the Debtors and the Trustee and presented to the Court as a modification, under §§ 1329 and 1325(a)(4), is unconfirmable precisely because it excludes property of the estate, Insurance Proceeds, payable solely to the Debtors, that must inure to unsecured creditors under established bankruptcy law.").

{652} ***In re Conrad*, 604 B.R. 163, 174–81 (Bankr. M.D. Pa. Aug. 13, 2019) (Van Eck)** (Sections 1327 and 1329 perform in harmony if modification is not barred by § 1327 or res judicata when the modification fits one or more of the four purposes in § 1329(a). Confirmation of modified plan filed seven months after confirmation of original plan is denied for lack of good faith when modified plan would reduce payment to unsecured creditors from 100% to 21%, income had not reduced between the petition and the time of modification and increases in expenses were nominal and mostly discretionary. "[M]odification under § 1329 is only allowed in four limited circumstances. . . . [T]he plain and unambiguous language of § 1329 denies any threshold change in circumstance requirement and clearly demonstrates that the common law doctrine of *res judicata* does not apply to modifications. . . . [C]omparison of the Debtors' average total monthly gross income at the commencement of this case with their average total monthly gross income as of the filing of the Motion to Modify demonstrates that they have not suffered a decrease in their average total monthly gross income from the commencement of this case. . . . [T]he plan as modified lacks good faith . . . . It fails to commit all the Debtors' monthly disposable income to the plan for the benefit of their creditors . . . .").

{653} ***In re McKay*, No. 18-31088, 2019 WL 3294081, at *3 (Bankr. S.D. Ill. July 22, 2019) (Altenberger)** (Lack of good faith at modification of confirmed plan included that debtor filed modified plan 18 days after confirmation, reducing payment to unsecured creditors from $105,000 to $0. Debtor used above-median protocol for calculation of disposable income at confirmation of original plan then changed to using method appropriate only for under-median debtors to dramatically reduce the projection of disposable income based on Schedules I and J instead of Official Form 122C. "[T]hree factors . . . indicate a lack of good faith . . . . First, . . . amendment to the confirmed plan was initiated a mere 18 days after confirmation. Second, the fourth amended plan reduces the amount being paid on unsecured claims from $105,520.80 (approximately 92%) to $0 (0%). Third, and most importantly, even though the Debtor's income is still above median, . . . the Debtor changed the method for calculating disposable income from one used for above median income debtors to one for below median debtors. . . . Debtor's delayed amendment of her plan and schedules until after confirmation is an attempt to deviate from the standard means test on form 122C-2 which equates to a manipulation of the Bankruptcy Code, which in turn equates to bad faith.").

{654} ***In re Moore*, 602 B.R. 40 (Bankr. E.D. Tenn. Apr. 25, 2019) (Rucker)** (On trustee's motion to increase payments to unsecured creditors, trustee has burden to demonstrate good faith and feasibility with respect to modification to capture nonexempt portion of an inheritance received more than 180 days after the petition. Inheritance is property of Chapter 13 estate. Best-interests-of-creditors test applies but excludes inheritance received more than 180 days after the petition because inheritance would not be property of a Chapter 7

estate. Disposable income test does not apply at modification after confirmation but debtors should have opportunity to prove changes in income and expenses that would bear on feasibility of capturing nonexempt portion of inheritance for unsecured creditors.).

§ 126.3 Does Disposable Income Test Apply?

{655} ***In re Scholl*, 605 B.R. 163 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (Disposable income test in § 1325(b) does not apply at modification after confirmation under § 1329 but courts include consideration of income and expenses in good-faith analysis under § 1325(a)(3).).

{656} ***In re Moore*, 602 B.R. 40 (Bankr. E.D. Tenn. Apr. 25, 2019) (Rucker)** (On trustee's motion to increase payments to unsecured creditors, trustee has burden to demonstrate good faith and feasibility with respect to modification to capture the nonexempt portion of an inheritance received more than 180 days after the petition. Best-interests-of-creditors test applies but excludes inheritance received more than 180 days after the petition because the inheritance would not be property of a Chapter 7 estate. Disposable income test does not apply at modification after confirmation but debtors should have opportunity to prove changes in income and expenses that would bear on feasibility of capturing the nonexempt portion of the inheritance for unsecured creditors.).

§ 126.4 Duration of Modified Plan

{657} ***Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 77–84 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)** (For purposes of modification under § 1329 and discharge under § 1328, direct payments to mortgagee are payments "under the plan" and default in direct payments means payments have not been completed—notwithstanding that debtor has completed payments required by the plan to be paid to the trustee. Because direct payments were not made and thus payments under the plan were not complete, debtor's motion to modify plan to surrender residence was timely. However, because 67 months passed since the first payment was due and surrender is a "payment" for § 1329(c) purposes, plan cannot be amended to surrender residence to mortgagee. Confirmed plan provided that $65,000 prepetition mortgage arrears would be cured by loan modification or plan would be modified to pay arrears in some other fashion. Plan also provided for direct payment of all postpetition mortgage payments to Wells Fargo. Debtors failed to make postpetition mortgage payments, increasing default to $123,819. No loan modification occurred and no other provision was made for the pre- or postpetition arrears. Debtor ultimately moved to modify the plan to surrender the residence to Wells Fargo 67 months after the first plan payment was due. "[C]ourts have held in the discharge context of § 1328(a) . . . that a debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan. Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.' . . . [T]he overwhelming majority of courts . . . have interpreted the term 'payments' in § 1328(a) to include direct payments by the debtor to a creditor. . . . While the question of whether a debtor has completed 'all payments under the plan' was not at issue in [*Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (June 7, 1993)], construing this language in § 1328(a) narrowly to include only those payments made to the chapter 13 trustee proves difficult given the Supreme Court's broad construction of 'provided for by the plan,' in that same section, to include claims that are merely referred to in the plan. . . . Only two courts have held that a debtor's direct payments on a nonmodifiable, nondischargeable residential mortgage loan under § 1322(b)(5) are not 'payments under the plan' for purposes of § 1328(a). . . . *In re Gibson*, 582 B.R. 15, 24 ([Bankr. C.D. Ill. Mar. 5, 2018) (Perkins)]. . . . *In re Rivera*, [599 B.R. 335, 339–42 (Bankr. D. Ariz. Mar. 29, 2019) (Wanslee)]. . . . While *Gibson* and *Rivera* are thoughtful and well-intended decisions, we respectfully disagree. And we perceive some flaws with interpreting the phrase 'payments under the plan' to include only those payments made to the trustee. One is the different outcomes that would result in conduit versus non-conduit jurisdictions. . . . [W]hether postpetition mortgage payments are paid directly by the debtor or paid by the chapter 13 trustee should not be dispositive of granting a discharge under § 1328(a). . . . A direct-pay debtor should not receive a discharge that a conduit debtor would not. . . . [T]he promise to maintain postpetition payments to a mortgage creditor is a mandatory element of the treatment of claims subject to § 1322(b)(5), and it is not severable. . . . We have difficulty reconciling that a debtor can receive a discharge after failing to make maintenance payments under § 1322(b)(5), when that same failure is grounds for case dismissal. . . . [S]imply because debtors prior to 2011 were flying under the radar and receiving discharges despite not making all maintenance payments as required under § 1322(b)(5), does not mean that such practice was correct or give it any legitimacy. Perhaps as an unintended consequence, Rule 3002.1 has merely exposed the problem at a point in the case where modification to cure the postpetition arrears is no longer an option. . . . The computation of disposable income to pay creditors under § 1325(b) takes into account the promised direct payments for housing, including § 1322(b)(5) maintenance payments. Debtors who fail to make these payments, which often amount to tens of thousands of dollars, benefit from years of living without mortgage payments at the expense of creditors. . . . [W]e join the overwhelming majority of courts holding that a chapter 13 debtor's direct payments to creditors, if provided for in the plan, are 'payments under the plan' for purposes of a discharge under § 1328(a) and hold that this same rule should apply in the context of post-confirmation plan modifications under § 1329(a). . . . Because the Mrdutts failed to satisfy the obligation of their prepetition arrears, and also failed to make their direct postpetition mortgage payments, their Plan payments were not 'complete' under § 1329(a). . . . [S]urrender is a form of payment for purposes of § 1329(c). . . . The court had no authority to modify a plan that allowed for payment beyond the 60-month time limit.").

{658} ***Touroo v. Terry (In re Touroo)*, No. 18-13365, 2019 WL 2590751, at *2–*3 (E.D. Mich. June 25, 2019) (Steeh)** (Embracing *In re Klaas*, 858 F.3d 820, 823 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court had discretion to allow debtors to complete Chapter 13 plan payments a few weeks after expiration of five-year limitation. Remand necessary for bankruptcy court to

consider factors in *Klaas*. Confirmed plan required the debtors to remit their 2017 tax refund. Debtors failed to do so and trustee moved to dismiss. Approximately three weeks after expiration of five-year duration of confirmed plan debtor submitted missing tax refund to the trustee. "[A] debtor may modify a plan after it has been confirmed. A debtor may modify a plan to 'extend or reduce the time for . . . payments,' 11 U.S.C. § 1329(a)(2), but may not modify the plan to extend its length beyond five years, 11 U.S.C. § 1329(c). . . . [T]he first weekly payment under the confirmed plan was due no later than August 7, 2013, . . . the plan expired no later than August 7, 2018. . . . Debtors submitted their 2017 tax refund to the Trustee on August 27, 2018. . . . This court is persuaded . . . that the *Klaas* decision properly accounts for the statutory context in determining that courts are not *required* to dismiss a case under § 1307(c) if a debtor has not timely completed all of the plan payments. The Code unambiguously gives bankruptcy courts discretion under such circumstances . . . bankruptcy courts have discretion to allow debtors to cure a default after the end of the five-year period.").

{659} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *3 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 trustee's motion to modify confirmed plan to capture nonexempt proceeds of postconfirmation personal injury action is granted. Distinguishing *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. June 23, 2016) (Bauer, Williams, Adelman), debtors' objection that only proceeds actually received within 60-month term of plan need be turned over to trustee is rejected. To satisfy best-interests-of-creditors test at modification after confirmation, Chapter 13 debtors must turn over nonexempt proceeds from postconfirmation personal injury action even if proceeds are received after 60 months after first payment under original plan. "[T]he modified plan here is not 'providing for' further plan payments by the Lugos. All the order does is establish a mechanism for the Lugos to turn over estate property for the Trustee to distribute to creditors according to the confirmed plan. . . . [T]he Lugos now have an additional asset to account for in calculating what their creditors are entitled to receive in a chapter 13 case.").

{660} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

§ 126.5 Changed-Circumstances Requirement?

{661} ***In re Scholl*, 605 B.R. 163 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (In the Sixth Circuit, there is no predicate for modification under § 1329 that the debtor experience an unanticipated or substantial change in circumstances; rather, a change in circumstances that affects the debtor's ability to pay satisfies § 1329.).

{662} ***In re Conrad*, 604 B.R. 163 (Bankr. M.D. Pa. Aug. 13, 2019) (Van Eck)** (Section 1329 does not condition modification after confirmation with respect to any particular change in circumstances—substantial and/or unanticipated.).

{663} ***Fraser v. CitiMortgage, Inc. (In re Fraser)*, 599 B.R. 830, 838 (Bankr. W.D. Pa. Apr. 26, 2019) (Böhm)** (Modification after confirmation under § 1329 is not available to value a secured claim and bifurcate the claim when undersecurity was known at confirmation and no substantial, unanticipated change in circumstances occurred to support modification. "This Court has ruled that 'a modification of a confirmed plan under § 1329(a) must be based upon a change in circumstances that is substantial, material or unanticipated at the time of the initial confirmation.' . . . Stating that a general 'devaluation' of the property has occurred, without more,

is insufficient to prove a 'substantial or material' change in circumstances. . . . Debtor knew or should have known about the diminished value of the property pre-confirmation, such a devaluation likely would not have been 'unanticipated.'").

§ 126.6 Modification after Confirmation after BAPCPA

{664} ***Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 77–84 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)** (For purposes of modification under § 1329 and discharge under § 1328, direct payments to mortgagee are payments "under the plan" and default in direct payments means payments have not been completed—notwithstanding that debtor has completed payments required by the plan to be paid to the trustee. Because direct payments were not made and thus payments under the plan were not complete, debtor's motion to modify plan to surrender residence was timely. However, because 67 months passed since the first payment was due and surrender is a "payment" for § 1329(c) purposes, plan cannot be amended to surrender residence to mortgagee. Confirmed plan provided that $65,000 prepetition mortgage arrears would be cured by loan modification or plan would be modified to pay arrears in some other fashion. Plan also provided for direct payment of all postpetition mortgage payments to Wells Fargo. Debtors failed to make postpetition mortgage payments, increasing default to $123,819. No loan modification occurred and no other provision was made for the pre- or postpetition arrears. Debtor ultimately moved to modify the plan to surrender the residence to Wells Fargo 67 months after the first plan payment was due. "[C]ourts have held in the discharge context of § 1328(a) . . . that a debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan. Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.' . . . [T]he overwhelming majority of courts . . . have interpreted the term 'payments' in § 1328(a) to include direct payments by the debtor to a creditor. . . . While the question of whether a debtor has completed 'all payments under the plan' was not at issue in [*Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (June 7, 1993)], construing this language in § 1328(a) narrowly to include only those payments made to the chapter 13 trustee proves difficult given the Supreme Court's broad construction of 'provided for by the plan,' in that same section, to include claims that are merely referred to in the plan. . . . Only two courts have held that a debtor's direct payments on a nonmodifiable, nondischargeable residential mortgage loan under § 1322(b)(5) are not 'payments under the plan' for purposes of § 1328(a). . . . *In re Gibson*, 582 B.R. 15, 24 ([Bankr. C.D. Ill. Mar. 5, 2018) (Perkins)]. . . . *In re Rivera*, [599 B.R. 335, 339–42 (Bankr. D. Ariz. Mar. 29, 2019) (Wanslee)]. . . . While *Gibson* and *Rivera* are thoughtful and well-intended decisions, we respectfully disagree. And we perceive some flaws with interpreting the phrase 'payments under the plan' to include only those payments made to the trustee. One is the different outcomes that would result in conduit versus non-conduit jurisdictions. . . . [W]hether postpetition mortgage payments are paid directly by the debtor or paid by the chapter 13 trustee should not be dispositive of granting a discharge under § 1328(a). . . . A direct-pay debtor should not receive a discharge that a conduit debtor would not. . . . [T]he promise to maintain postpetition payments to a mortgage creditor is a mandatory element of the treatment of claims subject to § 1322(b)(5), and it is not severable. . . . We have difficulty reconciling that a debtor can receive a discharge after failing to make maintenance payments under § 1322(b)(5), when that same failure is grounds for case dismissal. . . . [S]imply because debtors prior to 2011 were flying under the radar and receiving discharges despite not making all maintenance payments as required under § 1322(b)(5), does not mean that such practice was correct or give it any legitimacy. Perhaps as an unintended consequence, Rule 3002.1 has merely exposed the problem at a point in the case where modification to cure the postpetition arrears is no longer an option. . . . The computation of disposable income to pay creditors under § 1325(b) takes into account the promised direct payments for housing, including § 1322(b)(5) maintenance payments. Debtors who fail to make these payments, which often amount to tens of thousands of dollars, benefit from years of living without mortgage payments at the expense of creditors. . . . [W]e join the overwhelming majority of courts holding that a chapter 13 debtor's direct payments to creditors, if provided for in the plan, are 'payments under the plan' for purposes of a discharge under § 1328(a) and hold that this same rule should apply in the context of post-confirmation plan modifications under § 1329(a). . . . Because the Mrdutts failed to satisfy the obligation of their prepetition arrears, and also failed to make their direct postpetition mortgage payments, their Plan payments were not 'complete' under § 1329(a). . . . [S]urrender is a form of payment for purposes of § 1329(c). . . . The court had no authority to modify a plan that allowed for payment beyond the 60-month time limit.").

{665} ***In re Gresham*, No. 18-56289, 2020 WL 1170712, at *2–*7 (Bankr. E.D. Mich. Mar. 10, 2020) (Shefferly)** (HAVEN Act applies to Chapter 13 cases pending on August 23, 2019, but effect is not "retroactive" in sense that it would be unfair to revisit confirmation; however, confirmed plan can be modified to reduce required payments to unsecured creditors going forward to reflect elimination of veteran's benefits. Debtor confirmed a Chapter 13 plan in March of 2019. Debtor received monthly disability benefits from the Department of Veterans Affairs as a result of a combat-related injury. In October 2019, debtor moved to modify confirmed plan to reduce plan payments from $300 biweekly to $250 biweekly. "The HAVEN Act does not state whether it applies only to new cases filed after August 23, 2019 or whether it also applies to cases that were filed before that date. The legislative history to the HAVEN Act is also silent on this question. . . . The Trustee does not identify, and the Court is not aware of, any manifest injustice that will result from bankruptcy courts immediately applying the HAVEN Act to all CMI decisions, without regard to whether those cases were filed before or after August 23, 2019. . . . To now go back and apply the HAVEN Act 'retroactively' to hold that the Debtor's CMI at the time of confirmation of her plan excluded her VA benefits . . . is fundamentally unfair because the time has long passed for the Debtor's unsecured creditors to object to confirmation of her plan. . . . Here, the Plan Mod is based on a change in the law made by the HAVEN Act after the Debtor confirmed her plan. However, if applied to the calculation of the Debtor's CMI for purposes of the Plan Mod, it would obviously have a substantial impact on the Debtor's financial circumstances by excluding $1,789.00 of VA benefits each month. The passage of the HAVEN Act and its change in the definition of CMI is not something that the Debtor or the Trustee could have anticipated when the Debtor's plan was confirmed. . . . The Court holds that the HAVEN Act provides a legitimate reason for a

modification—sufficient under § 1329 and the case law in the Sixth Circuit—to the Debtor's plan for its duration. . . . However, the Court's holding that the HAVEN Act applies to the Plan Mod does not necessarily mean that the Plan Mod is approved. The Plan Mod must meet all of the requirements of § 1329(b)(1).").

{666} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

{667} ***In re Edwards*, 604 B.R. 417, 420–26 (Bankr. S.D. Fla. Aug. 1, 2019) (Kimball)** (Wells Fargo is bound by modified plan that cured defaults—notwithstanding mistake in amount of arrearage in modified plan—and Wells Fargo can't use objection to final cure notice under Bankruptcy Rule 3002.1 as an end run around the binding effect of confirmation. Wells Fargo is forbidden to collect the difference between the actual arrearage and the amount paid under the confirmed modified plan. "Inexplicably, the [modified plan] provided yet a different treatment for Wells Fargo compared with both the confirmed [plan] and the five modified plans previously filed . . . . [T]here is no reason for the change in the ongoing monthly payment amounts provided for Wells Fargo, and the parties agree that the payment amounts for Wells Fargo in the [modified plan] represent an unintended drafting error by the Debtor's prior counsel. Unfortunately, the [modified plan] presents regular payments to Wells Fargo aggregating . . . $5,433.42 less than the total amount presented in the [confirmed plan]. . . . The [modified plan] was served on Wells Fargo but Wells Fargo took no action. . . . [N]either the chapter 13 trustee nor the Court realized that the [modified plan] included changes to the treatment of Wells Fargo's claim that were not addressed in the motion to modify or otherwise . . . . [N]early four years after the Court confirmed the [modified plan], the chapter 13 trustee filed the notice of plan completion and notice of final cure payment. . . . Wells Fargo filed an objection to the trustee's notice of final cure payment, stating that the Debtor is not current on post-petition mortgage payments consistent with section 1322(b)(5). . . . This Court cannot ignore the broad holding of *Espinosa*. . . . [T]he chapter 13 trustee is required to file 'a notice stating that the debtor has paid in full the amount required to cure any default on the [mortgage] claim.' Fed. R. Bankr. P. 3002.1(f). This component of Bankruptcy Rule 3002.1 addresses only the cure of pre-bankruptcy defaults, not the payment of post-petition mortgage payments. In this case, there is no dispute that Wells Fargo's prepetition arrears were paid in full. Within 21 days after service of the trustee's notice, the holder of the mortgage claim may file an objection. Fed. R. Bankr. P. [3002.1(g)]. The holder can raise two categories of objections. First, the holder may challenge whether its pre-petition deficiency was cured. . . . Second, the holder may address 'whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code.' . . . Wells Fargo argues that Bankruptcy Rule 3002.1 gives it an opportunity to complain that the payments set out in the [modified plan], confirmed by an order of this Court four years ago, were not correct, and that the Court may now rule, in effect, that the [modified plan] should not have been confirmed. . . . Bankruptcy Rule 3002.1 itself does not support Wells Fargo's argument. Bankruptcy Rule 3002.1(h) permits the Court to determine whether a debtor has 'paid all required postpetition amounts' in order to resolve disputes arising from application of that same rule. . . . Subsections (g) and (h) provide a procedure to address . . . disputes . . . . The dispute resolution provisions of Bankruptcy Rule 3002.1 encompass only those differences arising from the notices of payment change permitted by that rule. Nothing in Bankruptcy Rule 3002.1 suggests that its application results in modification of a confirmed plan. . . . [N]othing in the Bankruptcy Code or applicable law suggests that a creditor

may collaterally attack a confirmation order, otherwise final and no longer subject to appeal, by the procedure provided in Bankruptcy Rule 3002.1.").

2. SPECIFIC MODIFICATIONS

§ 127.1 To Suspend Payments
§ 127.2 To Cure Postconfirmation Default

{668} ***In re Smith*, 600 B.R. 570, 577–83 (Bankr. S.D. Tex. Apr. 26, 2019) (Isgur)** (Confirmed plan can be modified over objection of car lender to change direct payment by debtor to payment through the Chapter 13 trustee and to reduce interest rate from contract rate of 15.5% to *Till* rate, 6%. Postpetition defaults in direct payment can be cured by adding defaults to amount owed and paying total with lower interest rate over remaining life of plan. "[T]he four alternatives set out in § 1329(a), are separated by the disjunctive 'or.' . . . It follows that under the plain language of § 1329, a debtor may modify a plan post-confirmation to not only extend or reduce time for payment, but also, separately, to increase or reduce the amount of payments on a claim. . . . Ms. Smith may modify her confirmed plan to increase or reduce the plan payments on Americredit's claim in accordance with § 1329(a)(1) and must pay at least the *Till* interest rate in accordance with § 1325(a)(5)(B). . . . This Court allowed Ms. Smith to act as the disbursing agent under the Plan for Americredit's claim. Ms. Smith, however, defaulted on her payments to Americredit . . . . [I]t is clear that Ms. Smith is no longer qualified to serve as the disbursing agent over Americredit's claim. By defaulting in her disbursement obligation, she has lost the privilege to act as a disbursing agent under the Plan as to Americredit's claim. . . . Modifying Ms. Smith's Plan from direct payments to payments made by the Trustee is in line with the Bankruptcy Code and subject to the discretion of the Court.").

§ 127.3 To "Add" Prepetition Creditors
§ 127.4 To Provide for Postpetition Claims
§ 127.5 To Incur New Debt
§ 127.6 To Sell or Refinance Property of the Estate
§ 127.7 To Surrender Collateral, Account for Repossession or Change the Treatment of a Secured Claim

{669} ***Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 77–84 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)** (For purposes of modification under § 1329 and discharge under § 1328, direct payments to mortgagee are payments "under the plan" and default in direct payments means payments have not been completed. Because direct payments were not made and payments under the plan were not complete, debtor's motion to modify plan to surrender residence was timely. However, because 67 months passed since the first payment was due and surrender is a "payment" for § 1329(c) purposes, plan cannot be amended to surrender residence to mortgagee. Confirmed plan provided that $65,000 prepetition mortgage arrears would be cured by loan modification or plan would be modified to pay arrears in some other fashion. Plan also provided for direct payment of postpetition mortgage installments to Wells Fargo. Debtors failed to make postpetition mortgage payments, increasing default to $123,819. No loan modification occurred and no other provision was made for the pre- or postpetition arrears. Debtor ultimately moved to modify the plan to surrender the residence to Wells Fargo 67 months after the first plan payment was due. "[C]ourts have held in the discharge context of § 1328(a) . . . that a debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan. Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.' . . . [T]he overwhelming majority of courts . . . have interpreted the term 'payments' in § 1328(a) to include direct payments by the debtor to a creditor. . . . While the question of whether a debtor has completed 'all payments under the plan' was not at issue in [*Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (June 7, 1993)], construing this language in § 1328(a) narrowly to include only those payments made to the chapter 13 trustee proves difficult given the Supreme Court's broad construction of 'provided for by the plan,' in that same section, to include claims that are merely referred to in the plan. . . . Only two courts have held that a debtor's direct payments on a nonmodifiable, nondischargeable residential mortgage loan under § 1322(b)(5) are not 'payments under the plan' for purposes of § 1328(a). . . . *In re Gibson*, 582 B.R. 15, 24 ([Bankr. C.D. Ill. Mar. 5, 2018) (Perkins)]. . . . *In re Rivera*, [599 B.R. 335, 339–42 (Bankr. D. Ariz. Mar. 29, 2019) (Wanslee)]. . . . While *Gibson* and *Rivera* are thoughtful and well-intended decisions, we respectfully disagree. And we perceive some flaws with interpreting the phrase 'payments under the plan' to include only those payments made to the trustee. One is the different outcomes that would result in conduit versus non-conduit jurisdictions. . . . [W]hether postpetition mortgage payments are paid directly by the debtor or paid by the chapter 13 trustee should not be dispositive of granting a discharge under § 1328(a). . . . A direct-pay debtor should not receive a discharge that a conduit debtor would not. . . . [T]he promise to maintain postpetition payments to a mortgage creditor is a mandatory element of the treatment of claims subject to § 1322(b)(5), and it is not severable. . . . We have difficulty reconciling that a debtor can receive a discharge after failing to make maintenance payments under § 1322(b)(5), when that same failure is grounds for case dismissal. . . . [S]imply because debtors prior to 2011 were flying under the radar and receiving discharges despite not making all maintenance payments as required under § 1322(b)(5), does not mean that such practice was correct or give it any legitimacy. Perhaps as an unintended consequence, Rule 3002.1 has merely exposed the problem at a point in the case where modification to cure the postpetition arrears is no longer an option. . . . The computation of disposable income to pay creditors under § 1325(b) takes into account the promised direct payments for housing, including § 1322(b)(5) maintenance payments. Debtors who fail to make these payments, which often amount to tens of thousands of dollars, benefit from years of living without mortgage payments at the expense of creditors. . . . [W]e join the overwhelming majority of courts holding that a chapter 13 debtor's direct payments to creditors, if provided

for in the plan, are 'payments under the plan' for purposes of a discharge under § 1328(a) and hold that this same rule should apply in the context of post-confirmation plan modifications under § 1329(a). . . . Because the Mrdutts failed to satisfy the obligation of their prepetition arrears, and also failed to make their direct postpetition mortgage payments, their Plan payments were not 'complete' under § 1329(a). . . . [S]urrender is a form of payment for purposes of § 1329(c). . . . The court had no authority to modify a plan that allowed for payment beyond the 60-month time limit.").

{670} ***In re Schroeder*, 607 B.R. 329 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Confirmed plan that provided debtor would negotiate mortgage modification and if not successful would then modify plan to provide for mortgage can be modified to bifurcate the mortgage under §§ 1322(c)(2) and 1329(a)(1) when mortgage is not protected from modification by § 1322(b)(2). Modification does not reclassify the mortgage claim, it simply changes the treatment of that claim as permitted by § 1322(c)(2).).

{671} ***In re Toliver*, 603 B.R. 420, 422–23 (Bankr. E.D. Wis. Aug. 8, 2019) (Halfenger)** (Rejecting *Chrysler Financial Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. Oct. 24, 2000) (Krupansky, Norris, Suhrheinrich), plan can be modified after confirmation to change treatment of car lender's claim from payment in full to surrender; evidentiary hearing necessary to assess good faith given that car is no longer running reliably. "While confirmed chapter 13 plans are binding . . . § 1329 authorizes debtors, trustees, and holders of allowed unsecured claims to modify plans after confirmation for the reasons described in § 1329(a) . . . . Toliver's proposed modification unquestionably reduces the amount of payments on CPS's secured claim; thus, it is authorized by § 1329(a)(1). . . . A plan that surrenders the collateral . . . satisfies § 1325(a)(5) without regard to the collateral's value. Section 1329 does not impose any limitations in addition to those in § 1325(a) on how a plan as modified may provide for secured claims. . . . [Section] 1325(a)(3)'s good-faith requirement cannot serve as a *per se* limitation on the debtor's ability to modify the plan to surrender collateral. . . . [T]he court will schedule an evidentiary hearing to adjudicate whether Toliver proposes her modification in good faith.").

{672} ***In re Smith*, 600 B.R. 570, 577–83 (Bankr. S.D. Tex. Apr. 26, 2019) (Isgur)** (Confirmed plan can be modified over objection of car lender to change direct payment by debtor to payment through the Chapter 13 trustee and to reduce interest rate from contract rate of 15.5% to *Till* rate, 6%. Postpetition defaults in direct payment can be cured by adding defaults to amount owed and paying total with lower interest rate over remaining life of plan. "[T]he four alternatives set out in § 1329(a), are separated by the disjunctive 'or.' . . . It follows that under the plain language of § 1329, a debtor may modify a plan post-confirmation to not only extend or reduce time for payment, but also, separately, to increase or reduce the amount of payments on a claim. . . . Ms. Smith may modify her confirmed plan to increase or reduce the plan payments on Americredit's claim in accordance with § 1329(a)(1) and must pay at least the *Till* interest rate in accordance with § 1325(a)(5)(B). . . . This Court allowed Ms. Smith to act as the disbursing agent under the Plan for Americredit's claim. Ms. Smith, however, defaulted on her payments to Americredit . . . . [I]t is clear that Ms. Smith is no longer qualified to serve as the disbursing agent over Americredit's claim. By defaulting in her disbursement obligation, she has lost the privilege to act as a disbursing agent under the Plan as to Americredit's claim. . . . Modifying Ms. Smith's Plan from direct payments to payments made by the Trustee is in line with the Bankruptcy Code and subject to the discretion of the Court.").

§ 127.8 To Decrease Payments to Creditors

{673} ***In re Gresham*, No. 18-56289, 2020 WL 1170712, at *2–*7 (Bankr. E.D. Mich. Mar. 10, 2020) (Shefferly)** (HAVEN Act applies to Chapter 13 cases pending on August 23, 2019, but effect is not "retroactive" in sense that it would be unfair to revisit confirmation; however, confirmed plan can be modified to reduce required payments to unsecured creditors going forward to reflect elimination of veteran's benefits. Debtor confirmed a Chapter 13 plan in March of 2019. Debtor received monthly disability benefits from the Department of Veterans Affairs as a result of a combat-related injury. In October 2019, debtor moved to modify confirmed plan to reduce plan payments from $300 biweekly to $250 biweekly. "The HAVEN Act does not state whether it applies only to new cases filed after August 23, 2019 or whether it also applies to cases that were filed before that date. The legislative history to the HAVEN Act is also silent on this question. . . . The Trustee does not identify, and the Court is not aware of, any manifest injustice that will result from bankruptcy courts immediately applying the HAVEN Act to all CMI decisions, without regard to whether those cases were filed before or after August 23, 2019. . . . To now go back and apply the HAVEN Act 'retroactively' to hold that the Debtor's CMI at the time of confirmation of her plan excluded her VA benefits . . . is fundamentally unfair because the time has long passed for the Debtor's unsecured creditors to object to confirmation of her plan. . . . Here, the Plan Mod is based on a change in the law made by the HAVEN Act after the Debtor confirmed her plan. However, if applied to the calculation of the Debtor's CMI for purposes of the Plan Mod, it would obviously have a substantial impact on the Debtor's financial circumstances by excluding $1,789.00 of VA benefits each month. The passage of the HAVEN Act and its change in the definition of CMI is not something that the Debtor or the Trustee could have anticipated when the Debtor's plan was confirmed. . . . The Court holds that the HAVEN Act provides a legitimate reason for a modification—sufficient under § 1329 and the case law in the Sixth Circuit—to the Debtor's plan for its duration. . . . However, the Court's holding that the HAVEN Act applies to the Plan Mod does not necessarily mean that the Plan Mod is approved. The Plan Mod must meet all of the requirements of § 1329(b)(1).").

{674} ***In re Conrad*, 604 B.R. 163, 174–81 (Bankr. M.D. Pa. Aug. 13, 2019) (Van Eck)** (Sections 1327 and 1329 perform in harmony if modification is not barred by § 1327 or res judicata when the modification fits one or more of the four purposes in § 1329(a). Confirmation of modified plan filed seven months after confirmation of original plan is denied for lack of good faith when modified plan would reduce payment to unsecured creditors from 100% to 21%, income had not reduced between the petition and the time of

modification and increases in expenses were nominal and mostly discretionary. "[M]odification under § 1329 is only allowed in four limited circumstances. . . . [T]he plain and unambiguous language of § 1329 denies any threshold change in circumstance requirement and clearly demonstrates that the common law doctrine of *res judicata* does not apply to modifications. . . . [C]omparison of the Debtors' average total monthly gross income at the commencement of this case with their average total monthly gross income as of the filing of the Motion to Modify demonstrates that they have not suffered a decrease in their average total monthly gross income from the commencement of this case. . . . [T]he plan as modified lacks good faith . . . . It fails to commit all the Debtors' monthly disposable income to the plan for the benefit of their creditors . . . .").

{675} ***In re McKay*, No. 18-31088, 2019 WL 3294081, at *3 (Bankr. S.D. Ill. July 22, 2019) (Altenberger)** (Lack of good faith at modification of confirmed plan included that debtor filed modified plan 18 days after confirmation, reducing payment to unsecured creditors from $105,000 to $0. Debtor used above-median protocol for calculation of disposable income at confirmation of original plan then changed to using method appropriate only for under-median debtors in order to dramatically reduce the projection of disposable income based on Schedules I and J instead of Official Form 122C. "[T]hree factors . . . indicate a lack of good faith . . . . First, . . . amendment to the confirmed plan was initiated a mere 18 days after confirmation. Second, the fourth amended plan reduces the amount being paid on unsecured claims from $105,520.80 (approximately 92%) to $0 (0%). Third, and most importantly, even though the Debtor's income is still above median, . . . the Debtor changed the method for calculating disposable income from one used for above median income debtors to one for below median debtors. . . . Debtor's delayed amendment of her plan and schedules until after confirmation is an attempt to deviate from the standard means test on form 122C-2 which equates to a manipulation of the Bankruptcy Code, which in turn equates to bad faith.").

{676} ***In re Shealy*, 599 B.R. 397, 404 (Bankr. M.D. Ga. May 6, 2019) (Carter)** (When car is destroyed after confirmation and insurer tenders more than balance due on car lender's secured claim, plan can be modified under § 1329(a)(1) or § 1329(a)(3) to pay balance of secured claim from the insurance proceeds and to pay debtor the excess. Car lender's claim amendment to add pendency interest that was omitted from the plan and omitted from the original claim is rejected. "Under [§ 1329], only the debtor, the trustee, and holders of unsecured claims may propose a post-confirmation plan modification. . . . Secured creditors such as Action . . . are not permitted to pursue modification of a confirmed plan. . . . Even if Action were permitted to seek modification under § 1329, the Court is aware of no cases . . . where a secured creditor had interest added to its claim under one of the § 1329 grounds for plan modification. In contrast, the Debtor is statutorily permitted to modify the Plan to provide for payment in full of Action's claim under either § 1329(a)(1) or (a)(3).").

§ 127.9 To Increase Payments to Creditors

{677} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Deletion of nonstandard plan provision that preserved Thirteenth Amendment challenge to any future effort by Chapter 13 trustee to increase payments by way of plan modification is not ripe for appellate review because no modification has been sought by trustee. Plan originally contained a footnote that preserved the debtors' argument that any attempt by the Chapter 13 trustee to increase payments by way of plan modification constituted involuntary servitude in violation of the Thirteenth Amendment to the Constitution. Bankruptcy court struck the footnote but confirmed the plan. BAP dodged debtors' appeal by finding that constitutional challenge was not ripe.).

{678} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 528–29 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (When confirmation vested property of the estate in debtor, postpetition appreciation belongs to debtor and cannot be captured by trustee's motion to modify plan to require sale proceeds to be paid to creditors. Confirmed plan required debtor to pay creditors $45,000 from proceeds of sale of property. Property vested in debtor at confirmation and was sold three years later for $107,000. Trustee cannot force excess proceeds to be paid to creditors. Proceeds are not disposable income and appreciation belongs to the debtor. "[T]he Property was property of the estate when Mr. Black commenced his case. But when the bankruptcy court confirmed the plan, the Property was revested in Mr. Black. . . . Revesting means that Mr. Black owned the property outright, free of his creditors' claims. *See Cal. Franchise Tax Bd. v. Jones (In re Jones)*, 420 B.R. 506, 515 [(B.A.P. 9th Cir. Nov. 24, 2009) (Baum, Dunn, Jury).] . . . We acknowledge that there is a split in authority on this point. . . . In our view, the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation. . . . [W]e squarely rejected [the *Barbosa v. Solomon*, 235 F.3d 31 (1st Cir. Dec. 21, 2000) (Torruella, Selya, Casellas,] approach in *Jones*. We . . . opted instead for the 'estate termination approach,' which provides that 'all property of the estate vests in the debtor at confirmation[.]'").

{679} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *3 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 trustee's motion to modify confirmed plan to capture nonexempt proceeds of postconfirmation personal injury action is granted. Distinguishing *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. June 23, 2016) (Bauer, Williams, Adelman), debtors' objection that only proceeds actually received within 60-month term of plan need be turned over to trustee is rejected. To satisfy best-interests-of-creditors test at modification after confirmation, Chapter 13 debtors must turn over nonexempt proceeds from postconfirmation personal injury action even if proceeds are received after 60 months after first payment under original plan. "[T]he modified plan here is not 'providing for' further plan payments by the Lugos. All the order does is establish a mechanism for the Lugos to turn over estate property for the Trustee to distribute to creditors according to the confirmed plan. . . . [T]he Lugos now have an additional asset to account for in calculating what their creditors are entitled to receive in a chapter 13 case.").

{680} ***In re Jones*, No. 17-03500-5-SWH, 2020 WL 907802, at *3 (Bankr. E.D.N.C. Feb. 25, 2020) (Humrickhouse)** (Local rule and practice that permitted Chapter 13 trustee to change "base" and to increase required payments into a plan when attorney's fee was allowed after confirmation are inconsistent with requirements for plan modification in § 1329. Local rule allowed trustee "without application to the court" to modify a Chapter 13 plan to generate funds necessary to pay attorney's fees that might be allowed during term of plan. When allowed fees required plan modification, the trustee could issue a "notice of plan payment change." "[T]he Notice filed by the trustee cannot, and does not, operate to modify the debtor's chapter 13 plan. . . . [T]he local rule, while expedient and practical in terms of case administration, is at odds with the plain language of 11 U.S.C. § 1329(a), which sets out the process by which a plan may be modified after confirmation[.]").

{681} ***In re Scholl*, 605 B.R. 163, 178–87 (Bankr. S.D. Ohio Aug. 23, 2019) (Hopkins)** (In 59th month of plan when rental property was destroyed and insurance company tendered $150,000 to debtors, agreed modification offered by debtors and trustee that would pay $80,000 to debtors and $70,000 to creditors cannot be confirmed because best-interests-of-creditors test in § 1325(a)(4) requires larger payment to unsecured creditors and debtors have not proposed modified plan in good faith. "[A] post-confirmation fire that results in a total loss of the Debtors' Rental Property, which has appreciated in value and leads to a substantial payment from an insurer, constitutes the sort of financial change that justifies a request for an increase in the payments unsecured creditors should receive. . . . In considering whether a proposed modification comports with § 1325(a)(3) good faith requirement, it is appropriate for the Court to consider the standards of § 1325(b) . . . . Coupled with the fact that the Debtors would be retaining an $80,000 windfall from the excess Insurance Proceeds while unsecured creditors would receive only 32 cents on the dollar, the Court believes that the modification as proposed by the parties in the settlement agreement perverts the good faith test under § 1325(a)(3), rather than demonstrating fidelity to it. . . . '[T]he appropriate date for performing the liquidation analysis required by §§ 1329(b) and 1325(a)(4) is the effective date of the modified plan.' . . . The compromise reached between the Debtors and the Trustee and presented to the Court as a modification, under §§ 1329 and 1325(a)(4), is unconfirmable precisely because it excludes property of the estate, Insurance Proceeds, payable solely to the Debtors, that must inure to unsecured creditors under established bankruptcy law.").

{682} ***In re Shealy*, 599 B.R. 397, 404 (Bankr. M.D. Ga. May 6, 2019) (Carter)** (When car is destroyed after confirmation and insurer tenders more than balance due on car lender's secured claim, plan can be modified under § 1329(a)(1) or § 1329(a)(3) to pay balance of secured claim from the insurance proceeds and to pay debtor the excess. Car lender's claim amendment to add pendency interest that was omitted from the plan and omitted from the original claim is rejected. "Under [§ 1329], only the debtor, the trustee, and holders of unsecured claims may propose a post-confirmation plan modification. . . . Secured creditors such as Action . . . are not permitted to pursue modification of a confirmed plan. . . . Even if Action were permitted to seek modification under § 1329, the Court is aware of no cases . . . where a secured creditor had interest added to its claim under one of the § 1329 grounds for plan modification. In contrast, the Debtor is statutorily permitted to modify the Plan to provide for payment in full of Action's claim under either § 1329(a)(1) or (a)(3).").

{683} ***In re Moore*, 602 B.R. 40 (Bankr. E.D. Tenn. Apr. 25, 2019) (Rucker)** (On trustee's motion to increase payments to unsecured creditors, trustee has burden to demonstrate good faith and feasibility with respect to modification to capture the nonexempt portion of an inheritance received more than 180 days after the petition. Best-interests-of-creditors test applies but excludes inheritance received more than 180 days after the petition because the inheritance would not be property of a Chapter 7 estate. Disposable income test does not apply at modification after confirmation but debtors should have opportunity to prove changes in income and expenses that would bear on feasibility of capturing the nonexempt portion of the inheritance for unsecured creditors.).

§ 127.10 To Account for Payments Other Than under the Plan

{684} ***In re Shealy*, 599 B.R. 397, 404 (Bankr. M.D. Ga. May 6, 2019) (Carter)** (When car is destroyed after confirmation and insurer tenders more than balance due on car lender's secured claim, plan can be modified under § 1329(a)(1) or § 1329(a)(3) to pay balance of secured claim from the insurance proceeds and to pay debtor the excess. Car lender's claim amendment to add pendency interest that was omitted from the plan and omitted from the original claim is rejected. "Under [§ 1329], only the debtor, the trustee, and holders of unsecured claims may propose a post-confirmation plan modification. . . . Secured creditors such as Action . . . are not permitted to pursue modification of a confirmed plan. . . . Even if Action were permitted to seek modification under § 1329, the Court is aware of no cases . . . where a secured creditor had interest added to its claim under one of the § 1329 grounds for plan modification. In contrast, the Debtor is statutorily permitted to modify the Plan to provide for payment in full of Action's claim under either § 1329(a)(1) or (a)(3).").

§ 127.11 To Extend or Reduce the Time for Payments

{685} ***Touroo v. Terry (In re Touroo)*, No. 18-13365, 2019 WL 2590751, at *2–*3 (E.D. Mich. June 25, 2019) (Steeh)** (Embracing *In re Klaas*, 858 F.3d 820, 823 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court had discretion to allow debtors to complete Chapter 13 plan payments a few weeks after expiration of five-year limitation. Remand necessary for bankruptcy court to consider the factors in *Klaas*. Confirmed plan required the debtors to remit their 2017 tax refund. Debtors failed to do so and trustee moved to dismiss. Approximately three weeks after expiration of five-year duration of confirmed plan debtor submitted missing tax refund to the trustee. "[A] debtor may modify a plan after it has been confirmed. A debtor may modify a plan to 'extend or reduce the time for . . . payments,' 11 U.S.C. § 1329(a)(2), but may not modify the plan to extend its length beyond five years, 11 U.S.C.

§ 1329(c). . . . [T]he first weekly payment under the confirmed plan was due no later than August 7, 2013, . . . the plan expired no later than August 7, 2018. . . . Debtors submitted their 2017 tax refund to the Trustee on August 27, 2018. . . . This court is persuaded . . . that the *Klaas* decision properly accounts for the statutory context in determining that courts are not *required* to dismiss a case under § 1307(c) if a debtor has not timely completed all of the plan payments. The Code unambiguously gives bankruptcy courts discretion under such circumstances . . . bankruptcy courts have discretion to allow debtors to cure a default after the end of the five-year period.").

{686} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

{687} ***In re Smith*, 600 B.R. 570, 577–83 (Bankr. S.D. Tex. Apr. 26, 2019) (Isgur)** (Confirmed plan can be modified over objection of car lender to change direct payment by debtor to payment through the Chapter 13 trustee and to reduce interest rate from contract rate of 15.5% to *Till* rate, 6%. Postpetition defaults in direct payment can be cured by adding defaults to amount owed and paying total with lower interest rate over remaining life of plan. "[T]he four alternatives set out in § 1329(a), are separated by the disjunctive 'or.' . . . It follows that under the plain language of § 1329, a debtor may modify a plan post-confirmation to not only extend or reduce time for payment, but also, separately, to increase or reduce the amount of payments on a claim. . . . Ms. Smith may modify her confirmed plan to increase or reduce the plan payments on Americredit's claim in accordance with § 1329(a)(1) and must pay at least the *Till* interest rate in accordance with § 1325(a)(5)(B). . . . This Court allowed Ms. Smith to act as the disbursing agent under the Plan for Americredit's claim. Ms. Smith, however, defaulted on her payments to Americredit . . . . [I]t is clear that Ms. Smith is no longer qualified to serve as the disbursing agent over Americredit's claim. By defaulting in her disbursement obligation, she has lost the privilege to act as a disbursing agent under the Plan as to Americredit's claim. . . . Modifying Ms. Smith's Plan from direct payments to payments made by the Trustee is in line with the Bankruptcy Code and subject to the discretion of the Court.").

F. MISCELLANEOUS POSTCONFIRMATION ISSUES

§ 128.1 Death or Incompetency of Debtor

{688} ***In re Daniels*, No. 16-20475, 2019 WL 2003924, at *1 (Bankr. N.D. Ind. Mar. 18, 2019) (Ahler)** (That one spouse in a joint Chapter 13 case died is not a ground under § 502 for disallowance of claims that surviving spouse says are separate debts of spouse who died. "Mr. Daniels died during the pendency of this chapter 13 case. The essence of the objections is that he was the one liable for the debts in question; Mrs. Daniels is not; and so, the claims should be denied. While all that may be true, that is not one of the reasons for which claims are denied. Mr. Daniels is still a named debtor in this case; the case still involves him, his debts and his property. So long as he is a named party to the case, any treatment of claims should continue as if he were still alive. This is entirely consistent with the provisions of Rule 1016 of the Federal Rules of Bankruptcy Procedure . . . .").

{689} ***In re Stucky*, No. 15-10864, 2018 WL 8223571, at *1 (Bankr. N.D. Ind. Nov. 8, 2018) (Grant)** (That one spouse in a joint Chapter 13 case died is not a ground under § 502 for disallowance of claims that surviving spouse says are separate debts of spouse who died. "Mr. Stucky died during the pendency of this chapter 13 case. The essence of the objections is that he was the one liable for the debts in question; Mrs. Stucky is not; and so, the claims should be denied. While all that may be true, that is not one of the reasons for which claims are denied. Mr. Stucky is still a named debtor in this case; the case still involves him, his debts and his property. So long

as he is a named party to the case, any treatment of claims should continue as if he were still alive. This is entirely consistent with the provisions of Rule 1016 of the Federal Rules of Bankruptcy Procedure, addressing the effect of the debtor's death in a chapter 13 case.").

PART 7: CLAIMS

§ 129.1 Summary of Part 7

A. STATUTES AND RULES DISCUSSED IN PART 7

§ 130.1 11 U.S.C. § 501: Filing Proofs of Claim
§ 130.2 11 U.S.C. § 502: Allowance and Disallowance of Claims
§ 130.3 11 U.S.C. § 503: Administrative Expenses
§ 130.4 11 U.S.C. § 506: Extent of Secured Claims
§ 130.5 11 U.S.C. § 507: Priority Claims
§ 130.6 11 U.S.C. § 1305: Postpetition Claims
§ 130.7 Bankruptcy Rule 3001: Proofs of Claim
§ 130.8 Bankruptcy Rule 3002: Filing of Proofs of Claim
§ 130.9 Bankruptcy Rule 3004: Filing of Claims by Debtor or Trustee
§ 130.10 Bankruptcy Rule 3007: Objections to Claims
§ 130.11 Bankruptcy Rule 3012: Valuation of Security
§ 130.12 Bankruptcy Rule 5005: Filing of Papers

B. PROCEDURE, TIMING AND FORM

1. FORM AND FILING OF PROOF OF CLAIM

§ 131.1 Official Form 410 and Variations
§ 131.2 [RESERVED]
§ 131.3 Bankruptcy Rule 3002.1: Mortgage Management after 2011

{690} ***Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1078–88 (7th Cir. Nov. 27, 2019) (Bauer, Brennan, St. Eve)** (For reckless and reprehensible loan servicing and debt collection practices during and after completion of Chapter 13 case, after jury trial, Ocwen ordered to pay compensatory damages of $582,000; punitive damages of $3 million awarded by jury are reduced to $582,000. "[I]n December 2009, [debtor] began a Chapter 13 plan under which she was required to cure her default over 42 months while maintaining her ongoing monthly mortgage payments. . . . [I]n October 2011, shortly after it acquired her previous servicer . . . Ocwen sent her a loan statement saying, inexplicably, that she owed $16,000 immediately. . . . Her statements continued to fluctuate: her February 2013 statement said she owed about $7500, her March statement, $9000. A month later, Ocwen now owed *Saccameno* about $1000 in credit . . . . [T]he bankruptcy court issued a notice of final cure, Fed. R. Bankr. P. 3002.1, informing Ocwen that Saccameno had completed her payments. Ocwen never responded to the notice, and the court entered a discharge order on June 29, 2013. . . . Ocwen . . . reviewed the discharge but mistakenly treated it as a dismissal. . . . [E]ach check was being placed into a suspense account and not being applied to the loan. . . . Saccameno would frequently call Ocwen's customer service line and each time was directed to a new, similarly unhelpful person. . . . Ocwen sent Saccameno an offer to refinance her mortgage . . . . Saccameno's counsel diligently walked Ocwen's representative through its own records payment by payment . . . confirming that Saccameno had made each payment. . . . [Ocwen] continues to place most of the blame on what it calls 'an isolated "miscoding" error committed by a lone employee, identified as "Marla."' . . . Her error was one among a host of others, and each error was compounded by Ocwen's obstinate refusal to correct them. . . . We are not sure how many human errors a company like Ocwen gets before a jury can reasonably infer a conscious disregard of a person's rights, but we are certain Ocwen passed it. The record is replete with evidence that Ocwen's servicing of Saccameno's loan was chaos from the moment Ocwen began working on the loan in 2011 to the day of the jury's verdict nearly seven years later. . . . The utter lack of explanation also supports a finding of corporate complicity. . . . The jury heard evidence that *no one* at Ocwen took any steps, whatsoever, to investigate how Marla's mistake . . . was made or how Ocwen would prevent it from happening again. . . . Ocwen had no explanation for how this whole ordeal happened, let alone how it might be avoided in the future. . . . The loan modification offers were even worse. Putting to one side their timing, the terms, especially of the second offer, were far from generous. Why would Saccameno, having then endured four years with Ocwen, want to chain herself to the company three decades more, only to owe it money at the end? . . . Ocwen insisted it had not seen errors like these before, but its representative admitted it had never bothered to look. The jury was not required to accept Ocwen's bare assertion that this was a unique case—especially considering the consent decrees implying it was not—and could have inferred that this is just how Ocwen does business. For that, Illinois law permits punitive damages. . . . [T]he record contains evidence that Ocwen was a recidivist. The consent decrees described how it had treated other customers as it did Saccameno, and that it had continued its ways despite repeated warnings from regulators. The number of opportunities Ocwen had to fix its mistakes is the core fact that justifies punishment in this case. . . . Ocwen's conduct was reprehensible . . . . Ocwen was . . . indifferent to her rights, including those rights that originated from her bankruptcy. No evidence supports that Ocwen was acting maliciously, though the number of squandered chances it had to correct its mistakes comes close.").

{691} ***Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 77–84 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)** (For purposes of modification under § 1329 and discharge under § 1328, direct payments to mortgagee are payments "under the plan" and default in direct payments means payments have not been completed—notwithstanding that debtor has completed payments required by the plan to be paid to the trustee. Because direct payments were not made and thus payments under the plan were not complete, debtor's

motion to modify plan to surrender residence was timely. However, because 67 months passed since the first payment was due and surrender is a "payment" for § 1329(c) purposes, plan cannot be amended to surrender residence to mortgagee. Confirmed plan provided that $65,000 prepetition mortgage arrears would be cured by loan modification or plan would be modified to pay arrears in some other fashion. Plan also provided for direct payment of all postpetition mortgage payments to Wells Fargo. Debtors failed to make postpetition mortgage payments, increasing default to $123,819. No loan modification occurred and no other provision was made for the pre- or postpetition arrears. Debtor ultimately moved to modify the plan to surrender the residence to Wells Fargo 67 months after the first plan payment was due. "[C]ourts have held in the discharge context of § 1328(a) . . . that a debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan. Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.' . . . [T]he overwhelming majority of courts . . . have interpreted the term 'payments' in § 1328(a) to include direct payments by the debtor to a creditor. . . . While the question of whether a debtor has completed 'all payments under the plan' was not at issue in [*Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (June 7, 1993)], construing this language in § 1328(a) narrowly to include only those payments made to the chapter 13 trustee proves difficult given the Supreme Court's broad construction of 'provided for by the plan,' in that same section, to include claims that are merely referred to in the plan. . . . Only two courts have held that a debtor's direct payments on a nonmodifiable, nondischargeable residential mortgage loan under § 1322(b)(5) are not 'payments under the plan' for purposes of § 1328(a). . . . *In re Gibson*, 582 B.R. 15, 24 ([Bankr. C.D. Ill. Mar. 5, 2018) (Perkins)]. . . . *In re Rivera*, [599 B.R. 335, 339–42 (Bankr. D. Ariz. Mar. 29, 2019) (Wanslee)]. . . . While *Gibson* and *Rivera* are thoughtful and well-intended decisions, we respectfully disagree. And we perceive some flaws with interpreting the phrase 'payments under the plan' to include only those payments made to the trustee. One is the different outcomes that would result in conduit versus non-conduit jurisdictions. . . . [W]hether postpetition mortgage payments are paid directly by the debtor or paid by the chapter 13 trustee should not be dispositive of granting a discharge under § 1328(a). . . . A direct-pay debtor should not receive a discharge that a conduit debtor would not. . . . [T]he promise to maintain postpetition payments to a mortgage creditor is a mandatory element of the treatment of claims subject to § 1322(b)(5), and it is not severable. . . . We have difficulty reconciling that a debtor can receive a discharge after failing to make maintenance payments under § 1322(b)(5), when that same failure is grounds for case dismissal. . . . [S]imply because debtors prior to 2011 were flying under the radar and receiving discharges despite not making all maintenance payments as required under § 1322(b)(5), does not mean that such practice was correct or give it any legitimacy. Perhaps as an unintended consequence, Rule 3002.1 has merely exposed the problem at a point in the case where modification to cure the postpetition arrears is no longer an option. . . . The computation of disposable income to pay creditors under § 1325(b) takes into account the promised direct payments for housing, including § 1322(b)(5) maintenance payments. Debtors who fail to make these payments, which often amount to tens of thousands of dollars, benefit from years of living without mortgage payments at the expense of creditors. . . . [W]e join the overwhelming majority of courts holding that a chapter 13 debtor's direct payments to creditors, if provided for in the plan, are 'payments under the plan' for purposes of a discharge under § 1328(a) and hold that this same rule should apply in the context of post-confirmation plan modifications under § 1329(a). . . . Because the Mrdutts failed to satisfy the obligation of their prepetition arrears, and also failed to make their direct postpetition mortgage payments, their Plan payments were not 'complete' under § 1329(a). . . . [S]urrender is a form of payment for purposes of § 1329(c). . . . The court had no authority to modify a plan that allowed for payment beyond the 60-month time limit.").

{692} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 1328640, at *2–*6 (S.D. Ind. Jan. 30, 2020) (Pryor)** (In Chapter 13 debtor's postdischarge action against Ocwen under RESPA, FDCPA, FCRA and other consumer protection statutes, discovery dispute is resolved by United States Magistrate judge in favor of debtor with respect to "risk convergence reports" and other records relevant to Ocwen's knowledge that its REALServicing platform was broken and could not accurately account for payments in a Chapter 13 case. "Defendant Ocwen used a software-based servicing system, called REALServicing, that was subject to various failings. . . . Ocwen maintained spreadsheets, called 'Risk Convergence Reports,' that tracked regulatory violations and potential areas for risk with the REALServicing platform. . . . Plaintiff sought these Risk Convergence Reports ('RCR'), and any email correspondence . . . , . . . establishing Ocwen's knowledge, willful indifference, or deliberate violation of federal law. . . . Plaintiff has explained . . . that, if provided, the RCRs will be used to show that Ocwen was aware of the widespread problems related to the REALServicing platform, had been aware for a significant period of time, and had not engaged in the appropriate corrective behavior. Accordingly, the Court finds that the Plaintiff's request for the RCRs is relevant. . . . The RCRs, while potentially a result of the nationwide consent decrees, do not necessarily hinge on the terms of those decrees, nor do they reveal any confidential information from the settlement negotiation process. Instead, the RCRs appear to be spreadsheets created in the normal course of Ocwen's business, in an attempt to track potential points of liability and forestall future regulatory action.").

{693} ***Stone v. JPMorgan Chase Bank, N.A.*, 415 F. Supp. 3d 628, 632–34 (E.D. Pa. Nov. 27, 2019) (McHugh)** (Chapter 13 debtor's "disturbing" claims under FDCPA and Pennsylvania consumer protection statutes that Chase violated Bankruptcy Rule 3002.1 final cure order and discharge order are dismissed because Chase was not a debt collector and (ironically) debtor could not prove reliance when debtor knew that servicer was not accounting correctly but continued to send payments anyway. Debtor's claims of violation of discharge injunction must be presented as a motion for contempt to the bankruptcy court that issued the discharge. "Defendant correctly asserts that it is beyond the reach of the FDCPA because it does not qualify as a 'debt collector' under the statute. . . . Plaintiff cannot state a claim under Pennsylvania's UTPCPL because he cannot show justifiable reliance upon the Defendant's alleged wrongful behavior. . . . Plaintiff submitted what he believed to be his correct mortgage payment to Defendant on a monthly basis, consistently disputing Defendant's contention that he was behind on his mortgage and owed additional fees. . . . As a result, it cannot be said that Plaintiff has 'relied' upon the Defendant's purported misrepresentations or deceptive acts in any meaningful sense. In a somewhat ironic

outcome, Plaintiff's knowledge of Defendant's allegedly wrongful behavior . . . bars him from bringing a claim against Defendant under the UTPCPL. . . .").

{694} ***Sandigo v. Ocwen Loan Servicing, LLC*, No. 17-cv-02727-BLF, 2019 WL 2233051, at *11 (N.D. Cal. May 23, 2019) (Freeman)** (On summary judgment, Ocwen's failure to give Bankruptcy Rule 3002.1 notices of changes in payments required by de-escrowing and then re-escrowing loan cannot be used by Ocwen to bar debtor's claims that Ocwen violated various state and federal laws in its mismanagement of the mortgage payment amount during the Chapter 13 case. "Ocwen argues that it could not have modified the escrow amounts due without filing a notice that complied with [Bankruptcy Rule 3002.1(b)(1)]; because it did not file such a notice, it did not modify the final escrow amount . . . . To say that this argument is perverse is an understatement. Punishing Ms. Sandigo for Ocwen's failure to comply with its duties under the bankruptcy rules is not appropriate for numerous reasons. . . . Rule 3002.1 is meant to protect creditors from underpayment and debtors from surprise about how much they owe at the close of the bankruptcy action. . . . [T]he Court has not found—and Ocwen does not cite—a case in which the rule was applied to the detriment of the debtor. Put simply, the law does not require that Ms. Sandigo suffer for Ocwen's failure to comply with its duties.").

{695} ***Yotis v. Oxford Bank & Tr. (In re Yotis)*, No. 18 C 5396, 2019 WL 2208472 (N.D. Ill. May 22, 2019) (Feinerman)** ($32,000 attorneys' fees in Bankruptcy Rule 3002.1 notice were allowed by mortgage contract and not unreasonable—notwithstanding that most related to unsuccessful motion to dismiss Chapter 13 case—when serial filings by debtor and spouse coupled with difficulties in discovery supported reasonableness determination. Mortgage allowed recovery of fees without regard to prevailing party. Years of litigation and serial eve-of-foreclosure bankruptcy filings explained aggressive litigation by mortgage holder.).

{696} ***Specialized Loan Servicing, LLC v. Devita*, 610 B.R. 513, 517–20 (E.D.N.C. Mar. 14, 2019) (Dever)** (After Notice of final cure under Bankruptcy Rule 3002.1, Specialized Loan Servicing, LLC, not entitled to Rule 60 relief from order that fixed principal balance of mortgage at $104,547.51; SLS did not contest the principal balance amount in its response to the trustee's Notice and did not respond to the trustee's motion to declare the principal balance to be the amount stated in the 3002.1 Notice. Months later SLS stated no ground for relief under Rule 60 other than misunderstanding its obligations under Bankruptcy Rule 3002.1 and under local rule that set procedures for determining amount remaining on a mortgage at end of a Chapter 13 case. "On July 7, 2017, the trustee filed a Notice of Final Cure Payment (the 'Notice') that advised SLS that the Devitas had completed all payments under their Chapter 13 Plan. . . . SLS responded to the Notice and stated that SLS agreed that the Devitas had paid in full the amount required to cure the pre-petition default and that the Devitas had paid all post-petition amounts due . . . . [T]he trustee moved to declare the mortgage payment current in the bankruptcy court. . . . [T]he trustee stated that he requested a detailed payment history from SLS . . . but SLS did not respond. . . . The trustee calculated the principal balance . . . . [T]he trustee sought a declaration from the bankruptcy court that the unpaid principal balance was $104,547.51. . . . SLS did not respond to the trustee's motion. . . . [T]he bankruptcy court adopted the trustee's calculations . . . . SLS acknowledged that, due to a lack of familiarity with local procedures, it inadvertently did not alert the bankruptcy court to the trustee's alleged erroneous calculation before the court entered the order. . . . Because SLS failed to show that it was not at fault in failing to respond, the bankruptcy court did not abuse its discretion in finding that Rule 60(b)(1) does not provide relief to SLS.").

{697} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682, 687–94 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (After transfers of servicing during Chapter 13 case from CitiFinancial to Carrington (and later, to SN), complaint states plausible claims that all servicers in the chain violated § 524(i) by misapplying or failing to apply payments. "CitiFinancial assigned the deed of trust and the secured claim to Wilmington . . . . Wilmington's servicer [was] Carrington . . . . [T]he Trustee filed a Notice of Final Cure Mortgage Payment, to which Carrington responded . . . , concurring with the Trustee's assessment that Plaintiffs had cured the prepetition arrearage and were current on postpetition mortgage payments . . . . Designed to remedy instances in which creditors misapplied payments under a confirmed plan, § 524(i) is unique in that the provision is 'not limited to acts occurring after discharge.' . . . [Section] 524(i) is applicable to CitiFinancial despite the fact it had transferred its secured claim by the time Plaintiffs had obtained their discharges, because the operable offending conduct for purposes of § 524(i), the alleged misapplication of payments, occurred in part when CitiFinancial still possessed the claim . . . . [D]espite filing a response to the Trustee's Notice of Final Cure Payment that Plaintiffs were current on all postpetition payments, Carrington sent Plaintiffs a . . . mortgage statement incorrectly stating in bold-type that it had not received all mortgage payments due since the bankruptcy filing. . . . SN sent a third letter . . . , which notifies the Plaintiffs of fees assessed and charged to their account, including 'Forebearance Prin Assessment' in . . . an amount that matches the amount of the allowed prepetition arrearage in the Plaintiffs' chapter 13 case . . . . The Court draws the reasonable inference that Carrington sent Plaintiffs a letter showing an inflated balance based on records it received from CitiFinancial . . . . Evidence that could prove CitiFinancial's misapplication of plan payments is controlled by CitiFinancial and has not been turned over to Plaintiffs . . . . [A]llegations that Carrington misapplied payments, which are supported by the alleged communications Plaintiffs received from Carrington and SN that showed missing payments and an overstated balance, are sufficient for purposes of a motion to dismiss . . . . Despite Plaintiffs' successful plan completion, leading to their eventual discharges, the account balance of Plaintiffs' mortgage was in excess of the allowed amount of their secured claim by as much as $27,000 . . . . [T]he inclusion of boilerplate disclaimers is not a talisman, cleansing a creditor's ongoing misrepresentation of the total payoff balance owed on a discharged debtor's mortgage loan. . . . Plaintiffs' allegations that CitiFinancial and Carrington both transferred Plaintiffs' mortgage account with an inflated balance due to misapplied payments sufficient to constitute an act to collect for the purposes of withstanding a motion to dismiss . . . .").

{698} ***In re Ferris*, 611 B.R. 701, 706–07 (Bankr. M.D. Fla. Dec. 6, 2019) (Funk)** (After transfers of servicing from Ocwen to Seterus to Mr. Cooper, Seterus violated § 524(i) by failing to properly account for payments during Chapter 13 case. Confirmed plan cured default and maintained payments on mortgage consistent with § 1322(b)(5). Debtor filed proof of claim for Ocwen for arrearage of $7,856.59. Ocwen did not object or amend. Debtor made all payments. Trustee filed notice of final cure to which mortgagee responded debtors were current. Chapter 13 case was closed. Seterus then sent multiple demand letters for varying default amounts and threatened foreclosure. Seterus failed to respond to protests from debtors and attorney. Emotional distress damages awarded of $10,000, attorney's fees of approximately $20,000 and punitive damages of $25,000. "Mr. Cooper alleged that the entire chain of events . . . resulted from the Debtors listing an incorrect arrearage amount in their proof of claim. However, Homeward Residential, Inc., which owned the mortgage from the date of the filing of the case until July 7, 2014, neither filed an amended proof of claim nor objected to confirmation of the Debtors' plan. Ocwen Loan Servicing, LLC, which owned the mortgage from July 7, 2014 until October 6, 2015, also took no action in the case. FNMA/Seterus, which acquired the mortgage on October 6, 2015, took no action in the case other than to file Notices of Mortgage Payment Change, which reflected post-petition increases in Debtors' escrow account . . . . [Section] 524(i) provides that a creditor's willful failure to credit payments received under a confirmed plan constitutes a violation of the injunction under § 524(a)(2) if the creditor's failure caused material injury to the debtor. . . . The Court finds that willfulness in the context of § 524(i) requires only that the creditor intended to credit payments improperly . . . . Seterus was put on notice by the Trustee's Motion for Determination of Final Cure that the Debtors had made their mortgage payments through June 2017 and in fact acknowledged such in its November 7, 2017 Response to the Trustee's Motion for Determination of Final Cure. . . . Despite this concession, however, Seterus (and later Mr. Cooper) failed to properly credit the March through June 2017 payments and, from April 2018 until May 2019, bombarded the Debtors with letters and notices demanding payment of the already paid amounts. Mr. Cooper failed to prove that Seterus' and Mr. Cooper's failure to properly credit the payments was in conflict with their normal procedures. The record before the Court clearly supports a finding that Seterus and Mr. Cooper willfully failed to credit the payments.").

{699} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

{700} ***In re Longhurst*, 607 B.R. 822, 826–27 (Bankr. D.S.C. Oct. 29, 2019) (Burris)** (U.S. Bank's Bankruptcy Rule 3002.1 Notice for postpetition fees seeking $1,715—amended to $1,400 after objection by debtor—is limited to $900 because objection to confirmation of plan that paid arrearages according to proof of claim was unnecessary and fees for reviewing plan, filing proof of claim and objecting to plan were overlapping, duplicative and unnecessary. "U.S. Bank asserts the charges in the Amended Rule 3002.1 Notice are reasonable because the fees charged are in accordance with the Fannie Mae guidelines . . . . The portions of the Fannie Mae fee schedule provided by U.S. Bank indicate *maximum* customary charges for certain categories of work. . . . While the schedule has some value here, it is not dispositive. . . . [I]t clearly was necessary for U.S. Bank to file a Proof of Claim and 410 form, review the plan, monitor its progress, file a Rule 3002.1 Notice, and undertake related acts to successfully participate in this case. However, the Court cannot conclude that a separate charge for a plan objection is reasonable or necessary here because, as Longhurst points out, Section 3.1(b) of the plan clearly stated that '[t]he trustee shall pay the arrearage *as stated in creditor's allowed claim* or as otherwise ordered by the Court[]' . . . . The objection was later withdrawn prior to any modified plan because U.S. Bank recognized that 'debtor's plan calls for payment of POC.' The objection was not the cause of any beneficial result for U.S. Bank. Further, the objection to plan is brief and generic in nature, does not appear difficult in any way, and the Court cannot see evidence that it was labor intensive. The record,

therefore, does not support a finding that the charge of $500.00 for the objection to plan is reasonable or necessary. . . . [I]t is difficult to determine why plan review would not be a part of the work necessary for a plan objection or included within the charge for the proof of claim.").

{701} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 613 B.R. 225 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (Claims that lenders and servicers violated Bankruptcy Rule 3002.1 fail because lenders/servicers correctly responded to final cure notice that arrears had been cured and only attorney's fees remained unpaid—consistent with interpretation that 8% floor in loan documents applied to calculation of mortgage payments during life of Chapter 13 plan.).

{702} ***In re Wright*, No. 15-43533-ELM-13, 2019 WL 5075941, at *3–*4 (Bankr. N.D. Tex. Oct. 9, 2019) (Morris)** (Deadline in scheduling order within which mortgagee had to respond to Chapter 13 trustee's mid-case notice to deem mortgage current trumps inconsistent deadline stated in the notice itself; specific deadline in scheduling order was not extended by Bankruptcy Rule 9006(a)(1)(C) when the deadline fell on a weekend. Chapter 13 trustee filed notice to deem mortgage current pursuant to a local bankruptcy rule. The notice recited that postpetition mortgage payments were being made directly by the debtor but that postpetition mortgage payments would be deemed current unless the mortgage holder responded to the notice no later than 60 days after the date of the notice. On a parallel track, the bankruptcy court issued a scheduling order that set a date certain deadline for the filing of a response to the notice. The date certain was a Saturday. The mortgage holder filed its response on the next business day disputing that the debtors were current on their postpetition mortgage payments. "Debtors are correct in their assertion that the responsive deadline was dictated by the Scheduling Order, which took precedence over both Local Rule 3002.1-1 and the Mortgage Notice. . . . [A] mortgage notice issued by the Trustee's office, such as the Mortgage Notice in this case, does not have the effect of either a local rule or a court order. Therefore, on this basis alone, the Scheduling Order takes precedence over the Mortgage Notice. . . . In 2009, Bankruptcy Rule 9006(a) was amended to clarify that the automatic extension of time provided to a party where a deadline falls on a weekend or legal holiday only applies where the deadline is stated in hours, days or a longer unit of time. In other words, it applies where the deadline must be calculated—not where a date certain deadline has been established. . . . [SJ1]Here, because the Scheduling Order established the date certain deadline . . . , Bankruptcy Rule 9006(a)(1)(C) is inapplicable and did not act to automatically extend the deadline . . . .").

{703} ***In re Simmons*, 608 B.R. 602, 606–13 (Bankr. S.D. Ga. Sept. 30, 2019) (Barrett)** (Direct payment of home mortgage is payment "outside" the Chapter 13 plan and default in postconfirmation direct payments is not a ground for dismissal or for denial of discharge. Trustee filed notice of completion of plan payments and notice of final cure payment. BONY responded that the debtor was delinquent on postpetition direct mortgage payments in the amount of $47,334.88. Stay relief was granted and the trustee, previously unaware of the default in direct payments, moved to dismiss. "The Southern District of Georgia, like many districts, is a non-conduit jurisdiction allowing debtors to pay their post-petition mortgage payments directly to the lender . . . . Debtors are current in their payments to the Trustee but have not made all their post-petition payments to their respective lenders. . . . [T]he current majority [concludes] that 'payments under the plan' includes direct post-petition mortgage payments. . . . The minority position, and the one adopted by this Court, finds that post-petition mortgage payments paid directly by debtor are not 'payments under the plan' and a debtor's failure to make such payments standing alone does not merit the dismissal of a debtor's bankruptcy case, the denial of their discharge, and most likely the loss of their home. . . . [D]irect post-petition mortgage payments are debts paid outside of the bankruptcy and a debtor's failure to make all of these payments, standing alone does not constitute a material default with respect to a term of a plan under § 1307(c)(6) and is not per se grounds for a denial of discharge.").

{704} ***In re Gilmore*, No. 13-bk-1311, 2019 WL 4673429 (Bankr. N.D. W. Va. Sept. 24, 2019) (Flatley)** (Distinguishing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and embracing *Reuland v. IRS (In re Reuland)*, 591 B.R. 342 (Bankr. N.D. Ill. Oct. 26, 2018) (Baer), confirmed plan that cured mortgage arrearage and provided for ongoing installment that was less than stated on proof of claim is binding on mortgagee and debtor is current on mortgage at completion of payments but difference between monthly payments made through the Chapter 13 plan and amounts required by loan is nondischargeable. Discrepancy was discovered when trustee made final cure notice under Bankruptcy Rule 3002.1 and U.S. Bank responded that a substantial postconfirmation arrearage developed as a result of the difference between payments under the confirmed plan and the monthly installments stated on the bank's proof of claim. Court orders party to "reconcile payment figures" in light of holding that loan is current but the bank's nondischargeable claim includes discrepancy in monthly installment amount.).

{705} ***In re Seawell-Sanders*, No. 14-21328-MMH, 2019 WL 3778371, at *4–*5 (Bankr. D. Md. Aug. 9, 2019) (Harner)** (Consent order in stay litigation that stated monthly payment on mortgage was $716.52 controlled when notice of payment change under Bankruptcy Rule 3002.1—filed before the consent order—stated monthly payment was $944.74. Lender waited four years to raise the issue and is bound by the consent order. "[A]t least with respect to payment adjustments, the Lender . . . must comply with Bankruptcy Rule 3002.1, which in many ways was intended to address the kind of end of case surprise to a chapter 13 debtor evident in this case. . . . Lender filed the 2015 Notice on January 7, 2015. This filing occurred just two days after the Lender filed its motion for relief from stay. Consequently, both the Lender and the Debtor were aware of the 2015 Notice when they were negotiating the Consent Order to resolve the Lender's motion for relief from stay. . . . [T]he 2015 Notice provides that the new total payment . . . of $944.74 was first due and effective on February 1, 2015. The Consent Order, which was negotiated and executed after the filing of the motion for relief from stay and the 2015 Notice, provides that the Debtor was to make 'the regular monthly payment of $716.52 . . . on or before February 01, 2015.' . . . [T]he Consent Order supersedes the 2015 Notice and establishes a monthly payment of $716.52, starting on

February 1, 2015. . . . Bankruptcy Rule 3002.1(b) currently provides that the change noted in a Notice of Mortgage Payment Change 'goes into effect, *unless the court orders otherwise*.'").

{706} ***In re Maldonado*, No. 19-30177, 2019 WL 4410070, at *1–*3 (Bankr. N.D.N.Y. Aug. 6, 2019) (Cangilos-Ruiz)** (Quicken Loans' $1,150 notice of postpetition fees under Bankruptcy Rule 3002.1 for plan review, filing proof of claim and objection to confirmation is unreasonable and is reduced to $500 when form plan in the district conforms installment payment of mortgage and amount of arrears to amounts shown in a timely filed proof of claim. Most of proof of claim work is administratively performed by the client, not by counsel. Quicken does not automatically get the amounts allowed by Fannie Mae guidelines and Quicken cannot charge the debtor for its counsel's unfamiliarity with local forms and practice. "The fees sought include: 'Attorney fees' of $650.00, for 'Plan Review ($150.00)' and 'Plan Objection ($500.00)' and an additional $500.00 for Quicken Loans' '03/19/19 Proof of Claim'. . . . Quicken Loans timely filed their proof of claim . . . . It states the monthly installment at $12.98 more than as stated in Debtor's plan . . . and prepetition arrears at $422.78 more . . . . Pursuant to the plan terms, the amounts stated in the proof of claim trumped the amounts stated by the Debtors in their proposed plan. . . . Quicken Loans then proceeded to file an objection to the plan . . . . A mortgage holder is entitled to seek reasonable post-petition fees, expenses and charges incurred in connection with a claim. . . . The court finds the fee of $150.00 for plan review reasonable . . . but the $500.00 fee for filing the proof of claim excessive, as has been found by other courts. . . . [P]roofs of claim similar to the claim here are typically prepared by clients, with the attorney subsequently reviewing and filing the claim. . . . To the extent that filing a proof of claim calls for administrative work, these tasks could be completed by a non-attorney. . . . [T]he court affirms the fee of $150.00 for plan review but reduces the $500.00 fee for the proof of claim to $200.00. The court also finds the $500.00 fee charged for filing the objection to the plan unreasonable in this instance as it was completely unnecessary. . . . [T]he language of the standard plan adopted by this District specifies that the amounts stated in a secured creditor's timely-filed proof of claim control over the terms proposed in the plan, absent further court order. . . . Counsel for the creditor is, of course, at liberty to proceed to file an objection to confirmation and may have done so at the client's direction. Absent the necessity for doing so, however, the court will not recognize as reasonable shifting the costs and charging the Debtors $500.00. . . . Quicken Loans relied solely on the Fannie Mae Guidelines . . . and offered no further explanation nor support for its position such as time entries or attorney hourly rates. . . . Quicken Loans' plan objection could easily have been resolved with a telephone call . . . . The court takes judicial notice of Quicken Loans' national presence and geographical breadth and the fact that Quicken Loans must appear in numerous bankruptcy court jurisdictions across the country. The court stresses the importance for parties appearing before this court to become familiar with local rules and customs.").

{707} ***In re Edwards*, 604 B.R. 417, 420–26 (Bankr. S.D. Fla. Aug. 1, 2019) (Kimball)** (Wells Fargo is bound by modified plan that cured defaults—notwithstanding mistake in amount of arrearage in modified plan—and Wells Fargo can't use objection to final cure notice under Bankruptcy Rule 3002.1 as an end run around the binding effect of confirmation. Wells Fargo is forbidden to collect the difference between the actual arrearage and the amount paid under the confirmed modified plan. "Inexplicably, the [modified plan] provided yet a different treatment for Wells Fargo compared with both the confirmed [plan] and the five modified plans previously filed . . . . [T]here is no reason for the change in the ongoing monthly payment amounts provided for Wells Fargo, and the parties agree that the payment amounts for Wells Fargo in the [modified plan] represent an unintended drafting error by the Debtor's prior counsel. Unfortunately, the [modified plan] presents regular payments to Wells Fargo aggregating . . . $5,433.42 less than the total amount presented in the [confirmed plan]. . . . The [modified plan] was served on Wells Fargo but Wells Fargo took no action. . . . [N]either the chapter 13 trustee nor the Court realized that the [modified plan] included changes to the treatment of Wells Fargo's claim that were not addressed in the motion to modify or otherwise . . . . [N]early four years after the Court confirmed the [modified plan], the chapter 13 trustee filed the notice of plan completion and notice of final cure payment. . . . Wells Fargo filed an objection to the trustee's notice of final cure payment, stating that the Debtor is not current on post-petition mortgage payments consistent with section 1322(b)(5). . . . This Court cannot ignore the broad holding of *Espinosa*. . . . [T]he chapter 13 trustee is required to file 'a notice stating that the debtor has paid in full the amount required to cure any default on the [mortgage] claim.' Fed. R. Bankr. P. 3002.1(f). This component of Bankruptcy Rule 3002.1 addresses only the cure of pre-bankruptcy defaults, not the payment of post-petition mortgage payments. In this case, there is no dispute that Wells Fargo's prepetition arrears were paid in full. Within 21 days after service of the trustee's notice, the holder of the mortgage claim may file an objection. Fed. R. Bankr. P. [3002.1(g)]. The holder can raise two categories of objections. First, the holder may challenge whether its pre-petition deficiency was cured. . . . Second, the holder may address 'whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code.' . . . Wells Fargo argues that Bankruptcy Rule 3002.1 gives it an opportunity to complain that the payments set out in the [modified plan], confirmed by an order of this Court four years ago, were not correct, and that the Court may now rule, in effect, that the [modified plan] should not have been confirmed. . . . Bankruptcy Rule 3002.1 itself does not support Wells Fargo's argument. Bankruptcy Rule 3002.1(h) permits the Court to determine whether a debtor has 'paid all required postpetition amounts' in order to resolve disputes arising from application of that same rule. . . . Subsections (g) and (h) provide a procedure to address . . . disputes . . . . The dispute resolution provisions of Bankruptcy Rule 3002.1 encompass only those differences arising from the notices of payment change permitted by that rule. Nothing in Bankruptcy Rule 3002.1 suggests that its application results in modification of a confirmed plan. . . . [N]othing in the Bankruptcy Code or applicable law suggests that a creditor may collaterally attack a confirmation order, otherwise final and no longer subject to appeal, by the procedure provided in Bankruptcy Rule 3002.1."), *denying reconsideration of* 603 B.R. 516 (Bankr. S.D. Fla. May 21, 2019) (Kimball).

{708} ***Prescott v. Wells Fargo Bank, N.A. (In re Prescott)*, No. 17-01007, 2019 WL 3421676, at *6 (Bankr. S.D. Tex. July 29, 2019) (Isgur)** (Wells Fargo violated Final Cure Order by attempting to collect monthly installment that was declared paid by order which

deemed mortgage current at end of prior Chapter 13 case. Wells Fargo willfully violated stay in second Chapter 13 case by contacting debtor and demanding payment of amounts that were barred by Final Cure Order in prior Chapter 13 case. Internal accounting errors did not violate stay but stay was violated when those mistakes translated into demands for payment and foreclosure. Negligence and negligent misrepresentation claims against Wells Fargo survive summary judgment when Wells Fargo attempted to collect amounts that were deemed paid by Final Cure Order in prior Chapter 13 case. Breach of contract claims fail because cure order eliminated any errors Wells Fargo may have made in crediting payments during prior Chapter 13 case. "The source of this discrepancy was likely the response Wells Fargo filed . . . to the Trustee's Notice of Final Cure Payment. In its response, Wells Fargo admitted that Mr. Prescott 'paid in full the amount required to cure the default.' . . . Wells Fargo also contradictorily stated that Mr. Prescott owed payments for both November 1 and December 1, 2015 . . . . No hearing was held regarding Wells Fargo's response and . . . the Court entered its Cure Order, which deemed Mr. Prescott current on his mortgage payment and that his next payment was due in December 2015. . . . [T]he reason for this discrepancy is irrelevant; Wells Fargo's claim for the November 2015 payment was eliminated by the Cure Order. Wells Fargo failed to challenge the Cure Order via reconsideration or appeal and it became a final, binding order, which held that Mr. Prescott's next payment was due on December 1, 2015. Accordingly, Wells Fargo's attempt to collect the November 2015 mortgage payment is a violation of the Court's Cure Order, which deemed Mr. Prescott current on his mortgage payments through December 2015.").

{709} ***In re Gunn*, No. 18-13909-SDM, 2019 WL 3934652, at *3–*6 (Bankr. N.D. Miss. June 18, 2019) (Maddox)** (On debtor's objection to Rule 3002.1 notice, attorney's fees sought by Deutsche Bank are allowable to undersecured mortgage holder but amounts sought are unreasonable. After review of reconstructed time records, $525 for proof of claim preparation and plan review is excessive—$350 is allowed. $500 for objection to confirmation based on difference between plan payment and actual arrearage is unreasonable given that form plan in district conforms automatically to amount in proof of claim—$150 is allowed. "[T]he Court concludes that § 506(b) does *not* overcome the anti-modification provision contained in § 1322(b)(2) where the creditor holds a secured claim secured by a debtor's principal residence. . . . Deutsche Bank has submitted non-contemporaneous, estimated time itemizations of the attorney and staff indicating that staff performed most of the work. . . . [A]ccording to the time itemization . . . the attorney spent forty-two minutes preparing the proof of claim and reviewing the plan, including some tasks that are plainly clerical in nature. . . . Further, the $75.00 referral fee listed included in the itemization simply represents the attorney's cost of doing business. . . . [I]f Deutsche Bank filed their objection *solely* to correct dollar amounts, the Objection to Confirmation would not have been necessary and Deutsche Bank would not be entitled to attorney's fees. . . . But Deutsche Bank also objected to plan feasibility. . . . According to Deutsche Bank's itemized statement, much of the work performed in preparing the objection duplicated the work later performed in preparing the proof of claim and reviewing the plan. . . . [T]he Court will not allow the Deutsche Bank to assess the cost of clerical services or duplicate services to the Debtor. . . . [T]he Court will not allow creditors to recoup attorney's fees for unnecessary objections. . . . Filing objections to confirmation merely to correct a monthly mortgage payment or arrearage amount, without any other basis for objection, is unreasonable.").

{710} ***In re Morris*, 603 B.R 127 (Bankr. W.D. Okla. May 15, 2019) (Loyd)** (Based in large part on expert testimony from Mike McCormick and the lack of contrary evidence from the debtor, Quicken Loans is allowed $900 on a Bankruptcy Rule 3002.1 notice of postpetition fees for review of Chapter 13 plan and filing proof of claim. Debtor did not conduct discovery of the law firm involved and capitulated to reconstructed time records. No evidence presented about exactly what work was done by attorneys.).

{711} ***In re Suarez Garcia*, 603 B.R. 640, 644–46 (Bankr. E.D. Cal. May 15, 2019) (Sargis)** (Objection to Bankruptcy Rule 3002.1 notice of mortgage payment change is sustained when evidence reveals that Deutsche Bank/Ocwen recharacterized prepetition default in escrow account as a postpetition payment of taxes in order to accelerate the payment of the escrow default by increasing the escrow portion of the monthly mortgage payment. Prepetition escrow default that left the escrow account short to pay taxes was a prepetition debt that was properly added to the arrearage amount to be paid over the life of the plan. Deutsche Bank could not recharacterize that escrow default as a postpetition charge recoverable within a year through higher mortgage payments. Deutsche Bank's accounting was a sort of double recovery of the shortfall in the escrow account that would have paid the taxes. "Deutsche Bank knowingly did not include . . . all of the pre-petition defaults in the required pre-petition escrow payments. Rather, it included only the amounts for which it had already made escrow advances and what it asserted should be an escrow cushion, intentionally excluding all of the actual escrow defaults that had occurred that resulted in there being no monies in the escrow . . . . The actual, accurate escrow shortage has to be properly computed for the pre-petition amount, not merely a 'projected shortage of an escrow cushion' as Deutsche Bank attempts to do here . . . . [T]he pre-petition escrow shortage created by the pre-petition defaults cannot be transported through time by Deutsche Bank to create fictitious future post-petition defaults in required escrow payments. . . . Deutsche Bank manipulated and misstated the pre-petition arrearage to improperly defeat Debtor's right under the Bankruptcy Code to cure that pre-petition default over a period of up to five years through a Chapter 13 plan. Then Deutsche Bank has attempted to increase the post-petition escrow payments, which is to fund the post-petition taxes and insurance for the post-petition period, to force Debtor to cure that portion of the pre-petition over one year instead of the five years permitted by Congress in the Bankruptcy Code for a Chapter 13 plan. . . . Creditor does not have the luxury, or right, to elect to ignore the pre-petition defaults and then claim them as a post-petition default when they pay the taxes mere days after the bankruptcy case was filed, not having the money in escrow because of Debtor's pre-petition defaults.").

{712} ***In re Snow*, 603 B.R. 114, 118–27 (Bankr. W.D. Okla. May 9, 2019) (Loyd)** (Quicken is allowed $1,000 flat fee for prepetition foreclosure attorney's fees and $900 for postpetition preparation of proof of claim and plan review. "Michael McCormick, a senior partner in the bankruptcy department at McCalla Raymer, LLC, . . . was called as an expert witness by Quicken. . . . In McCormick's

expert opinion the charge of $500 . . . for proof of claim matters was 'more than reasonable' . . . . McCormick noted that the Federal Home Loan Mortgage Corporation (Freddie Mac) had just announced, effective April 18, a suggested $950 fee for plan review and proof of claim preparation and filing . . . . The burden of proof was . . . upon the Debtor to refute the $1,000 claim for attorney's fees. . . . Under Rule 3002.1(d), the *prima facie* evidentiary benefits of filing a proof of claim under Rule 3001(f) do not apply to a creditor's notice of post-petition fees. . . . [T]he Court is not bound by any fee agreement between the attorney and the client rather, the Court's responsibility is to determine whether the fee requested is reasonable. . . . Baer & Timberlake . . . is seeking the flat fee of $1,000 under its arrangement with Quicken which on a time basis equates to a 'blended' rate of less than $110 per hour. . . . Debtor did not come forward with *any* expert testimony to refute Quicken's contention that its pre-petition attorney's fees of $1,000 was unreasonable. . . . McCormick, testified that because the filing of a proof of claim (both Official Form 410 and 410A) and Rule 3002.1 supplements carry serious implications, the same may not be done in a perfunctory, ministerial or automatic matter, and may require the assistance of counsel. . . . Quicken's request for a $1,000 fee for pre-petition services in the state foreclosure proceedings was authorized, reasonable, and allowable. . . . Quicken's request for $900 for post-petition services including plan review and filing of the Proof of Claim is fair and reasonable and is allowable. The Court's decision today should not be read as holding that in this Court an attorney's flat fee arrangement with its mortgagee client is *prima facie* evidence of the reasonableness of the fee. The amount of a reasonable fee is based on a case-by-case factual basis; there is no precise rule or formula applied. Rather, the essential inquiry is one of reasonableness; and the court exercises discretion to reach an equitable award.").

{713} ***In re Ihejurobi*, No. 18-13380-RAG, 2019 WL 2016612 (Bankr. D. Md. May 6, 2019) (Gordon), *aff'd*, No. SAG-19-1391, 2019 WL 5102679 (D. Md. Oct. 11, 2019) (Gallagher)** (Debtor's claim of violation of Bankruptcy Rule 3002.1 by Wells Fargo was not supported by any facts. Wells Fargo had a $1.7 million lien on real estate. Notice of payment change was not required nor could any failure to give notice be a ground for sanctions under Bankruptcy Rule 3002.1(i) because debtor had made no payments in years, debtor could not cure arrears through any imaginable Chapter 13 plan and debtor was using the Chapter 13 case simply to delay foreclosure.).

§ 131.4 Informal Proofs of Claim: Letters, Motions, Pleadings and Conversations

{714} ***In re Douglas*, No. 19-51826-PMB, 2019 WL 6704974, at *2–*3 (Bankr. N.D. Ga. Dec. 6, 2019) (Baisier)** (Untimely proof of claim for deficiency after liquidation of motorcycle relates back to motion for stay relief and attachments which collectively satisfy the criteria for an informal proof of claim in the Eleventh Circuit. "[A] motion for relief from the automatic stay will serve as an informal proof of claim if it (1) apprises the Court of the existence, nature, and amount of a claim, (2) makes clear the creditor's intent to hold the debtor liable for that claim, and (3) was filed before the claims bar date. . . . [T]he Respondent's numerous filings and submissions in this case made prior to the Bar Date, . . . including the Motion for Relief, must be construed as an informal proof of claim under prevailing Eleventh Circuit precedent. . . .").

{715} ***In re Bales*, No. 18-52257, 2019 WL 3436870 (Bankr. E.D. Ky. July 30, 2019) (Wise)** (Untimely proof of claim is not saved by "informal claim" theory because creditor did not file any writing that could anchor the argument.).

{716} ***In re Mitchell*, No. 18-80336, 2019 WL 7840716 (Bankr. M.D.N.C. Jan. 16, 2019) (James)** (Objection to confirmation that demanded payment and stated an amount satisfied the informal proof of claim requirements in the Fourth Circuit and can be amended by untimely filed formal proof of claim.).

§ 131.5 Is a Plan Provision a Proof of Claim?

2. WHO SHOULD FILE PROOFS OF CLAIM AND WHEN?

§ 132.1 1994 Code Amendments Changed the Rules

§ 132.2 In General: Filing Is Required for Allowance

{717} ***In re Porter*, 603 B.R. 449, 451–54 (Bankr. N.D. Cal. May 8, 2019) (Lafferty)** (New definition of timeliness for filing proofs of claim in Bankruptcy Rule 3002(c) does not apply to a case pending on December 1, 2017, when it would not be "just or practical" to bar claim based on the new shorter time period. Not "just" or "practical" to apply new 70-day timeliness definition in Bankruptcy Rule 3002(c) when pending Chapter 13 case contained clerk's notice setting later deadline using superseded 90-day provision in former version of the Rule. "On October 23, 2017, on motion of the Debtor, the case was converted to a chapter 13 bankruptcy. . . . [T]he Court entered a *Notice of Chapter 13 Bankruptcy Case* . . . . The filing deadline for all non-government creditors to file proofs of claim set forth in the Notice was February 28, 2018, in accordance with then-in-effect Rule 3002(c) . . . . On December 1, 2017, an amended version of Rule 3002 took effect . . . . Amended Rule 3002(c) shortens the deadline to file proofs of claim to 70 days after an order for relief is entered or a bankruptcy case is converted. Chief Justice John Roberts' Order transmitting the amendments to Congress stated 'the foregoing amendments . . . shall govern in all proceedings in bankruptcy cases thereafter commenced and, *insofar as just and practicable*, all proceedings then pending.' . . . It would be unduly burdensome to LVNV to decide that LVNV's proof of claim filing deadline was actually fifty-eight days fewer than a deadline provided by the Court, pursuant to a required and official 'Notice' on which LVNV relied. . . . To decide . . . that a deadline duly noticed out by the Clerk's Office, that creditors duly relied upon, was changed automatically so as to remove fifty-eight days from a filing deadline, without further notice to Debtor or creditors from the Clerk of Court as mandated by Rule 2002, is simply not practicable.").

§ 132.3 Governmental Units
§ 132.4 Unsecured Claims

{718} ***In re Miller*, No. 19-41236, 2019 WL 6002189, at *1–*2 (Bankr. N.D. Ohio Nov. 12, 2019) (not for publication) (Kendig)** (Unsecured claim holder that states an interest rate on the face of its proof of claim is not entitled to postpetition interest in a Chapter 13 case; it is not necessary for the debtor or trustee to object to every claim that contains an interest rate in order to disallow postpetition interest. "The dilemma for the court, the chapter 13 trustee, and debtors arises because section nine of the official claim form contains a field for interest . . . . Frequently, unsecured creditors complete this section, raising the question of whether inclusion of the interest rate is a request for payment of interest on an unsecured claim or simply a recitation of the contractual terms of the debt at the time the case was filed? Without a clear answer, the chapter 13 trustee cautiously requires an objection to disallow interest on an unsecured claim. . . . Reading the Code to require a claim objection permits a creditor to file a claim for interest to which it is not entitled with the hope that it will benefit from an unwary debtor or trustee. It also burdens the trustee or debtor with filing objections to disallow payment of unauthorized interest. . . . When a creditor files a proof of claim setting forth an unsecured claim, it is not entitled to interest. Exceptions to the rule are inapplicable and do not support forcing a claim objection. From here forward, the court will not require debtors and/or trustees to file claim objections that simply seek to disallow the payment of interest[.]").

§ 132.5 Partially Secured Claims

{719} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (When Chapter 13 plan proposes to treat creditor as partially secured but creditor files proof of claim stating its claim is unsecured, creditor has waived secured status and is unsecured for plan confirmation purposes.).

§ 132.6 Priority Claims, Including Requests for Payment of Administrative Expenses
§ 132.7 Secured Claim Holders

{720} ***In re Field*, 604 B.R. 680 (Bankr. D.S.C. Aug. 8, 2019) (Waites)** (Mortgage creditor's proof of claim was timely filed because within the 70 days allowed by Rule 3002(c)(7) the servicer filed Official Form 410, Official Form 410A, an escrow statement and all the attachments required by Rules 3002(c)(2)(C), 3001(c)(1) and 3001(d). Not necessary to consider the filings required during the subsequent 50 days because all the required filings were made within the initial 70-day period.).

{721} ***In re Spencer*, No. 12-20854-13, 2019 WL 4410352 (Bankr. D. Kan. July 24, 2019) (Berger)** (State court orders determined CitiMortgage's standing to file proof of claim for mortgage in Chapter 13 case but debtor's objection to that claim is sustained because proof of claim was untimely filed—after the 90-day deadline in the former version of Bankruptcy Rule 3002(c). Section 502(b)(9) requires disallowance of claim notwithstanding years of extended litigation of other issues.).

§ 132.8 910-Day PMSI Car Claims: Epilogue
§ 132.9 Postpetition Claims

3. ENLARGEMENT OF AND EXCEPTIONS TO CLAIMS BAR DATES

§ 133.1 General Rules: No Enlargement or Exceptions, Except . . .

{722} ***Eagle One Fed. Credit Union v. Campanile*, No. 19-8103 (RMB), 2020 WL 416182, at *3–*6 (D.N.J. Jan. 27, 2020) (Bumb)** (Junior mortgage holder that did not file timely proof of claim cannot file an allowable late proof of its unsecured claim after senior mortgage holder was granted stay relief and foreclosed. Bankruptcy Rule 3002(c) contains no exception for these facts and "excusable neglect" under Bankruptcy Rule 9006 is not available to extend the deadline for filing a proof of claim in Chapter 13 cases. There is no equitable exception to the Rule 3002(c) deadline and the junior mortgage holder has only itself to blame for failing to timely file a proof of claim. Rule 3002(c)(3) does not support stay relief to allow the junior mortgagee to obtain a deficiency judgment that it could then file within the 30 days allowed by that Rule. Mortgagee was unsecured creditor from the time of the petition because there was no value to support its claim—notwithstanding that debtor represented that property had sufficient value to secure the junior mortgage. "Rule 9006(b)(1)'s excusable neglect analysis has no relevance to the case at hand. . . . [T]his Court, like the Bankruptcy Court below, is precluded from applying Section 105(a) because Rule 3002(c) explicitly prohibits extending the deadline for filing a proof of claim under the circumstances of this case. . . . Rule 3002(c)(3) would not grant Eagle One additional time to file its late claim."), *aff'g* No. 17-24902 (JNP), 2019 WL 968095 (Bankr. D.N.J. Feb. 25, 2019) (Poslusny) (Underwater junior lienholder that failed to timely file proof of its deficiency claim is not entitled to stay relief to end-run disallowance of its untimely claim under Bankruptcy Rule 3002(c)(3). Junior lienholder's lien was not "avoided" within the meaning of Rule 3002(c)(3) when senior lienholder foreclosed. Entry of state court deficiency judgment if stay relief were granted would not be the sort of "judgment" that triggers relief in Bankruptcy Rule 3002(c)(3). Lienholder also missed the 30-day window in Rule 3002(c)(3) and cannot file an allowable claim under that rule.).

{723} ***In re Hans Dajung Choe*, No. 18-69400-PMB, 2019 WL 6999722 (Bankr. N.D. Ga. Dec. 19, 2019) (Baisier)** (Motion for reconsideration of disallowance of claim is denied when only ground asserted is lack of notice of objection to claim; presumption of regularity of mails with respect to several notices was not overcome by naked denial of receipt. Timely misfiling of proof of claim in wrong case and then failing to appear in opposition to claim objection resulted in disallowance of claim.).

{724} ***In re Field*, 604 B.R. 680 (Bankr. D.S.C. Aug. 8, 2019) (Waites)** (Mortgage creditor's proof of claim was timely filed because within the 70 days allowed by Rule 3002(c)(7) the servicer filed Official Form 410, Official Form 410A, an escrow statement and all the attachments required by Rules 3002(c)(2)(C), 3001(c)(1) and 3001(d). Not necessary to consider the filings required during the subsequent 50 days because all the required filings were made within the initial 70-day period.).

{725} ***In re Jackson*, No. 18-03159-HB, 2019 WL 3797580, at *1–*2 (Bankr. D.S.C. July 24, 2019) (Burris)** (Applying Bankruptcy Rule 3002(c)(6), extension of time to file proof of claim is granted when debtors filed Rule 1007(a) list and filed schedules but omitted Amex as a creditor; court grants Amex's request, supported by trustee, for extension of time to render late-filed claim timely. "Debtors filed a petition for Chapter 13 relief with schedules, statements and a list of creditors, all of which omitted AmEx. As a result, AmEx did not receive sufficient notice of this case to timely file a claim. . . . By omitting AmEx, Debtors failed in their duties under § 521 and Rule 1007(a). . . . If the initial list of creditors omits a party or gives inaccurate information, amendments and corrections should be made to comply with these authorities. If that action is not taken or is untimely and, as a result, the creditor has insufficient notice under the circumstances to provide a reasonable time to file a claim, then an extension under Rule 3002(c)(6) may be appropriate. . . . AmEx had insufficient notice to give it a reasonable time to file a claim and the lack of notice resulted from the Debtors' failure to timely comply with Rule 1007(a). AmEx is, therefore, entitled to an extension of the claim deadline under Rule 3002(c)(6)(A).").

{726} ***In re Porter*, 603 B.R. 449, 451–54 (Bankr. N.D. Cal. May 8, 2019) (Lafferty)** (New definition of timeliness for filing proofs of claim in Bankruptcy Rule 3002(c) does not apply to a case pending on December 1, 2017, when it would not be "just or practical" to bar claim based on the new shorter time period. Not "just" or "practical" to apply new 70-day timeliness definition in Bankruptcy Rule 3002(c) when pending Chapter 13 case contained clerk's notice setting later deadline using superseded 90-day provision in former version of the Rule. "On October 23, 2017, on motion of the Debtor, the case was converted to a chapter 13 bankruptcy. . . . [T]he Court entered a *Notice of Chapter 13 Bankruptcy Case* . . . . The filing deadline for all non-government creditors to file proofs of claim set forth in the Notice was February 28, 2018, in accordance with then-in-effect Rule 3002(c) . . . . On December 1, 2017, an amended version of Rule 3002 took effect . . . . Amended Rule 3002(c) shortens the deadline to file proofs of claim to 70 days after an order for relief is entered or a bankruptcy case is converted. Chief Justice John Roberts' Order transmitting the amendments to Congress stated 'the foregoing amendments . . . shall govern in all proceedings in bankruptcy cases thereafter commenced and, *insofar as just and practicable*, all proceedings then pending.' . . . It would be unduly burdensome to LVNV to decide that LVNV's proof of claim filing deadline was actually fifty-eight days fewer than a deadline provided by the Court, pursuant to a required and official 'Notice' on which LVNV relied. . . . To decide . . . that a deadline duly noticed out by the Clerk's Office, that creditors duly relied upon, was changed automatically so as to remove fifty-eight days from a filing deadline, without further notice to Debtor or creditors from the Clerk of Court as mandated by Rule 2002, is simply not practicable.").

§ 133.2 Unscheduled Creditors before and after BAPCPA

{727} ***Matthews v. Gamboa (In re Gamboa)*, No. 17-1006-JDL, 2020 WL 118591 (Bankr. W.D. Okla. Jan. 9, 2020) (Loyd)** (Section 726(a)(2)(C) does not apply in Chapter 13 cases and is not a source of authority for late filing of proof of claim by an unscheduled creditor.).

{728} ***In re Kielman*, 609 B.R. 818 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (Untimely filed proof of claim is disallowed notwithstanding that creditor was not scheduled by pro se debtor.).

{729} ***In re Somerville*, 605 B.R. 700, 704–09 (Bankr. D. Md. Oct. 4, 2019) (Harner)** (Extension of time under Bankruptcy Rule 3002(c)(6) is not available when Chapter 13 debtor timely filed a list of creditors but failed to list or schedule the creditor seeking to late file a proof of claim. "Debtor timely filed her Creditor List. . . . Debtor failed to identify . . . the Movant's alleged claim . . . in the Debtor's bankruptcy schedules. The Movant was in turn omitted from the Creditor List. The Movant did not receive notice of the bankruptcy case . . . . Prior to 2017, courts interpreting Bankruptcy Rule 3002(c) were divided concerning whether the language of the rule provided any discretion for courts to enlarge a claims bar date in a chapter 13 case for reasons other than those included in the statutory list. . . . Bankruptcy Rule 3002(c) was amended in 2017 to . . . broaden the scope of subsection (c)(6). . . . The language added to subsection (c)(6) did not, however, eliminate the debate over the scope of the rule. Courts generally recognized that amended Bankruptcy Rule 3002(c)(6) requires both insufficient notice *and* an untimely filing of the Creditor List (or notice mailed to a foreign address) to support an extension of the claims bar date. . . . The words of the rule require two elements . . . (i) insufficient notice *caused by* (ii) the debtor's failure 'to timely file the list of creditors' names and addresses required by [Bankruptcy] Rule 1007(a).' . . . If that list is timely filed, Bankruptcy Rule 3002(c)(6) does not permit enlarging the time for a moving creditor to file a proof of claim. The Court acknowledges that the drafters of the rule could have intended broader coverage. . . . [T]he Debtor timely filed her Creditor List in accordance with Bankruptcy Rule 1007(a). . . . Consequently, a delayed filing of that list was not the cause of the Movant's insufficient notice. The Court may not, under these circumstances, enlarge the Movant's time to file a proof of claim. . . . Movant is not without a remedy. . . . [A] creditor who did not have adequate notice of the claims bar date and is not permitted to file a late proof of claim is not subject to the chapter 13 discharge set forth in § 1328(a) of the Code.").

{730} ***In re Vanderpol*, 606 B.R. 425, 428–32 (Bankr. D. Colo. Aug. 28, 2019) (Brown)** (Acknowledging split of authority, failure to list specific creditor—as opposed to failure to file the list of creditors under Bankruptcy Rule 1007(a)—is sufficient to trigger extension of time under new Bankruptcy Rule 3002(c)(6). "By its express terms, Rule [3002(c)(6)(A)] only applies when the debtor fails to file the Creditor Matrix on a timely basis, a circumstance that does not apply here. Ordinarily, where the language of a statute is plain, 'the sole function of the courts is to enforce it according to its terms.' . . . By referring only to the failure to file the Creditor Matrix timely and omitting any reference to leaving a particular creditor off the Creditor Matrix, this maxim would counsel the Court to find that the omission was intentional and signals Congressional intent to narrowly grant a discretionary extension. . . . [O]ne court and one commentator have followed this maxim and rejected any attempt to expand its meaning to include an omitted creditor. . . . Without a great deal of analysis, two cases have interpreted the rule more broadly. . . . The Court believes that this new rule provision is one in which legislative intent would be thwarted by a plain language interpretation. . . . [I]f there is no Creditor Matrix on file, the case will be automatically dismissed on the *forty-sixth* day of the case. The deadline for filing a proof of claim . . . is *seventy* days after the filing of a voluntary petition. . . . This means that, in cases in which the debtor fails to file a timely Creditor Matrix, the forty-five-day automatic dismissal deadline will always occur long before any deadline for filing a proof of claim. Thus, if the rule is read narrowly, it will simply never apply. . . . [T]he intent of Congress is best effectuated by reading this rule to apply whenever the debtor fails to timely file a *full and complete* Creditor Matrix.").

{731} ***In re Bales*, No. 18-52257, 2019 WL 3436870 (Bankr. E.D. Ky. July 30, 2019) (Wise)** (Applying *In re Fryman*, No. 18-20660, 2019 WL 2612763 (Bankr. E.D. Ky. July 24, 2019), *as amended* (July 24, 2019) (Wise), Bankruptcy Rule 3002(c)(6) does not apply when Chapter 13 debtor filed the list required by Bankruptcy Rule 1007(a)(1) but did not list or schedule the creditor that later filed motion for extension of time in which to file a proof of claim.).

{732} ***In re Jackson*, No. 18-03159-HB, 2019 WL 3797580, at *1–*2 (Bankr. D.S.C. July 24, 2019) (Burris)** (Applying Bankruptcy Rule 3002(c)(6), extension of time to file proof of claim is granted when debtors filed Rule 1007(a) list and filed schedules but omitted Amex as a creditor; court grants Amex's request, supported by trustee, for extension of time to render late-filed claim timely. "Debtors filed a petition for Chapter 13 relief with schedules, statements and a list of creditors, all of which omitted AmEx. As a result, AmEx did not receive sufficient notice of this case to timely file a claim. . . . By omitting AmEx, Debtors failed in their duties under § 521 and Rule 1007(a). . . . If the initial list of creditors omits a party or gives inaccurate information, amendments and corrections should be made to comply with these authorities. If that action is not taken or is untimely and, as a result, the creditor has insufficient notice under the circumstances to provide a reasonable time to file a claim, then an extension under Rule 3002(c)(6) may be appropriate. . . . AmEx had insufficient notice to give it a reasonable time to file a claim and the lack of notice resulted from the Debtors' failure to timely comply with Rule 1007(a). AmEx is, therefore, entitled to an extension of the claim deadline under Rule 3002(c)(6)(A).").

{733} ***In re Fryman*, No. 18-20660, 2019 WL 2612763, at *1–*3 (Bankr. E.D. Ky. July 24, 2019) (Wise)** (Bankruptcy Rule 3002(c)(6) as amended in 2017 is not available to extend time for filing proof of claim by unscheduled creditor when debtor filed a list of creditors for Rule 1007(a) purposes but omitted the unscheduled creditor. Unscheduled creditor's due process argument fails because nondischargeability under § 523(a)(3) protects unscheduled creditor when Bankruptcy Rule 3002(c)(6) is not available. "Debtor omitted the creditor not only from her schedules, but also from her mailing list required by Rule 1007(a). . . . The deadline for filing proofs of claim was July 25, 2018. Creditor did not receive notice of the bankruptcy case prior to this deadline. . . . Creditor filed its untimely proof of claim on January 14, 2019, . . . secured by a tax lien on Debtor's real property. . . . The Chapter 13 Trustee objected . . . . Creditor moved for an extension of time to file its claim pursuant to Rule 3002(c)(6)(A). . . . At issue here is the interpretation of the clause 'because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a).' . . . [T]he failure to include an unscheduled creditor in the Mailing List does not expressly or implicitly violate Rule 1007(a). The omission of an unscheduled creditor from the Mailing List does not constitute a failure to timely file the list of creditors for the purposes of Rule 3002(c)(6)(A). . . . Rule 3002(c)(6)(A) does not permit an extension of the claim-filing deadline when a debtor timely files a Mailing List of creditors identified in the schedules. . . . But creditors who do not receive sufficient notice of a bankruptcy case have a remedy in § 523(a)(3), applicable to chapter 13 cases through § 1328(a). Creditor does not explain why its right to due process is not sufficiently protected through the Code . . . .").

§ 133.3 [RESERVED]
§ 133.4 Amended Claims

{734} ***In re Van*, 612 B.R. 893 (Bankr. N.D. Ill. Jan. 13, 2020) (Goldgar)** (County cannot amend its timely proof of claim for 2015 property taxes 27 months after bar date to add claims for 2012–14 because relation back under Federal Rule of Civil Procedure 15 is not available to claim taxes for a different year. The claim for 2015 taxes did not put debtors on notice that years later the county would reacquire earlier tax claims from purchaser of tax certificates based on declaration of "error" by purchaser. Taxing authority should have filed a contingent claim with respect to the earlier tax years.).

{735} ***In re Schroeder*, 607 B.R. 329 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Amended claim filed more than a year after confirmation and long after claims bar date that more than doubles the amount of claim that is secured based on improvements to property after the petition is disallowed. Valuation for bifurcation purposes should be focused on confirmation date, not a year after confirmation.).

{736} ***In re Brown*, 603 B.R. 786 (Bankr. D.S.C. Aug. 13, 2019) (Waites)** (Amended claim filed without leave of court on eve of hearing on objection to claim unfairly seeks to shift burden of proof by curing deficiencies in original proof of claim without time for debtor to adjust litigation preparation and strategy. Allowing amended claim would shift burden of proof unfairly and defeat the purpose of Bankruptcy Rule 3001(f).).

{737} ***In re Shealy*, 599 B.R. 397, 402–04 (Bankr. M.D. Ga. May 6, 2019) (Carter)** (Car lender cannot use an amended claim to add pendency interest three years after confirmation when plan does not provide for pendency interest, original claim did not ask for pendency interest, § 1327 and *Espinosa* bind the lender and no compelling justification supports the amended claim late in the case. Destruction of the car and tender of insurance proceeds that exceed the original secured claim do not change this outcome. A motion to modify by the debtor under § 1329 will pay the car lender the balance of its allowed secured claim and then pay to the debtor the excess insurance proceeds. "Had Action asserted its claim to pendency period interest before confirmation of the Debtor's Plan, it would be entitled to payment of such interest. However, because Action made no such assertion until nearly four years after Plan confirmation, it cannot now seek to add pendency period interest to its claim. . . . Although creditors have broad rights to amend their claims, that right narrows considerably once a plan is confirmed. . . . Because amendment of a claim post-confirmation may yield detrimental results such as rendering a plan infeasible or altering distributions to other creditors, . . . post-confirmation amendments should occur only where there exists a compelling justification. . . . Action has articulated no compelling justification in support of its post-confirmation proof of claim amendment.").

§ 133.5 Tax Claim Exception after BAPCPA

4. FILING OF PROOFS OF CLAIM BY DEBTOR OR TRUSTEE

§ 134.1 Timing, Form, Superseding and Amended Claims before 2005

§ 134.2 Filing of Claims by Debtor or Trustee after 2005 Amendments to Bankruptcy Rule 3004

{738} ***In re Karipides*, No. 17-61935, 2020 WL 717954 (Bankr. N.D. Ohio Jan. 21, 2020) (not for publication) (Kendig)** (Chapter 13 debtor's untimely filed Bankruptcy Rule 3004 claim on behalf of student loan creditor is disallowed on trustee's objection. Debtor cannot prove excusable neglect for Bankruptcy Rule 9006(b) purposes when neglect by former counsel caused debtor to miss the Rule 3004 window by 19 months.).

{739} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

{740} ***In re Kielman*, 609 B.R. 818, 823 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (After disallowance of untimely proof of claim filed by creditor that was not scheduled by pro se debtor, remedy may be available to the debtor under Bankruptcy Rule 3004 to seek allowance of a late-filed claim on behalf of the creditor. The debtor "may choose to seek an extension of the deadline to file a claim under Rule 3004, which may be enlarged under Rule 9006(b)(1) for excusable neglect.").

§ 134.3 [RESERVED]

{741} ***Medina v. Daniel's Jewelers (In re Medina)*, 798 F. App'x 127 (9th Cir. Mar. 10, 2020) (Bybee, Collins, Bress)** (Bankruptcy court did not abuse its discretion by rejecting Chapter 13 debtor's claim objection for lack of prosecution.), *aff'g* BAP No. SC-18-1120-LSF, 2018 WL 6072423 (B.A.P. 9th Cir. Nov. 20, 2018) (not for publication) (Lafferty, Spraker, Faris) (Chapter 13 debtor's objection to $879.82 unsecured claim was appropriately denied based on debtor's failure to attend hearing after multiple continuances and excessive discovery requests.).

{742} ***Bayview Loan Servicing, LLC v. Donnan (In re Donnan)*, No. EC-18-1106-BSL, 2019 WL 1922843, at *3–*4 (B.A.P. 9th Cir. Apr. 29, 2019) (not for publication) (Brand, Spraker, Lafferty)** (Prima facie validity of mortgagee's proof of claim that included arrears to be cured through the plan overcame debtor's naked objection with respect to late charges, NSF fees, broker's price opinion fees and property inspection fees; debtor's objection to foreclosure attorney's fees and costs overcame prima facie validity of proof of claim and bankruptcy court should have allowed an evidentiary hearing. "To overcome the Rule 3001(f) presumption, the objecting party must present evidence tending to rebut the claim—evidence with probative force equal to that of the creditor's proof of claim. . . . Bayview's Claim . . . was prima facie evidence of its validity and amount for the prepetition fees and costs. . . . [T]he Claim Objection . . . did specifically question, supported with the breakdown, whether some of the Foreclosure Attorney's Fees and Costs were incurred postpetition. The Donnans also questioned the reasonableness of these fees, which was a plausible complaint given that Bayview's claim for prepetition fees is subject to a reasonableness standard. . . . [T]he Donnans provided sufficient evidence to rebut the Claim's prima facie effect with respect to the Foreclosure Attorney's Fees and Costs.").

{743} ***In re Booker*, No. 19-30787 (AMN), 2020 WL 930091 (Bankr. D. Conn. Feb. 26, 2020) (Nevins)** (Pro se debtor's motion to reconsider denial of objection to mortgagee's claim is denied because debtor states no ground comprehensible under Federal Rule 60.).

{744} ***In re Brown*, 603 B.R. 786 (Bankr. D.S.C. Aug. 13, 2019) (Waites)** (Amended claim filed without leave of court on eve of hearing on objection to claim unfairly seeks to shift burden of proof by curing deficiencies in original proof of claim without time for debtor to adjust litigation preparation and strategy. Allowing amended claim would shift burden of proof unfairly and defeat the purpose of Bankruptcy Rule 3001(f). Creditor failed to carry burden of proof with respect to validity or amount of its claim when presumption was not available because creditor did not file loan history required by Rule 3001. Debt was more than 15 years old and may have matured a decade earlier. Creditor claimed inconsistent amounts due in this bankruptcy and in a prior bankruptcy. Creditor confessed that it did not receive original documents when it acquired the loan. Creditor could not confirm the correct interest rate and original note was lost. Sanctions awarded under Rule 3001(c)(2)(D) including attorney's fees for expense of prosecuting objection.).

{745} ***In re Field*, 604 B.R. 680 (Bankr. D.S.C. Aug. 8, 2019) (Waites)** (Mortgage holder's proof of claim failed to reveal the chain of transfers by which it came to hold the mortgage thereby forfeiting prima facie effect under Bankruptcy Rule 3001(f); at the hearing, mortgage holder presented sufficient evidence to establish the validity and amount of its claim and its standing to assert that claim.).

{746} ***In re Simon*, No. 15-12181, 2019 WL 3759555 (Bankr. W.D. La. Aug. 8, 2019) (Hodge)** (Car lender's claim was entitled to *prima facie* validity because it satisfied Bankruptcy Rule 3001 requirements including information about principal and interest and other charges from which debtor could determine whether to object.).

{747} ***Nicholson v. eCAST Settlement Corp.*, 602 B.R. 295, 299–306 (Bankr. M.D. Pa. May 24, 2019) (Opel)** (Debtor's testimony that she did not owe a debt to eCAST Settlement Corporation overcame *prima facie* validity of claim; eCAST failed to prove that it was the purchaser of the debt therefore debtor's claim objection was sustained. "Debtor provides that she sent Claimant a Rule 3001(c)(3)(B) request demanding that Claimant provide her with the account agreement . . . and the purported assignment transferring the specific account to Claimant. . . . Claimant . . . was unable to provide the underlying contract between Debtor and Citibank or the assignment of the specific account from Citibank to Claimant. . . . Claimant did not call any witnesses to testify . . . . Without Citibank's testimony, the information in the Affidavit and Citibank's alleged statements are inadmissible hearsay . . . . Debtor testified that she had no knowledge of her debt being transferred to Claimant and that she did not owe any debt to Claimant. . . . Debtor has produced sufficient evidence through her Objection and testimony . . . to negate the Claim's *prima facie* validity. . . . Claimant failed to produce any subsequent admissible evidence to prove the validity of its Claim . . . . Claimant failed to attach or subsequently produce . . . any . . . documentation specifically showing that Citibank sold Debtor's account . . . to Claimant. . . . [P]ursuant to § 502(b)(1) and Pennsylvania state law, the Claim should be disallowed.").

{748} ***In re Fanning*, No. 18-11163-JDL, 2019 WL 2179734 (Bankr. W.D. Okla. May 22, 2019) (Loyd)** (Wells Fargo is allowed $1,400 "flat fee" for attorney services in foreclosure before Chapter 13 petition. By including fees in prepetition proof of claim with sufficient description to satisfy Bankruptcy Rule 3001, fees were entitled to evidentiary presumption and debtor did not present evidence of unreasonableness. Court is not bound by flat fee agreement between Wells Fargo and its counsel but flat fee was less than hourly rate would have been.).

§ 135.2 Allowance and Objections to Claims: Changes by BAPCPA

§ 135.3 Documentation and Assigned Claims

{749} ***Derby v. Portfolio Recovery Assocs., LLC (In re Derby)*, No. 18-03097-KLP, 2020 WL 1696099 (Bankr. E.D. Va. Mar. 31, 2020) (Phillips)** (Attorney's fees awarded to Chapter 13 debtor's counsel for prosecuting adversary proceeding against Portfolio Recovery Associates for filing proofs of claim that added interest and charges to principal without disclosure and notwithstanding contrary decision in *Maddux v. Midland Credit Management, Inc*. *(In re Maddux)*, 567 B.R. 489 (Bankr. E.D. Va. Dec. 1, 2016) (Huennekens). PRA apparently corrected its improper proof of claim practices after *Maddux* only with respect to some claims in some cases. The bankruptcy court found that PRA continued to file proofs of claim that it knew were improper under *Maddux*. PRA is required to review proofs of claim in other cases and amend those claims if necessary consistent with *Maddux*.).

{750} ***In re Field*, 604 B.R. 680 (Bankr. D.S.C. Aug. 8, 2019) (Waites)** (Mortgage holder's proof of claim failed to reveal the chain of transfers by which it came to hold the mortgage thereby forfeiting prima facie effect under Bankruptcy Rule 3001(f); at the hearing, mortgage holder presented sufficient evidence to establish the validity and amount of its claim and its standing to assert that claim.).

{751} ***Levings v. JPMorgan Chase Bank, Nat'l Ass'n (In re Levings)*, No. 18-08010-TRC, 2019 WL 2236696 (Bankr. E.D. Okla. May 22, 2019) (Cornish)** (Motion to reconsider dismissal of adversary proceeding challenging endorsement of note to Chase is denied for lack of any basis. State court already ruled against debtor's claims of fraud by Chase and further litigation is properly left to state court.).

§ 135.4 Reconsideration of Claims

{752} ***In re Hans Dajung Choe*, No. 18-69400-PMB, 2019 WL 6999722 (Bankr. N.D. Ga. Dec. 19, 2019) (Baisier)** (Motion for reconsideration of disallowance of claim is denied when only ground asserted is lack of notice of objection to claim; presumption of regularity of mails with respect to several notices was not overcome by naked denial of receipt. Timely misfiling of proof of claim in wrong case and then failing to appear in opposition to claim objection resulted in disallowance of claim.).

{753} ***In re Kielman*, 609 B.R. 818 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (Reconsideration under § 502(j) is not available to provide relief from an order disallowing an untimely filed claim because the notice and hearing procedure was not respected and there is no obvious ground for relief given the undeniably late filed claim.).

{754} ***In re Hodgins*, No. 18-21810, 2019 WL 4296859 (Bankr. E.D. Mich. Sept. 10, 2019) (Opperman)** (Neither relief under Rule 9024 nor reconsideration under § 502(j) is appropriate with respect to order overruling claim objection when lender secured by siding on debtor's home perfected its lien under Michigan UCC by filing in register of deeds office.).

{755} ***Fraser v. CitiMortgage, Inc. (In re Fraser)*, 599 B.R. 830 (Bankr. W.D. Pa. Apr. 26, 2019) (Böhm)** (Reconsideration of mortgage claim under § 502(j) is not available when debtor delayed 18 months to bring adversary proceeding seeking to bifurcate mortgage. Confirmed plan treated mortgage as fully secured and plan contained a 90-day deadline within which debtor had to but failed to challenge the filed proof of claim. Claim reconsideration under § 502(j) is not an end run around the 90-day deadline in the confirmed plan.).

§ 135.5 Failure to File Proof of Claim
§ 135.6 Untimely Filed Claims in Cases Filed before October 22, 1994: The *Hausladen* Phenomenon
§ 135.7 Untimely Filed Claims in Cases Filed after October 22, 1994

{756} ***In re Waldschmidt*, 605 B.R. 860, 864–66 (Bankr. N.D. Ind. Sept. 24, 2019) (Grant)** (Late-filed claim by car lender is disallowed on objection from Chapter 13 trustee notwithstanding confirmed plan approved by trustee, debtor and car lender that would have paid claim in full with agreed-upon interest had a timely claim been filed. Outcome is not changed by fact that confirmation occurred after claims bar date and treatment of car lender in plan was approved by debtor and trustee. "No statute or rule requires claim objections to precede confirmation . . . . [T]he validity of a claim objection should not turn on the happenstance of when the confirmation hearing was held in relation to the claims bar date. . . . The court is not inclined to read the provisions of the national form plan as either dispensing with the need to file claims or precluding objections to untimely claims.").

{757} ***In re Venanzio*, 602 B.R. 921 (Bankr. W.D. Pa. July 30, 2019) (Böhm)** (Mortgage holder's proof of claim is disallowed on trustee's objection for two reasons: proof of claim was untimely filed one year after bar date; confirmed plan is res judicata with respect to amount of arrears that may be collected by mortgage holder. Confirmed plan provided for arrearage claim of $4,895—an amount paid by the confirmed plan. Untimely filed claim was for $10,453. Court order states that mortgagee is "disallowed" from collecting larger amount in any action or proceeding.).

{758} ***In re Spencer*, No. 12-20854-13, 2019 WL 4410352 (Bankr. D. Kan. July 24, 2019) (Berger)** (State court orders determined CitiMortgage's standing to file proof of claim for mortgage in Chapter 13 case but debtor's objection to that claim is sustained because

proof of claim was untimely filed—after the 90-day deadline in the former version of Bankruptcy Rule 3002(c). Section 502(b)(9) requires disallowance of claim notwithstanding years of extended litigation of other issues.).

D. PRIORITY CLAIMS AND ADMINISTRATIVE EXPENSES

§ 136.1 Treatment of Priority Claims

{759} ***In re Steenes*, 942 F.3d 834, 836–39 (7th Cir. Nov. 12, 2019) (Easterbrook, Rovner, Hamilton)** (On rehearing, traffic fines incurred by Chapter 13 debtors during confirmed cases are administrative expenses that must be paid in full and promptly. "After bankruptcy judges confirmed their Chapter 13 payment plans, Steenes and Dudley used their cars in ways that led to fines for running red lights, illegal parking, and similar offenses. . . . Allowing debtors in bankruptcy to stiff involuntary creditors, such as cities trying to collect for on-street parking, has nothing to recommend it. . . . [D]ebtors who need cars must pay their involuntary creditors—including cities as well as, say, pedestrians run down by reckless driving—along with the suppliers of gasoline and insurance. . . . [A] debtor making payments under a Chapter 13 plan is not entitled to park for free on city streets, when others must pay in advance or pay fines for parking in forbidden places or at forbidden times. . . . [V]ehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full.").

§ 136.2 Taxes before BAPCPA

§ 136.3 Taxes after BAPCPA

{760} ***United States v. Chesteen (In re Chesteen)*, 799 F. App'x 236, 238–41 (5th Cir. Feb. 20, 2020) (Owen, Barksdale, Duncan)** (Shared Responsibility Payment is not an excise tax for purposes of § 507(a)(8)(E)(i) and is not entitled to priority or full payment in a Chapter 13 case. "Section 507(a)(8)(E)(i)—excise tax—is the only priority provision the Government advanced . . . . We . . . need not determine the extent to which [*National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012),] controls or whether the SRP, as it existed in 2016, is a tax or penalty . . . . Even assuming *arguendo* the provision is a tax in bankruptcy—regardless of whether it is *NFIB* or the bankruptcy functional analysis that would dictate that outcome—the SRP, for the reasons that follow, is not entitled to priority under the one priority provision—'excise tax on . . . a transaction', pursuant to 11 U.S.C. § 507(a)(8)(E)(i) . . . . [A]n excise tax is imposed on some type of activity . . . . This is in harmony with the remainder of the provision, which . . . requires the excise tax be 'on . . . a transaction' . . . . [T]he SRP concerns a person's inactivity in not procuring the requisite insurance. . . . This is the opposite of the activity required for a tax to constitute an 'excise tax' pursuant to § 507(a)(8)(E)(i)."), *rev'g and remanding* No. 18-2077, 2019 WL 1499532 (E.D. La. Feb. 25, 2019) (Lemelle), *rev'g* No. 17-11472, 2018 WL 878847, at *1–*3 (Bankr. E.D. La. Feb. 9, 2018) (Brown) (IRS extraction for failure to purchase health insurance under Affordable Care Act is a penalty, not a tax for § 507(a)(8) purposes. "[T]he IRS describes this 'excise tax' as the debtor's 'shared responsibility payment liability [arising] under Internal Revenue Code § 5000A' for failure to maintain health insurance in 2016. . . . [I]t is apparent that the ACA individual mandate is a penalty designed to deter citizens from living without health insurance. . . . Failure to make the ACA individual mandate payment does not result in any of the typical consequences that result from non-payment of taxes . . . . Rather, an individual who fails to make the ACA individual mandate payment is penalized by having the exaction deducted out of future tax returns. . . . Congress itself labeled the ACA individual mandate a 'penalty' and not a tax. . . . [I]t cannot be said that the ACA individual mandate is an exaction imposed for the purpose of supporting the government. Congress's primary, or dominant, purpose of imposing the individual mandate of the ACA was not to support or fund the government fiscally, but to discourage Americans from living without health insurance coverage. . . . [I]t is not a 'tax' within the meaning of § 507(a)(8).").

{761} ***In re Albracht*, No. 19-03672-5-DMW, 2020 WL 1547198 (Bankr. E.D.N.C. Mar. 31, 2020) (Warren)** (Citing *United States v. Chesteen (In re Chesteen)*, No. 19-30195, 2020 WL 859688 (5th Cir. Feb. 20, 2020) (Owen, Barksdale, Duncan), shared responsibility payment is not an excise tax on a transaction for purposes of priority in § 507(a)(8)(E).).

{762} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *3–*4 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Citing § 511 and New Jersey law, plan cannot require purchaser of tax sale certificate to apply payments from Chapter 13 debtor first to principal portion of claim; state law fixes interest rate and applies GAAP principles to pay interest and penalties before principal. "SLS, as a tax certificate holder, is treated as a secured creditor, holding a lien against the Debtors' Property. . . . [T]o the extent SLS is over-secured, upon application of 11 U.S.C. § 506(a), it is entitled to collect interest on its claim at 'the rate determined under applicable nonbankruptcy law.' 11 U.S.C. § 511(a). . . . Pursuant to § 511, state law must be applied when determining interest due to an over-secured claimant. . . . [M]unicipalities are required to follow the Generally Accepted Accounting Principles . . . . Debtor may not deviate by applying payments to principal first and interest thereafter.").

{763} ***In re Van*, 612 B.R. 893 (Bankr. N.D. Ill. Jan. 13, 2020) (Goldgar)** (County's claim for property taxes for prepetition tax years is a prepetition claim notwithstanding that claim was sold prepetition and did not revert to county until "error" was declared by purchaser and county repurchased tax claim after bankruptcy. Contingent claim at petition was not a postpetition claim notwithstanding that contingency occurred years after bar date. County is bound by confirmed plan and its claim will be discharged when it did not object to confirmation or file a timely claim. County could have protected itself by filing contingent claims for purchased tax debts.).

{764} ***In re Jones*, 610 B.R. 663, 666–68 (Bankr. D. Mont. Nov. 13, 2019) (Hursh)** (Shared responsibility payment required by 26 U.S.C. § 5000A is an excise tax but it is not entitled to priority under § 507(a)(8)(E) because it is not based on a "transaction" but instead on a failure to engage in a transaction. "[*National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012),] did not (specifically) address whether the SRP was an excise tax. In fact, the Supreme Court did not even go so far as to label the SRP a true tax. . . . [T]he SRP is an excise tax under 11 U.S.C. § 507(a)(8)(E). . . . [Section] 507(a)(8)(E)(i) and (ii) allow priority status for an excise tax imposed '*on a transaction* . . .' . . . The SRP arises out of a taxpayer's choice to *not* do something (the choice to not maintain minimum health care coverage). . . . Other courts have concluded that the SRP is not an excise tax entitled to priority treatment under § 507(a)(8)(E) because the 'transaction' element is not met merely by failing to do something.").

{765} ***In re Cole*, No. 18-35182, 2019 WL 2319281 (Bankr. S.D. Tex. May 29, 2019) (Isgur)** (Because it won't be known for five years whether the debtor will default on Offer in Compromise with IRS, IRS appropriately filed claim for entire amount of tax debt. Whether debtor has already defaulted will be addressed at confirmation of whatever plan the debtor proposes for dealing with the IRS's claim.).

{766} ***In re Bailey*, No. 18-03328-5-DMW, 2019 WL 2367180, at *3–*7 (Bankr. E.D.N.C. May 24, 2019) (Warren)** (Shared responsibility payment is a penalty, not a tax, and is not entitled to priority in a Chapter 13 case. If the SRP is a tax, it can't be either an excise tax or an income tax so it is not entitled to priority or full payment. "[T]he *Tax Cuts and Jobs Act of 2017*, Public Law 115-97, reduces the SRP amount to zero. It is difficult to imagine that a tax would be reduced to zero. Generally, under the Internal Revenue Code, taxes are collected, and penalties are abated. This subsequent act by Congress implies more of a penalty abatement than a statutory tax repeal. . . . [T]he court finds absurd the notion that the SRP could be meant to provide for the support of government. . . . An analysis of the characteristics of the SRP . . . leads this court to conclude the SRP is a penalty. . . . Assuming the SRP qualifies as a tax, then in order for § 507(a)(8)(E) to apply to the SRP, this court would have to find the SRP is an excise tax on some sort of transaction. . . . An exaction that is not always measured by income cannot qualify as an income tax. . . . The SRP is a penalty, not a tax, and even if it were a tax, it would not fit into any of the categories listed in 11 U.S.C. § 507(a)(8) . . . .").

{767} ***In re Cousins*, 601 B.R. 609 (Bankr. E.D. La. Apr. 10, 2019) (Magner)** (Shared responsibility payment under the Affordable Care Act is either an excise tax or an income tax, entitled to priority and nondischargeability in a Chapter 13 case.).

§ 136.4 Trustees' Fees and Expenses before BAPCPA
§ 136.5 Trustees' Fees and Expenses after BAPCPA
§ 136.6 Debtors' Attorneys' Fees before BAPCPA
§ 136.7 Debtors' Attorneys' Fees after BAPCPA

{768} ***McBride v. Riley (In re Riley)*, 923 F.3d 433, 435–43 (5th Cir. May 13, 2019) (Reavley, Elrod, Willett)** (Local no-look fee order did not permit Chapter 13 debtor's attorney to recover filing fees, briefing fees or credit report fees in addition to no-look amount. Bankruptcy court is permitted but not required to allow Chapter 13 debtor's attorneys to recover filing fees, credit report fees and prepetition briefing fees as reimbursable expenses—part of "reasonable compensation" under § 330(a)(4)(B) and § 503(b). "[This] dispute involves no-money-down business models, wherein the debtor's attorney agrees to advance the costs of filing fees, credit counseling course fees, and credit report fees on behalf of the debtor. . . . The Bankruptcy Court for the Western District of Louisiana has a standing order . . . that any advances made by debtor's counsel for pre-filing expenses were accounted for in the no-look fee amount and therefore not separately reimbursable. . . . The no-look fee option is an administrative creation of the bankruptcy court designed to quickly identify a level of debtor's counsel compensation that is presumptively reasonable and easy to administer. . . . [T]he advances of the filing fee, credit counseling fee, and credit report fee by debtor's counsel in this case were not necessary expenses to preserve the estate under 11 U.S.C. § 503(b)(1). . . . [W]e conclude that § 330(a)(4)(B) permits bankruptcy courts to reimburse debtor's counsel for the costs of advancing such fees as reasonable compensation, but it does not require them to do so. . . . '[C]ompensation' is broad enough that it would generally be understood to include reimbursement. . . . § 330(a)(4)(B) says courts may allow compensation 'for representing the interests of the debtor in connection with the bankruptcy case[.]' A filing fee (and the other two fees) are, by any ordinary understanding of the words, 'interests of the debtor in connection with the bankruptcy case.' As such, this section grants bankruptcy courts the discretion to authorize compensation to a Chapter 13 debtor's counsel even when the underlying activity fulfills a personal obligation of the debtor . . . so long as that obligation is an interest of the debtor connected with the bankruptcy case. . . . [W]e hold that 11 U.S.C. §§ 503(b) and 330 provide bankruptcy courts with the discretion to compensate debtor's counsel for advancing the costs of filing fees, credit counseling fees, and credit report fees if they choose to do so . . . ."), *aff'g in part, vacating in part* No. 1:17-01302, 2018 WL 1768602, at *5–*7 (W.D. La. Apr. 12, 2018) (Trimble) (Filing fees, credit counseling fees and credit report fees are not reimbursable to debtor's counsel under 11 U.S.C. § 503(b)(1)(A) or § 503(b)(2) or under 11 U.S.C. § 330(a) because they are not administrative expenses of the Chapter 13 estate. "This court agrees with Judge Kolwe and finds that he (1) did not err in holding that the filing fee for a Chapter 13 case is not a post-petition expense (2) did not err in holding that the filing fee for a Chapter 13 case accrues pre-petition (3) did not err in holding that advances of filing fees, credit counseling fees, and credit report fees by debtor's counsel in Chapter 13 are not reimbursable under 22 U.S.C. § 503 (b)(1)(A). . . . [A]llowing debtor's counsel to advance that fee and then subsequently seek reimbursement of that fee through the plan, would take away the discretion of the Court to allow the fee to be paid in installments because of necessity, eviscerate Rule 1006(b) and divert available funds from unsecured creditors to the debtors' counsel."), *aff'g* 577 B.R. 497 (Bankr. W.D. La. Sept. 29, 2017) (Kolwe) (Although amended "no look" fee rule in district does not

prohibit debtors' attorneys from seeking reimbursement of advances for filing fee, a credit report and prepetition briefing, those advances are not administrative expenses under § 503 and are not separately reimbursable because expenses are included in the no-look amount. "Effective February 1, 2017, this District's Bankruptcy Judges revoked the prior standing order on no-look fees and adopted a new one. . . . Under this order, the total no-look fee is $3,600, but the last $600 of the fee is not payable until the last six months of the debtor's plan . . . . [I]t no longer expressly states that the no-look fee is inclusive of the filing fee and other advances. . . . [T]he filing fee, credit counseling fee and credit report fee are all prepetition expenses of the Debtor, not the estate. . . . [T]he advances do not provide a direct and substantial benefit to the estate. . . . [I]t only serves to satisfy the personal obligation of the Debtor to pay each of these costs. . . . This Court disagrees . . . that the filing fee is a post-petition expense. . . . [W]hile this Court acknowledges that a Chapter 13 debtor's attorney may incur certain reimbursable expenses, the Court finds that those expenses are included in the Court's contemplation and implementation of the no-look fee. . . . [T]he no-look fee is intended to be inclusive of all expenses. If the debtor's attorney seeks any amount over the no-look fee, the current standing order requires a formal fee application setting forth both compensation and expenses requested. . . . [A]dvances are not reimbursable . . . as an administrative expense of the Debtor's estate under 11 U.S.C. § 503(b)(1)(A) or (b)(2).").

{769} ***Dean v. Lane (In re Lane)*, 598 B.R. 595 (B.A.P. 6th Cir. Apr. 29, 2019) (Buchanan, Dales, Wise)** (Interim fee award in Chapter 13 case is not a final order; BAP lacks jurisdiction over appeal of order overruling objection to interim fee award.).

{770} ***Deighan Law, LLC v. Daugherty*, No. 4:19-CV-02506-SNLJ, 2020 WL 1862671, at *1–*7 (E.D. Mo. Apr. 14, 2020) (Limbaugh)** (Reversing bankruptcy court, Deighan Law, LLC, d/b/a UpRight Law, is an integrated law firm with general and limited partners that did not violate § 504 when part of the fee paid by a Chapter 13 debtor was retained by UpRight in Illinois and part was paid to Deighan in Missouri to handle specifics of the case. UpRight was not just a "referral service" and the legal relationship between the Illinois and the Missouri components was not prohibited by any statute or rule. "[T]he case turns on the narrow question of whether Deighan Law and the local lawyers are members of the same professional association, corporation or partnership—in other words, whether they are members of the same law firm. . . . Deighan Law is an Illinois limited liability company . . . . Deighan Law does business in Missouri under the registered name UpRight Law LLC. . . . [T]hree St. Louis limited partners . . . each operates their own law firm in addition to, and independently of, their association with UpRight Law. . . . Initial fees are collected by Upright Law . . . . [I]n Chapter 13 cases, the limited partner 'receive[s] one hundred percent (100%) of all post-petition fees distributed, provided that [they] perform[ ] all of the post-petition work as is required on the respective case.' . . . [T]his Court is of the opinion that Doyel, Caraker and Magdy are indeed partners in a law firm with UpRight Law so that section 504(b)(1)'s exception to section 504(a)'s fee-sharing prohibition applies. . . . [T]he limited partners identify UpRight Law as their law firm in the bankruptcy petitions . . . . UpRight Law is a firm specializing in bankruptcy law that has three general partners and approximately 300 limited partners, all of whom are lawyers. . . . UpRight law and its limited partners do constitute a law firm. Although the structure and operation of the firm is [*sic*] unconventional, this Court finds no authority that precludes it. . . . [T]he Chicago office continues to monitor the cases, supervises as necessary, and also provides legal assistance from staff lawyers and other partners as necessary. This alone makes UpRight Law more than a lawyer referral agency. . . . There is no citation . . . , nor does this Court find any authority precluding lawyers from representing clients through two separate practices—one in which they hold themselves out as part of the same firm and one in which they represent clients individually or through a separate firm with other attorneys. . . . Deighan Law's limited partners are partners in a professional association, corporation or partnership who may share compensation under Section 504(b)(1)."), *rev'g and remanding sub nom., In re Richard*, No. 16-42080-659, 2018 WL 5733508, at *5–*8 (Bankr. E.D. Mo. Oct. 10, 2018) (Surratt-States) (Upright Law violated § 504 by sharing fees with three attorneys to whom it referred debtors to file Chapter 13 cases. The three attorneys did not form a single firm with Upright Law for purposes of Missouri law and § 504. "This is a case about the status of three attorneys and a company with whom each attorney signed Partnership Agreements for purposes of fee-splitting. . . . This Court finds that each attorney has contracted with separate entity, Upright Law, to share fees in violation of Bankruptcy Code Section 504. This violation of Section 504 requires the disgorgement of fees paid to Upright Law. . . . Upright Law is nothing more than a lawyer referral agency that completes administrative screening work, then refers the case to attorneys to take on the legal work. . . . [T]he Local Attorneys' status as members of separate legal entities and not a single law firm with Upright Law also means the Local Attorneys are not members, partners, or regular associates in a professional association, corporation, or partnership with Upright Law within meaning of Section 504. Violation of Section 504 requires disgorgement of fees.").

{771} ***Acclaim Legal Servs., P.L.L.C. v. Terry (In re Freeman)*, No. 19-13412, 2020 WL 1473903 (E.D. Mich. Mar. 26, 2020) (Steeh)** (After conversion from Chapter 7 to Chapter 13, attorney's fees for work during the Chapter 7 case are not allowable under § 330(a)(4)(B) because opposing a § 707(b) motion to dismiss and filing multiple amended means test forms did not benefit the debtor or anyone else.).

{772} ***McDonald v. Wildfire Credit Union (In re Griffus)*, No. 19-cv-10577, 2019 WL 3564580 (E.D. Mich. Aug. 6, 2019) (Drain)** (Bankruptcy court did not abuse discretion by refusing to sanction attorney for filing and then withdrawing proof of claim when attorney admittedly did not have authority from creditor to file proof of claim but there was agency relationship between creditor and client with whom attorney actually dealt.).

{773} ***In re Cervantes*, No. 18-10306-B-13, 2020 WL 1884213 (Bankr. E.D. Cal. Apr. 14, 2020) (Lastreto)** (Debtor's attorney, Thomas Gillis, ordered to disgorge $600 when attorney violated flat fee agreement and Rights and Responsibilities pledge in district by demanding additional fee to help debtor deal with postpetition default in payments.).

{774} ***In re Cervantes*, No. 18-10306-B-13, 2020 WL 1580277, at *1 (Bankr. E.D. Cal. Mar. 31, 2020) (Sargis, Clement, Lastreto)** (Bankruptcy court publishes formula for Chapter 13 trustees to use to determine portion of no-look fees that were earned and/or must be refunded by suspended attorney with 481 pending Chapter 13 cases. "In this District, counsel for a chapter 13 debtor can elect to be compensated by a flat fee . . . . Debtor's counsel in these cases elected that option and received the full fee. Since the State Bar of California has suspended counsel for two years, counsel cannot complete the work necessary to earn the fee. The chapter 13 Trustee objected to the fee in each case. We SUSTAIN the objections, present a formula to determine the proper fee, and after applying the formula, order counsel to refund certain amounts to the Chapter 13 Trustee for the benefit of the respective estates.").

{775} ***In re Lewis*, No. 19-51775, 2020 WL 1042032 (Bankr. E.D. Mich. Mar. 3, 2020) (Tucker)** (Fee application is denied sua sponte when $8,000 request far exceeds usual amount for Chapter 13 case dismissed before confirmation, application and proposed order together with stipulation are internally inconsistent and ambiguous and attorney did not comply with local rules with respect to notice and other procedures.).

{776} ***In re Gillis*, No. 20-101-A/B, 2020 WL 970320 (Bankr. E.D. Cal. Feb. 25, 2020) (Clement)** (On motion of Chapter 13 trustees in 481 Chapter 13 cases pending in the district in which debtor's counsel has been suspended from practice by state bar, standing trustees are ordered to cease distributing "no-look" fees to suspended counsel pending more comprehensive solution to how fees will be paid to complete the pending cases.).

{777} ***In re Gonzalez Torres*, No. 14-09581 (ESL), 2020 WL 889347 (Bankr. D.P.R. Feb. 24, 2020) (Lamoutte)** (In a fee dispute between Chapter 13 trustee and attorneys for debtors, because scheduled debts related primarily to a failed business, debtors are not "assisted persons," attorneys are not Debt Relief Agencies and §§ 526, 527 and 528 are not applicable.).

{778} ***In re Gillis*, No. 20-101, 2020 WL 768827, at *7 (Bankr. E.D. Cal. Feb. 14, 2020) (not for publication) (Sargis)** (The United States Bankruptcy Court for the Eastern District of California struggles with a suspended attorney's broken efforts to complete 603 pending bankruptcy cases, including many Chapter 13 cases. "[T]here is substantial pre- and post-confirmation work remaining to be done by an attorney . . . . Because of the Suspension, Mr. Gillis cannot do such work, cannot be allowed fees for such work, and cannot assign such fees for future work. Whomever [*sic*] substitutes in as counsel for the debtor in the future will make the fee arrangement with his or her new client, which fee arrangement is subject to approval by the court before such counsel can assert the right to be paid such fees.").

{779} ***In re Guajardo*, No. 19-10540-ta13, 2020 WL 762828 (Bankr. D.N.M. Feb. 14, 2020) (Thuma)** (Pro se debtors' objection to substitute counsel's $9,200 fee application is resolved largely in favor of counsel and fees are allowed for $9,006.73.).

{780} ***In re Blume*, 610 B.R. 829 (Bankr. E.D. Mich. Dec. 23, 2019) (Tucker)** (Chapter 13 debtors' application to incur postpetition debt to hire nonbankruptcy counsel to pursue state court litigation is granted with conditions on amount and method of payment from postpetition income. Application to employ nonbankruptcy counsel was denied as unnecessary—Chapter 13 debtors can hire any nonbankruptcy counsel they wish to pursue state court litigation; only postpetition payment of nonbankruptcy counsel is subject to bankruptcy court review and approval.).

{781} ***In re Husted*, No. 11-41903, 2019 WL 4744759 (Bankr. E.D. Tex. Sept. 27, 2019) (Rhoades)** (Travel expenses for special counsel to Chapter 13 debtor are reduced. Counsel secured a $1.5 million settlement for Chapter 13 debtor based on abuse by a priest but some of the expenses claimed were not documented and some were not of benefit to debtor.).

{782} ***In re Frillman*, No. 3:18-bk-04334-JAF, 2019 WL 4412272 (Bankr. M.D. Fla. Sept. 13, 2019) (Funk)** (Court approves settlement of U.S. trustee's motion for sanctions against debtor's attorney including suspension of practice for 180 days, 15 hours of CLE and refund of attorney's fees in multiple cases. Attorney failed to get wet signature from Chapter 13 debtors, allowed multiple cases to be dismissed for filing deficiencies and made multiple motions to set aside dismissals without correcting deficiencies. Attorney failed to file fee disclosures and rarely completed Chapter 13 cases.).

{783} ***In re Davis*, 605 B.R. 658 (Bankr. D.N.J. Aug. 29, 2019) (Meisel)** (Debtor's counsel failed to comply with requirements imposed on Debt Relief Agencies by §§ 526–528, by failing to provide required disclosures in writing and failing to adequately define the scope of representation. Debtor elected to void the contract and receive full refund of all fees paid.).

{784} ***In re Bennett*, No. 17-31697 (AMN), 2019 WL 3805975, at *2–*3 (Bankr. D. Conn. Aug. 13, 2019) (Nevins)** (Use of "appearance counsel" in Chapter 13 cases violated bankruptcy rules and state rules of professional responsibility, delayed the cases and disserved the debtors. Some fee disgorgement was ordered and CLE required and a modest monetary sanction imposed. "While Attorney Brown's role is referenced as that of 'appearance counsel,' what that meant is that he appeared on the debtor's behalf at judicial

proceedings but failed to file a notice of appearance in either case, in violation of Local Bankruptcy Rule 9010-1. . . . [T]he use of Attorney Brown as appearance counsel at best caused delay and confusion, and at worst was prejudicial to the client. . . . [T]he practice also violated some of the Connecticut Rules of Professional Responsibility and the Federal Rules of Bankruptcy Procedure . . . .").

{785} ***In re Nguyen*, No. 17-27906-GMH, 2019 WL 5887106 (Bankr. E.D. Wis. July 3, 2019) (Halfenger)** (In Chapter 13 case dismissed before confirmation, fee application for $9,645 is denied and counsel is allowed only $2,000 paid before the petition. Local rule created presumption that $1,000 was reasonable compensation for counsel in a Chapter 13 case dismissed before confirmation. Counsel filed detailed fee application to which no one objected. Court rejected fee request as unreasonable notwithstanding that counsel represented debtor in multiple proceedings including stay relief litigation, objections to confirmation and motions to dismiss for nonpayment.).

{786} ***Walker v. UpRight Law (In re Walker)*, 604 B.R. 10 (Bankr. D.S.C. June 21, 2019) (Burris)** (UpRight Law, LLC, denied summary judgment in action by Chapter 13 debtors challenging charges for "questionable" and "valueless" services in Chapter 13 cases administered through "partners" who are South Carolina licensed attorneys.).

{787} ***In re Roberts*, No. 17-11846-gs, 2019 WL 5875700 (Bankr. D. Nev. May 22, 2019) (Spraker)** (Chapter 13 debtor's attorney is bound by original fee disclosure of $6,796, which contained no service exclusions. Attorney cannot more than double the amount requested with an amended disclosure and fee application that purports to exclude services that were already performed.).

{788} ***In re Schatz*, 601 B.R. 864, 866–72 (Bankr. D. Conn. May 6, 2019) (Nevins)** (Fee applications are denied and disgorgement ordered when debtor's attorney and appearance counsel violated fee-sharing prohibition in § 504, failed to file timely and accurate disclosures required by Bankruptcy Rule 2016 and Official Form 2030 and failed to adequately represent debtor in complicated Chapter 13 case. "At all times relevant here, Attorney Anderson and Attorney Brown did not work in the same law firm . . . . Anderson generally did not appear at court hearings . . . . Brown represented the debtor at the § 341 . . . Meeting of Creditors . . . . Brown attended five hearings to consider confirmation of the debtor's Chapter 13 Plan . . . . Brown was generally ineffective in representing the debtor. . . . § 504 of the Bankruptcy Code . . . expressly prohibits an attorney from sharing any compensation with another attorney that is not another 'member, partner, or regular associate' of the applicant's law firm. . . . [T]he majority of courts prohibit debtor's counsel from hiring contract attorneys under § 504. . . . Appearance counsel are 'attorneys who appear at proceedings at the request of, and on behalf of, the debtors' chosen attorney.' . . . Attorney Anderson violated § 504 by sharing compensation with an attorney that is not an associate at her law firm. . . . Attorney Anderson was under a continuing duty to file a supplemental Form 2030 within fifteen (15) days after any payments or agreements not previously disclosed. . . . [T]he Court will require disgorgement of a portion of Attorney's [*sic*] Anderson's requested fees 'for fee sharing in violation of section 504 or for failure to disclose sharing arrangements under Rule 2016.' . . . Attorney's [*sic*] Brown's unreasonable and unexcused delay in filing Form 2030 Statement of Compensation is a violation of § 329 and Rule 2016(b). . . . Despite the debtor's affidavit stating that he was 'fully satisfied with the legal serviced [*sic*] provided to [him] by Attorneys Anderson and Brown,' the Court concludes on this record that Attorney Brown and Attorney Anderson did not adequately represent the debtor.").

{789} ***In re Contreras*, No. 18-30995, 2019 WL 1868622 (Bankr. S.D. Tex. Apr. 25, 2019) (Norman)** (In consolidated cases, large-volume Chapter 13 attorney is chastised for overbilling, inefficient practices, overcharging for contract attorneys and paralegals doing secretarial work, charging for frivolous adversary proceedings and charging for attorney mistakes.).

{790} ***In re Fisher*, No. 16-1911, 2019 WL 1875366, at *2–*3 (Bankr. S.D. Ala. Mar. 27, 2019) (Callaway)** (Debtor's state court attorney must return contingent fee and late-filed application for retention is denied when attorney settled tort claim without court approval, relying on debtor's statement that no bankruptcy was pending. Attorney failed to check PACER to reveal pending Chapter 13 case. Settlement of state court tort action is approved after the fact and debtor is allowed to keep all proceeds as exempt property. "It takes only a few moments to check a client's name on PACER before distributing settlement proceeds to determine whether that client is in bankruptcy. To rely on a client's representation that he or she is not in bankruptcy is not enough. . . . [T]he Slocumb law firm has not shown that its neglect was sufficiently excusable to justify the untimely application for employment . . . . The court will thus deny the application to employ and the application for compensation. . . . There is no problem with the underlying settlement, except for the attorney's fees and expenses. The debtor was entitled to exempt all the net proceeds[.]").

§ 136.8 Utilities before BAPCPA
§ 136.9 Utilities after BAPCPA
§ 136.10 Leases and Executory Contracts before BAPCPA
§ 136.11 Leases and Executory Contracts after BAPCPA

{791} ***Microf, LLC v. Cumbess (In re Cumbess)*, No. 5:18-cv-00449-TES, 2019 WL 1984197, at *4 (M.D. Ga. May 2, 2019) (Self)** (When Chapter 13 debtor assumed HVAC lease in a confirmed plan but trustee did not assume or reject, under § 365(p)(1) the leased property left the estate and the debtor became personally liable for lease payments. Lessor not entitled to administrative expense priority for missed postconfirmation lease payments because neither the lease nor the HVAC was property of the Chapter 13 estate for purposes of § 503(b)(1)(A). "The debtor's assumption of the lease is merely his indication of his decision to perform on the lease, not his decision

to obligate the estate on the lease. . . . [T]he plain text of [§ 365(p)(1)] clearly and unambiguously states that a trustee's failure to assume an unexpired lease before confirmation of the debtor's plan causes the leased property to exit the estate.", *aff'g* 594 B.R. 843, 846–51 (Bankr. M.D. Ga. Nov. 30, 2018) (Carter) (Assumption of HVAC lease by debtor in Chapter 13 plan did not automatically generate administrative expense for postpetition defaults. Lessor had burden of proof and failed to present evidence of actual benefit to the estate. Enactment of § 365(p)(1) in 2005 changed the context for lease assumption in Chapter 13 cases, removing automatic benefit analysis when the debtor, but not the trustee, assumes the lease. Burden of proof was on lessor to prove benefit to estate and lessor cannot rest on inference that assumption means benefit to estate. "Under § 503(b)(1)(A), a party may move for allowance of administrative expenses for the 'actual, necessary costs and expenses of preserving the estate.' . . . The claimant bears the burden of proving both that the expense was actual and necessary, as well as the value provided. . . . Under § 365(d)(2), the Trustee could have assumed the Lease at any time *before* plan confirmation. Because the Trustee did not do so, however, § 365(p)(1) took effect, removing the HVAC equipment from the estate and terminating the automatic stay with respect thereto. . . . Accordingly, when the Debtor's plan was confirmed and the Lease assumed under § 1322(b)(7), the HVAC equipment had already ceased to be property of the estate and was no longer protected by the automatic stay. . . . [T]he relevant code sections should preclude the finding of any presumed or automatic benefit to the estate by virtue of the Lease assumption. . . . [T]he Court cannot inherently recognize without evidence that the Debtor's use of the HVAC equipment—which is not property of the bankruptcy estate under § 365(p)(1)—provided an actual, concrete benefit to the preservation of the estate.").

{792} ***Aire Serv LLC v. Roberts (In re Roberts)*, 607 B.R. 635 (Bankr. N.D. Ill. Oct. 10, 2019) (Barnes)** (On motion for preliminary injunction, franchisor failed to prove likelihood of success against Chapter 13 debtor because covenant not to compete was a claim under Seventh Circuit law which must be asserted by proof of claim, not by plenary action for injunction.).

§ 136.12 Failed Adequate Protection before BAPCPA
§ 136.13 Failed Adequate Protection after BAPCPA
§ 136.14 Miscellaneous Administrative Expenses and Priority Claims before BAPCPA
§ 136.15 Miscellaneous Administrative Expenses and Priority Claims after BAPCPA

{793} ***In re Steenes*, 942 F.3d 834, 836–39 (7th Cir. Nov. 12, 2019) (Easterbrook, Rovner, Hamilton)** (On rehearing, traffic fines incurred by Chapter 13 debtors during confirmed cases are administrative expenses that must be paid in full and promptly. "After bankruptcy judges confirmed their Chapter 13 payment plans, Steenes and Dudley used their cars in ways that led to fines for running red lights, illegal parking, and similar offenses. . . . Allowing debtors in bankruptcy to stiff involuntary creditors, such as cities trying to collect for on-street parking, has nothing to recommend it. . . . [D]ebtors who need cars must pay their involuntary creditors—including cities as well as, say, pedestrians run down by reckless driving—along with the suppliers of gasoline and insurance. . . . [A] debtor making payments under a Chapter 13 plan is not entitled to park for free on city streets, when others must pay in advance or pay fines for parking in forbidden places or at forbidden times. . . . [V]ehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full.").

{794} ***In re Sylvester*, No. 19-11716, 2020 WL 1140890 (E.D. La. Mar. 9, 2020) (Lemmon)** (After conversion from Chapter 13 to Chapter 7, bankruptcy court appropriately awarded administrative expense to attorney that prosecuted successful fraudulent conveyance action against Chapter 13 debtor. However, fee award is vacated for findings with respect to reasonableness. Creditor that prosecuted fraudulent conveyance action had derivative standing to pursue the avoidance action and Chapter 13 trustee joined as a party in that litigation. Decision is not clear with respect to what priority the administrative expense would have in the Chapter 7 case.).

{795} ***In re Miller*, 610 B.R. 678 (Bankr. S.D. Ala. Nov. 25, 2019) (Oldshue)** (Chapter 13 debtor's failure to post a prepetition security deposit for the lease/purchase of real property is not entitled to the priority described in § 507(a)(7) because that section protects deposits delivered to a Chapter 13 debtor, not deposits the debtor failed to provide to others.).

{796} ***In re Johnson*, 607 B.R. 250, 252–53 (Bankr. W.D. Pa. Oct. 28, 2019) (Taddonio)** (Filing fees unpaid in prior dismissed Chapter 13 case are a general unsecured claim in subsequent case and are not entitled to priority or payment in advance of other unsecured creditors. "The Trustee now requests authority to use funds currently in her possession from the 2017 Case to satisfy the filing fee that accrued in the 2014 Case. . . . [T]he Court finds that the *Motion* is premised on a fundamental legal flaw—that the Court enjoys some sort of priority regarding these unpaid fees that would allow a distribution to the Court before distributions to other creditors. The Trustee has not articulated any legal authority in support of such priority treatment, and the Court is unaware of any that would apply under these circumstances. . . . [A]ny unpaid filing fee assessed against a prior estate is nothing more than a prepetition general unsecured claim in a subsequent bankruptcy filing. . . . As the holder of a general unsecured claim, the Court, *if a proof of claim was filed on its behalf*, would be entitled to a pro rata distribution in pari passu with other similarly-situated creditors. Nothing more, nothing less. . . . The Court recognizes that the Trustee's request was well-intentioned if not legally sustainable. Although it would be tempting for the Court to direct the payment of its filing fees in this manner for hundreds of delinquent cases, it finds that it cannot sacrifice core bankruptcy principles simply to recover lost revenue. The central tenets of the Code mandate that creditor distributions occur in order of priority and that similarly-situated creditors are treated equally. . . . If creditors are expected to abide by these precepts, the Court must do likewise when acting as the holder of a comparable claim. Put simply, the Court cannot contravene the Code simply to move itself to the front of the unsecured-creditors line.").

{797} ***In re Brayan*, 602 B.R. 350, 351 (Bankr. E.D. Mich. Apr. 22, 2019) (Tucker)** (At conversion from Chapter 7 to Chapter 13, bankruptcy court sua sponte refuses stipulation that would have allowed Chapter 7 trustee an administrative expense claim for compensation when Chapter 7 trustee did not distribute any funds before conversion. "[T]he Court will not approve the Chapter 7 Trustee obtaining any fee or administrative expense if this case is converted to Chapter 13, without the Chapter 7 Trustee having made any disbursements or having turned over any money to any non-debtor parties in interest. . . . [U]nder the plain language of 11 U.S.C. § 326(a), a Chapter 7 trustee is not entitled to any compensation, when a Chapter 7 case is converted to Chapter 13 with the Chapter 7 trustee having made no disbursements.").

{798} ***In re Mitchell*, No. 18-80336, 2019 WL 7840716 (Bankr. M.D.N.C. Jan. 16, 2019) (James)** (Proof of claim asserting priority under § 507(a)(3) and § 502(f) is not entitled to priority because § 502(f) does not apply in a voluntary Chapter 13 case.).

§ 136.16 Postpetition Interest on Priority Claims before BAPCPA
§ 136.17 Postpetition Interest on Priority Claims after BAPCPA

{799} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *3–*4 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Citing § 511 and New Jersey law, plan cannot require purchaser of tax sale certificate to apply payments from Chapter 13 debtor first to principal portion of claim; state law fixes interest rate and applies GAAP principles to pay interest and penalties before principal. "SLS, as a tax certificate holder, is treated as a secured creditor, holding a lien against the Debtors' Property. . . . [T]o the extent SLS is over-secured, upon application of 11 U.S.C. § 506(a), it is entitled to collect interest on its claim at 'the rate determined under applicable nonbankruptcy law.' 11 U.S.C. § 511(a). . . . Pursuant to § 511, state law must be applied when determining interest due to an over-secured claimant. . . . [M]unicipalities are required to follow the Generally Accepted Accounting Principles . . . . Debtor may not deviate by applying payments to principal first and interest thereafter.").

§ 136.18 Secured Priority Claims before BAPCPA
§ 136.19 Secured Priority Claims after BAPCPA

{800} ***In re Cochran*, No. 16-00760, 2020 WL 535998 (Bankr. N.D. Iowa Jan. 31, 2020) (Collins)** (Confirmation of plan that surrendered four co-owned properties to former spouse in full satisfaction of her claim did not discharge former spouse's claim in pending adversary proceeding; judgment of nondischargeability in adversary proceedings is binding and balance of debt to former spouse, now unsecured, is nondischargeable.).

{801} ***In re Beasley*, No. 18-04268-DSC13, 2019 WL 3403361 (Bankr. N.D. Ala. July 3, 2019) (Crawford)** (Former spouse has secured claim to extent of value of assets scheduled and not scheduled by Chapter 13 debtor based on recorded judgments in domestic relations litigation.).

§ 136.20 Alimony, Maintenance and Support in Cases Filed after October 22, 1994
§ 136.21 Domestic Support Obligations after BAPCPA

{802} ***Ford v. Waage*, No. 8:18-cv-2053-T-02, 2019 WL 2027729, at *4 (M.D. Fla. May 8, 2019) (Jung)** (Appeal is untimely of bankruptcy court decision to defer to state court to determine amount of support owed by Chapter 13 debtor. "'The bankruptcy court is without proper authority to determine the total amount of the domestic support obligation from which it might subtract the credits claimed by Mr. Ford.'").

{803} ***In re Buehler*, No. 19-31696-dwh13, 2020 WL 939159 (Bankr. D. Or. Feb. 24, 2020) (Hercher)** (Based on estimation of state and federal taxes that former spouse is likely to pay that will trigger debtor's obligation to reimburse one-half, proof of claim by former spouse for $87,539.85 is allowed as a nonpriority claim for $16,157.52.).

{804} ***In re Cochran*, No. 16-00760, 2020 WL 535998 (Bankr. N.D. Iowa Jan. 31, 2020) (Collins)** (Confirmation of plan that surrendered four co-owned properties to former spouse in full satisfaction of her claim did not discharge former spouse's claim in pending adversary proceeding; judgment of nondischargeability in adversary proceedings is binding and balance of debt to former spouse, now unsecured, is nondischargeable.).

{805} ***Potts v. Potts (In re Potts)*, No. 18-01052, 2020 WL 476592 (Bankr. N.D. Miss. Jan. 29, 2020) (Maddox)** (Former spouse's claim and lien securing that claim are not entitled to priority and nondischargeability because domestic support obligation factors slightly favor debtor—payments do not cease at remarriage; relative incomes were not considered by state court; and award was intended to compensate for loss of interest in homestead.).

{806} ***In re LaSpina*, 611 B.R. 219 (Bankr. E.D. Pa. Jan. 3, 2020) (Chan)** (After review of state court special master report and considering significant income disparity, one-third of state court award was a priority, nondischargeable support obligation and two-thirds of the award was equitable division of property that could be discharged in a Chapter 13 case.).

{807} ***In re Stuteville*, 611 B.R. 886 (Bankr. D.N.M. Nov. 27, 2019) (Jacobvitz)** ($10,000 judgment in favor of former spouse for guardian ad litem fees for children in divorce is a domestic support obligation entitled to priority in Chapter 13 case; that payment by former spouse to guardian ad litem resulted in assignment of the debt to the former spouse does not defeat the DSO nature of the judgment. In contrast, $1,000 sanction for nonpayment of the debtor's share of guardian ad litem fees was not a DSO.).

{808} ***In re Wobbleton*, 607 B.R. 827 (Bankr. E.D. Va. Sept. 30, 2019) (Kindred)** (Based on disparity of incomes, household needs of children and structure of state court decree, Chapter 13 debtor's obligation to pay mortgage on former marital residence is a domestic support obligation entitled to priority that must be paid in full.).

{809} ***In re Moore-McKinney*, 603 B.R. 855, 861–62 (Bankr. N.D. Ga. May 10, 2019) (Hagenau)** (Interest is included in domestic support obligation after BAPCPA and claim of former spouse must be paid with state law rate interest as part of nondischargeable DSO notwithstanding § 1322(b)(10). Interest in DSO is allowable and must be paid in current case notwithstanding that former spouse did not seek postpetition interest on DSO in prior case. DSO and interest are nondischargeable and there is no preclusive effect of prior plan with respect to former spouse's right to postpetition interest. "The interest that accrues on a prepetition debt in the nature of alimony, maintenance or support shares the nondischargeable character of the debt and becomes part of the DSO itself. . . . Section 101(14A) enlarged the concept of a domestic support obligation to define post-petition interest as part of the DSO claim itself. The Bankruptcy Code therefore not only *allows* but *requires* Chapter 13 plans to provide for payment of post-petition interest on DSO claims. . . . There is no reference to or exception for DSOs in section 1322(b)(10). . . . But the predicate to § 1322(b) is that all of its subsections are 'subject to subsection[ ] (a).' . . . It is subparagraph (2) in 'subsection[ ] (a)' that mandates that a chapter 13 plan provide for full payment of all claims entitled to priority under § 507. Paying post-petition interest as part of a DSO claim under § 101(14A) is therefore required by § 1322(a)(2) and an exception to the general rule in § 1322(b)(10) . . . .").

{810} ***Thompson v. Thompson (In re Thompson)*, No. 18-4030-BEM, 2019 WL 1914132 (Bankr. N.D. Ga. Apr. 29, 2019) (Ellis-Monro)** (Obligation to pay for house and car in divorce decree was not in the nature of support when former spouse had greater income, decree contained no findings of fact indicative of support and no other domestic support obligation factors were supported by evidence.).

§ 136.22 Driving or Boating while Intoxicated Priority after BAPCPA

E. POSTPETITION CLAIMS

§ 137.1 Postpetition Claims before BAPCPA
§ 137.2 Postpetition Claims after BAPCPA

{811} ***In re Van*, 612 B.R. 893 (Bankr. N.D. Ill. Jan. 13, 2020) (Goldgar)** (County's claim for property taxes for prepetition tax years is a prepetition claim notwithstanding that claim was sold prepetition and did not revert to county until "error" was declared by purchaser and county repurchased tax claim after bankruptcy. Contingent claim at petition was not a postpetition claim notwithstanding that contingency occurred years after bar date. County is bound by confirmed plan and its claim will be discharged when it did not object to confirmation or file a timely claim. County could have protected itself by filing contingent claims for purchased tax debts.).

{812} ***In re Kielman*, 609 B.R. 818 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (Postpetition defaults in payments of prepetition car note are not postpetition claims for § 1305 purposes. Postpetition claims under § 1305 are not a route around the failure of a prepetition car lender to timely file a proof of claim when the pro se debtor failed to schedule the car lender and the late-filed claim of the car lender was disallowed.).

F. MISCELLANEOUS CLAIMS QUESTIONS

§ 138.1 Alimony, Maintenance and Support in Cases Filed before October 22, 1994
§ 138.2 Claims for Creditors' Attorneys' Fees

{813} ***In re Sylvester*, No. 19-11716, 2020 WL 1140890 (E.D. La. Mar. 9, 2020) (Lemmon)** (After conversion from Chapter 13 to Chapter 7, bankruptcy court appropriately awarded administrative expense to attorney that prosecuted successful fraudulent conveyance action against Chapter 13 debtor. However, fee award is vacated for findings with respect to reasonableness. Creditor that prosecuted fraudulent conveyance action had derivative standing to pursue the avoidance action and Chapter 13 trustee joined as a party in that litigation. Decision is not clear with respect to what priority the administrative expense would have in the Chapter 7 case.).

{814} ***In re Chapman*, No. 19-26731-beh, 2020 WL 1212773, at *1–*6 (Bankr. E.D. Wis. Mar. 11, 2020) (Hanan)** (Attorney sanctioned under Bankruptcy Rule 9011 for filing "emergency" Chapter 13 petition based on power of attorney and a fabricated story by the debtor's daughter. Simple investigation would have revealed two prior similar cases within a year. Debtor was not aware that daughter was filing bankruptcy petitions using a power of attorney. Daughter represented that debtor's son would fund the plan, but son was unaware of daughter's misrepresentations. "Neither Attorney Clowers nor [paralegal] spoke with Mrs. Chapman herself prior to filing the Chapter 13 bankruptcy case on her behalf . . . . [Daughter] did not disclose to Attorney Clowers and [paralegal], nor did they discover themselves, that two previous cases had been filed on behalf of Mrs. Chapman in the preceding twelve months. . . . Bankruptcy Rule 9011 includes a 21-day 'safe harbor' provision . . . . But the safe harbor provision does not apply if the challenged paper is a

bankruptcy petition . . . . [T]he Clowers firm took [daughter], the power of attorney, at her word . . . . [T]he petition erroneously states 'no previous cases.' . . . [O]ne phone call to the debtor's prior counsel . . . and would have learned that [daughter] had spun the same sham story about a brother whom she claimed would save the day by paying the mortgage arrears, but never actually did so. . . . The fact that counsel filed without adequate investigation, relying on a fairly sympathetic, albeit untrue, story by the debtor's disingenuous and manipulative daughter, suggests a negligent sense of urgency . . . . [A] monetary sanction is warranted . . . . One-third of the fees and costs incurred for the instant, third case seems appropriate.").

{815} ***In re Manz*, No. 19-30090 (JNP), 2020 WL 1180752 (Bankr. D.N.J. Mar. 10, 2020) (Poslusny)** (Chapter 13 debtor is liable to landlord for attorney's fees based on consent agreement notwithstanding ambiguities in contract and covenants with respect to fees. Under state law, fees must be reasonable and reasonableness will require further hearing.).

{816} ***In re Smith*, No. 19-30059-dwh13, 2020 WL 129439 (Bankr. D. Or. Jan. 8, 2020) (Hercher)** (Oversecured lender is allowed attorney's fees with 7.5% interest payable through confirmed plan. Lender is not entitled to immediate payment of attorney's fees but instead is entitled by confirmed plan to be paid at sale or refinance.).

{817} ***In re Vinson*, No. 19-10544-JGR, 2019 WL 6834842, at *5–*8 (Bankr. D. Colo. Dec. 5, 2019) (Rosania)** (Banks $60,000 claim for attorney's fees for four prepetition foreclosures, a prior Chapter 7 case, and participation in current Chapter 13 case is reduced to $11,785. Fee application was almost incomprehensible with lumped entries, multiple lawyers, and entries for noncompensable work. Petition and plan were filed in a good faith effort to save the debtor's home when the only issue was attorney's fees payable to the mortgagee's counsel. "Under Colorado state law, attorney's fees claimed under a contract are subject to a reasonableness standard, . . . , which is determined by reference to the so-called lodestar factors . . . . It has taken the Court hours to decipher a reasonable fee. The Court reviewed the one hundred and thirty-four pages on two different occasions and took fifteen pages of internal notes. The legal fee statements were in reverse chronological order, the fee summary contained a math error that took several hours to uncover, the attorney time was hopelessly lumped, the categories were hopelessly lumped, the categories were combined between the three promissory notes, three lawyers worked on the file . . . , there were multiple inter-office communications, there was legal research on fundamental bankruptcy law issues, and there was random allocation of fees between categories. . . . The Bank was overly aggressive in the post-petition period, using several lawyers on another one lawyer matter and engaging in far-fetched discovery. The animosity between the parties was palpable.").

{818} ***In re Bulger*, 606 B.R. 526 (Bankr. W.D.N.Y. Sept. 16, 2019) (Bucki)** (Fees sought by mortgagee for filing proof of claim and objecting to Chapter 13 plan are reduced to amounts that would be allowed by Fannie Mae had the lender not been an individual—$4,000 claim reduced to $1,150. $7,500 attorney's fee requested for defending objection to proof of claim is denied in full because settlement of objection reduced amount of claim—indicating that claim was excessive—and it is not reasonable to require Chapter 13 debtors to pay attorney's fees for defense of an excessive claim.).

{819} ***In re Fanning*, No. 18-11163-JDL, 2019 WL 2179734 (Bankr. W.D. Okla. May 22, 2019) (Loyd)** (Wells Fargo is allowed $1,400 "flat fee" for attorney services in foreclosure before Chapter 13 petition. By including fees in prepetition proof of claim with sufficient description to satisfy Bankruptcy Rule 3001, fees were entitled to evidentiary presumption and debtor did not present evidence of unreasonableness. Court is not bound by flat fee agreement between Wells Fargo and its counsel but flat fee was less than hourly rate would have been.).

§ 138.3 Creditors' Attorneys' Fees: New Recovery Rights after BAPCPA

{820} ***In re Sheed*, 607 B.R. 470 (Bankr. E.D. Pa. Oct. 3, 2019) (Coleman)** (Chapter 13 debtor's objection to foreclosure fees and costs included in mortgagee's proof of claim is overruled based on *res judicata* effect of state court foreclosure judgment and ambiguous terms of mortgage modification agreement. Court seems to hold that attorney's fees and costs are not part of "mortgage arrearages" that were folded into the note as part of mortgage modification agreement.).

§ 138.4 Nonrecourse Claims and Claims Discharged in Prior Bankruptcy Case

{821} ***Asset Mgmt. Holdings, LLC v. Hernandez (In re Hernandez)*, No. CC-19-1013-FSTa, 2019 WL 5066745, at *4 (B.A.P. 9th Cir. Oct. 8, 2019) (not for publication) (Faris, Spraker, Taylor)** (Applying *Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris), stripped-off lienholder in Chapter 20 case does not have an allowable unsecured claim. That debtor delayed a year during which lienholder received distributions as an unsecured creditor does not change disallowance of the unsecured claim. "[A]fter a lien is 'stripped' in a chapter 13 case, 'the junior lienholder will ordinarily be left with an allowed unsecured claim . . . .' . . . [T]he result is different when the debtor obtains a chapter 7 discharge, then avoids a wholly unsecured lien in a subsequent chapter 13 case . . . . [T]he chapter 7 discharge extinguishes the debtor's personal liability to the creditor, leaving the creditor with no allowed unsecured claim in the subsequent chapter 13 case.").

{822} ***Washington v. Real Time Resolution, Inc. (In re Washington)*, 602 B.R. 710, 715–16 (B.A.P. 9th Cir. July 30, 2019) (Lafferty, Kurtz, Faris)** (Applying logic of *Free v. Malaier (In re Free)*, 542 B.R. 492 (B.A.P. 9th Cir. Dec. 17, 2015) (Jury, Kirscher,

Faris), after discharge of personal liability in prior Chapter 7 case and strip-off of surviving lien under *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. Dec. 24, 2002) (D.W. Nelson, T.G. Nelson, Schwarzer), no allowable unsecured claim remains to be paid in the Chapter 13 case. "Under § 524, the chapter 7 discharge enjoins enforcement of the claim against the debtor personally, and nothing in the Bankruptcy Code authorizes resurrecting the creditor's in personam rights. . . . ' . . . Congress knows how to turn a nonrecourse claim into a recourse obligation (see § 1111(b)(1)), and no such text can be found in § 506(a)(1).' . . . [T]his Panel has held that, for eligibility purposes, debts for which in personam liability has been discharged in a prior chapter 7 case cannot be counted toward the unsecured debt limitation of § 109(e). . . . [I]n light of Ms. Washington's claim objection, the court was required to consider whether the unsecured claim was enforceable against the debtor. Because it was not, the claim should have been disallowed. There is simply no statutory basis for resurrecting the debtor's personal liability or for treating the claim as a claim against the estate.").

{823} ***Ihejurobi v. Wells Fargo Bank, N.A.*, No. SAG-19-1391, 2019 WL 5102679 (D. Md. Oct. 11, 2019) (Gallagher)** (Frivolous argument that mortgage lien was rendered "unenforceable" by discharge in prior Chapter 7 case allows Wells Fargo to file separate motion for sanctions against attorney; bankruptcy court warned counsel that argument was frivolous but counsel appealed anyway.).

§ 138.5 Truth-in-Lending and Other Consumer Protection Statutes

{824} ***Davis v. Carrington Mortg. Servs., LLC*, No. 2:18-cv-02181-APG-VCF, 2020 WL 1853317 (D. Nev. Apr. 10, 2020) (Gordon)** (In FCRA action against Experian and others, not unreasonable that credit report stated mortgage was discharged in Chapter 13 case. Reporting agency was not required to determine complicated legal question whether mortgage debt was discharged.).

{825} ***Slyzko v. Equifax Info. Servs. LLC*, No. 2:19-cv-00176-JAD-EJY, 2020 WL 1433518 (D. Nev. Mar. 23, 2020) (Dorsey)** (Chapter 13 debtor's broad-ranging class action complaint under FCRA against Experian is dismissed for the most part—some claims with, some claims without, leave to amend. Gist of complaint was that Experian inaccurately reported the status of debts during and after Chapter 13 case.).

{826} ***Calvillo v. Experian Info. Sols., Inc.*, No.: 2:19-cv-00279-JAD-BNW, 2020 WL 1433521 (D. Nev. Mar. 23, 2020) (Dorsey)** (Chapter 13 debtor's multi-count complaint against Experian under FCRA and various state consumer protection laws with respect to reporting of debt that was paid during Chapter 13 case and/or discharged, including the use of behavioral information, is partially dismissed.).

{827} ***Steinmetz v. American Honda Fin.*, No. 2:19-cv-00067-APG-EJY, 2020 WL 1324989 (D. Nev. Mar. 20, 2020) (Gordon)** (Chapter 13 debtor's FCRA complaint is dismissed: credit reporting agency does not violate FCRA by reporting $0 owed for debt discharged in Chapter 13 case. METRO 2 guidelines are not binding. That debtor made voluntary payments to creditors after discharge is not within FCRA reporting requirements. Experian's handling of "behavioral data" did not state a claim under FCRA.).

{828} ***Rogers v. Wells Fargo Bank, N.A.*, No. 19-cv-02596, 2020 WL 1081721 (N.D. Ill. Mar. 6, 2020) (Seeger)** (Chapter 13 debtor's FCRA complaint for inappropriate access to credit report after discharge survives motion to dismiss. Wells Fargo accessed debtor's credit report two weeks after discharge in a Chapter 13 case in which the property securing the claim was surrendered and Wells Fargo's debt was discharged as a personal liability. Debtor's challenge to accessing the credit report states a claim for inappropriate access under FCRA.).

{829} ***Howard v. LVNV Funding, LLC*, No. 3:19-cv-93, 2020 WL 978653 (W.D. Pa. Feb. 28, 2020) (Gibson)** (FDCPA is not preempted by Bankruptcy Code when allegation is that LVNV filed false and misleading proofs of claim that combined interest and other charges with principal. Filing proof of claim can violate FDCPA when proof of claim is false or misleading and Chapter 13 debtor's complaint states cause of action that survives motion to dismiss.).

{830} ***Sandifer v. Copiah Bank, N.A*, No. 3:19-CV-623-DPJ-FKB, 2020 WL 854194 (S.D. Miss. Feb. 20, 2020) (Jordan)** (Equifax is instructed to file an amended answer stating specific defenses in Chapter 13 debtor's action under FDCPA with respect to inaccurate reporting of debt discharged in Chapter 13 case.).

{831} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 1328640, at *2–*6 (S.D. Ind. Jan. 30, 2020) (Pryor)** (In Chapter 13 debtor's postdischarge action against Ocwen under RESPA, FDCPA, FCRA and other consumer protection statutes, discovery dispute is resolved by United States Magistrate judge in favor of debtor with respect to "risk convergence reports" and other records relevant to Ocwen's knowledge that its REALServicing platform was broken and could not accurately account for payments in a Chapter 13 case. "Defendant Ocwen used a software-based servicing system, called REALServicing, that was subject to various failings. . . . Ocwen maintained spreadsheets, called 'Risk Convergence Reports,' that tracked regulatory violations and potential areas for risk with the REALServicing platform. . . . Plaintiff sought these Risk Convergence Reports ('RCR'), and any email correspondence . . . , . . . establishing Ocwen's knowledge, willful indifference, or deliberate violation of federal law. . . . Plaintiff has explained . . . that, if provided, the RCRs will be used to show that Ocwen was aware of the widespread problems related to the REALServicing platform, had been aware for a significant period of time, and had not engaged in the appropriate corrective behavior. Accordingly, the Court finds that the Plaintiff's request for the RCRs is relevant. . . . The RCRs, while potentially a result of the

nationwide consent decrees, do not necessarily hinge on the terms of those decrees, nor do they reveal any confidential information from the settlement negotiation process. Instead, the RCRs appear to be spreadsheets created in the normal course of Ocwen's business, in an attempt to track potential points of liability and forestall future regulatory action.").

{832} ***Coordes v. Wells Fargo Bank, N.A.*, No. 2:19-CV-0052-TOR, 2019 WL 5295526 (E.D. Wash. Oct. 18, 2019) (Rice)** (Chapter 13 debtors' class action complaint under state consumer protection statutes with respect to Wells Fargo's flawed software that improperly denied mortgage modification applications survives motion to dismiss for the most part.).

{833} ***Wortman v. Rushmore Loan Mgmt. Servs. LLC*, No. 19 C 2860, 2019 WL 5208893 (N.D. Ill. Oct. 16, 2019) (Kendall)** (Chapter 13 debtors' post-discharge claims under FDCPA and state Consumer Protection Act fail because debtors did not give the pre-suit notice required by the mortgage. That debtors claimed discharge of the mortgage does not change this outcome because only personal liability was discharged in the completed Chapter 13 case. The mortgage lien survived and its terms require notice before initiating litigation.).

{834} ***Leoni v. Experian Info. Sols. Inc.*, No. 2:17-cv-01408-RFB-VCF, 2019 WL 4866118 (D. Nev. Sept. 26, 2019) (Boulware)** (Chapter 13 debtor proved for FCRA purposes that Experian incorrectly reported the date of debtor's Chapter 13 case but debtor failed to show any injury.).

{835} ***Steinmetz v. American Honda Fin.*, No. 2:19-CV-64 JCM (VCF), 2019 WL 4415090 (D. Nev. Sept. 16, 2019) (Mahan)** (Motion to dismiss FCRA action is granted because reporting zero balances and charge-offs after discharge in a Chapter 13 case is accurate notwithstanding that debtor continues to make voluntary payments after the discharge of personal liability.).

{836} ***Hamilton v. LoanCare, LLC*, No. 19 C 0554, 2019 WL 3973132 (N.D. Ill. Aug. 22, 2019) (Rowland)** (For purposes of motion to dismiss, magistrate judge finds that complaint states plausible cause of action under FDCPA when LoanCare sent debtor letter that purported to "waive" collection of deficiency on mortgage that was discharged in Chapter 13 case. Notice implied that deficiency was collectible prior to the waiver notwithstanding disclaimer that notice was not a collection effort.).

{837} ***Galea v. Wells Fargo Bank, N.A.*, 388 F. Supp. 3d 1212 (E.D. Cal. Aug. 1, 2019) (Mendez)** (FCRA complaint by Chapter 13 debtor against Wells Fargo, Equifax and others survives motion to dismiss when credit report eight months after completion of plan and discharge showed a monthly payment amount past due and did not comply with Metro 2 format for reporting discharge in Chapter 13 cases.).

{838} ***Barnette v. Equifax, Inc.*, No. 2:18-cv-01348, 2019 WL 3491941 (S.D. W. Va. July 12, 2019) (Tinsley)** (Magistrate judge recommends dismissal of Chapter 13 debtor's deficient complaint that student loan creditor with nondischargeable debt violated state consumer protection laws by reporting inaccurate debt information after failing to investigate debtor's claims of error. Many of debtor's causes of action are preempted by FDCPA.).

{839} ***Cole v. Insouth Bank (In re Cole)*, No. 2:15-mc-00017-SHM-dkv, 2019 WL 2440082 (W.D. Tenn. June 11, 2019) (Mays)** (District court accepts bankruptcy judge's recommendation of dismissal of Chapter 13 debtor's adversary proceeding against bank under Fair Housing Act and Tennessee Human Rights Act. Debtor's commercial properties are not "dwellings" for purposes of the statutes under which the debtor seeks to proceed.).

{840} ***Sanchez v. Servis One*, No. 18cv586 JM(JMA), 2019 WL 2373565 (S.D. Cal. June 4, 2019) (Miller)** (On motion to dismiss, Chapter 13 debtor's complaint states claims under FCRA and California law when debt was reported as delinquent notwithstanding discharge at completion of payments. Even prior to discharge, some courts hold that industry standard requires mention of bankruptcy filing in addition to continuing to report delinquency.).

{841} ***Holmes v. JP Morgan Chase Bank*, No. 18-cv-01693 DMS (JLB), 2019 WL 2183449 (S.D. Cal. Feb. 12, 2019) (Sabraw)** (Chapter 13 debtor's complaint against mortgagee under California Consumer Credit Reporting Agency Act is dismissed without prejudice when credit report included reference to Chapter 13 case and was not misleading.).

{842} ***Pritchett v. Paul Mason & Assocs., Inc.*, No. 3:15-cv-00197-TCB-RGV, 2017 WL 11151625 (N.D. Ga. Feb. 1, 2017) (Vineyard), *report and recommendation adopted in part, rejected in part by* No. 3:15-cv-197-TCB, 2017 WL 11151610 (N.D. Ga. Mar. 2, 2017) (Batten)** (Magistrate judge recommends denial of summary judgment in FCRA action against creditor for filing proof of claim in Chapter 13 case based on debt discharged in prior bankruptcy case. Magistrate judge recommends referral to bankruptcy court of action for contempt of discharge injunction based on filing of proof of claim in Chapter 13 case by creditor with debt discharged in prior bankruptcy case.).

{843} ***Holder v. Carrington Mortg. Servs., LLC*, No. 1:15-CV-04342-LMM-JCF, 2016 WL 11574764 (N.D. Ga. May 23, 2016) (Fuller)** (Magistrate judge recommends dismissal of Chapter 13 debtor's FDCPA action based on failure to plead that mortgage servicer was a "debt collector.").

{844} ***Delane v. Carrington Mortg. Servs., LLC*, No. 1:15-cv-04409-CAP-CMS, 2016 WL 11581718 (N.D. Ga. May 18, 2016) (Salinas)** (Magistrate judge recommends that Chapter 13 debtor's complaint that Carrington violated FCRA survives motion to dismiss but claims under FDCPA fail because of lack of proof that Carrington is a "debt collector.").

{845} ***Steed v. GSRAN-Z, LLC (In re Steed)*, No. 19-5201-JWC, 2020 WL 1562526 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (*Ad valorem* taxes and fees being collected by purchaser of tax certificates are not "debts" for purposes of FDCPA.).

{846} ***Barkley v. Santander Consumer USA Inc. (In re Martin)*, No. 19-02193-NPO, 2020 WL 1670254 (Bankr. S.D. Miss. Mar. 30, 2020) (Samson)** (Chapter 13 debtor's adversary proceeding against Santander under FDCPA, Bankruptcy Rule 9011 and various other theories for filing a proof of claim for a debt it knew to be extinguished by Mississippi law more than nine years before the petition is dismissed based on *Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017).).

{847} ***McGarvey v. USAA Sav. Bank (In re McGarvey)*, 613 B.R. 285 (Bankr. E.D. Cal. Feb. 21, 2020) (Sargis)** (FCRA claims against bank for reporting debts as delinquent instead of reporting that debts were provided for in a confirmed Chapter 13 plan consistent with METRO guidelines are dismissed for the most part because prior to discharge the information reported was not inaccurate and industry standards do not control in FCRA cases; one claim remaining for trial is whether bank violated automatic stay by not correcting its credit reporting to show that debt was involved in a Chapter 13 case.).

{848} ***Nagel v. Kentucky Tax Billing Servicing, Inc. (In re Nagel)*, No. 19-2009, 2020 WL 1182664 (Bankr. E.D. Ky. Feb. 21, 2020) (Wise)** (Chapter 13 debtor's action against purchaser of tax certificates for filing false claims is dismissed because there is no independent cause of action for filing a false claim in bankruptcy based on the criminal liability described in 18 U.S.C. § 152(4). Bankruptcy court abstains from various state law causes of action. Debtor alleged that purchaser of tax certificates routinely and falsely filed secured claims and filed claims against debtors based on *in rem* judgments against specific tax sale property that would not give rise to liens on other property and would not create personal liability.).

{849} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Purchaser at prepetition tax sale violated Pennsylvania consumer protection statutes by demanding rent to which there was no entitlement, demanding possession when possession belonged to debtor, and intimidating debtor in effort to force debtor to vacate property. Purchaser at prepetition tax sale demanded rent and otherwise acted like owner of property after debtor exercised redemption right by proposing plan that would pay redemption amount over life of plan. Exercise of redemption right through plan before it expired cut off vesting of title in purchaser. Chapter 13 debtor satisfied redemption right by proposing plan that paid redemption amount over life of plan as permitted by Bankruptcy Code. Exercise of redemption right does not require completion of payment of redemption amount to stop title from vesting in purchaser. Debtor recovers nominal actual damages, not including emotional distress damages, and is awarded attorney's fees.).

{850} ***Torres Melendez v. Collazo Connelly & Surillo, LLC (In re Torres Melendez)*, No. 19-0400, 2020 WL 557320 (Bankr. D.P.R. Feb. 4, 2020) (Lamoutte)** (Bankruptcy court has jurisdiction over Chapter 13 debtors' FDCPA action when any recovery will increase payments to unsecured creditors through the confirmed plan. Complaint against foreclosure law firm states claim under FDCPA when notices from law firm were timed from mailing instead of from receipt by debtors and complaint alleges that law firm was a debt collector.).

{851} ***Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 610 B.R. 787, 795–803 (Bankr. E.D. Pa. Dec. 20, 2019) (Frank)** (On reconsideration—see *Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019) (Frank)—complaint pleads sufficient facts to find that Ocwen violated the FDCPA by filing a proof of claim that included attorney's fees to which the mortgagee was not entitled under state law; *Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017), did not decide whether the filing of a proof of claim could violate the FDCPA in a bankruptcy case and that issue remains for factual development and trial. The Bankruptcy Code and FDCPA are not irreconcilable with respect to filing of a proof of claim by a mortgagee with a prepetition foreclosure judgment because the creditor can simply treat the judgment amount as the principal balance on Part 2 of Official From 410A. Ocwen, through its law firm Phelan Hallinan Diamond & Jones, LLP, filed a proof of claim that included various expense advances that were not chargeable to the debtor after entry of a prepetition foreclosure judgment. "The Debtor asserts that in demanding payment of these uncollectible charges in the POC, Ocwen misrepresented the character, amount, or legal status of the debt . . . . In *Midland Funding*, the Court held that filing a proof of claim in a chapter 13 bankruptcy case that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the FDCPA. . . . Ocwen proposes a broad reading of *Midland Funding* . . . . I decline Ocwen's invitation to hold that a debt collector can never violate the FDCPA when it files a proof of claim in a bankruptcy case. . . . I conclude that a creditor can complete Official Forms B410 and B410A . . . accurately and without violating the FDCPA. In this respect, there is no conflict between the bankruptcy claims allowance process and the FDCPA. . . . *[I]t is possible* for a debt collector of a residential mortgage creditor to complete Part 2 of Form 410A accurately when the creditor's mortgage has merged into a prepetition foreclosure judgment. This is accomplished simply by treating the foreclosure judgment amount as the 'principal balance' amount to be filled in on the Form and then adding to that amount those post-judgment charges that survive the merger of the mortgage into the judgment or that otherwise are authorized by law."),

vacating in part on reconsideration, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019) (FDCPA claims against U.S. Bank fail because U.S. Bank is the creditor holding the debt, not a debt collector.), *amending and superseding*, 609 B.R. 133 (Bankr. E.D. Pa. Oct. 24, 2019).

{852} ***In re Barragan*, No. 18-12591-JDW, 2019 WL 4180289 (Bankr. N.D. Miss. Sept. 3, 2019) (Woodard)** (Because loan was for a business purpose, TILA did not require notice of three-day right of rescission; Chapter 13 debtor's claim objection is overruled and objection to confirmation from lender is sustained.).

{853} ***Llanos v. Cascade Funding Mortg. Tr. 2017-1 (In re Llanos)*, No. 1:19-ap-01036-MT, 2019 WL 4024949 (Bankr. C.D. Cal. Aug. 26, 2019) (Tighe)** (RESPA and FDCPA claims against mortgage holder and servicer are not preempted by Bankruptcy Code because there are no conflicting remedies and some defendants do not hold claims in this Chapter 13 case. On motion to dismiss, Chapter 13 debtor has raised plausible claim that servicer purchased unnecessary force-placed insurance and failed to refund premiums. Servicer's failures to timely respond to notices of error state a claim. Error by servicer with respect to crediting large reinstatement payment states a claim for relief that will require evidence.).

{854} ***Brown v. Davis (In re Brown)*, No. 19-01100 (MEW), 2019 WL 3889633 (Bankr. S.D.N.Y. Aug. 16, 2019) (Wiles)** (Lender could not have violated HOEPA or TILA because property was rental, not personal residence of Chapter 13 debtor.).

{855} ***Woodford v. Capital Bank, NA (In re Woodford)*, 600 B.R. 520 (Bankr. W.D. Va. May 1, 2019) (Black)** (Bank did not violate Equal Credit Opportunity Act by requiring Chapter 13 debtor's husband to sign deed of trust when husband was not also a borrower on the note but was a co-owner of the collateral.).

{856} ***Jaley v. American Express Nat'l Bank (In re Jaley)*, 600 B.R. 511, 517–18 (Bankr. D. Md. Apr. 29, 2019) (Simpson)** (Putative class action challenging Amex's practice of filing claims that are uncollectible because of three-year limitation under Maryland law is dismissed because debt rendered uncollectible by statute of limitations is still a right to payment with respect to which a proof of claim can be filed in a Chapter 13 case. "[T]he common law rule applicable in Maryland is that the expiration of the limitations period terminates the creditor's remedy, but not the right to payment. . . . Defendant holds an unenforceable right to payment on the Debt even after the expiration of the three-year limitations period. As such, . . . Defendant was within its rights under bankruptcy law to file Claim No. 5.").

{857} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 603 B.R. 555 (Bankr. D.S.C. Jan. 15, 2019) (Waites)** (Motion to amend Chapter 13 debtor's complaint against mortgage holder and servicers is granted with respect to TILA and other causes of action alleging that servicer miscalculated adjustable interest rate and failed to give accurate notices.).

§ 138.6 U.C.C. and Other Commercial Law Questions

{858} ***Highland Greens Homeowners Ass'n of Buena Park v. Basave de Guillen (In re Basave de Guillen)*, 604 B.R. 826 (B.A.P. 9th Cir. Aug. 26, 2019) (Lafferty, Spraker, Taylor)** (Applying California law, bankruptcy court correctly determined that homeowners' association's recorded notice of lien created a secured claim only with respect to assessments and judgments before the notice—not a continuing lien that would include assessments and fees after recording of the notice.).

{859} ***Donahue v. Probasco & Assocs., P.A.*, No. 18-2344-CM-TJJ, 2019 WL 2073870 (D. Kan. May 10, 2019) (Murguia)** (Scheduling debt in Chapter 13 case did not restart statute of limitations for collection under Kansas law.).

{860} ***In re Hornaday*, No. 18-24483-BKC-PGH, 2020 WL 1847163 (Bankr. S.D. Fla. Apr. 9, 2020) (Hyman)** (Second mortgagee's claim for deficiency after foreclosure by first mortgagee is barred by one-year statute of limitations under Florida law. Junior mortgagee had one year from issuance of certificate of sale after foreclosure by first mortgagee in which to bring suit to collect its deficiency.).

{861} ***Real Time Resolutions, Inc. v. United States Small Bus. Admin. (In re Stewart)*, No. 19-1105, 2020 WL 1228669 (Bankr. E.D. La. Mar. 12, 2020) (Grabill)** (In inter-creditor dispute, lienholder is relieved of its unintended release of senior mortgage under exception to Louisiana public records doctrine.).

{862} ***In re Donohue*, No. 19-41271 CN, 2020 WL 419727 (Bankr. N.D. Cal. Jan. 27, 2020) (Novack)** (240% interest rate in loan by Gaia Finance to Chapter 13 debtor is unconscionable.).

{863} ***In re Jarvis*, No. 19-10085, 2020 WL 211406 (Bankr. W.D.N.C. Jan. 2, 2020) (Hodges)** (Applying Virginia UCC, security interest perfected in name of parent entity in a prior transaction does not create a perfected security interest in a subsequent transaction with an affiliate. Debt is unsecured in the Chapter 13 case.).

{864} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Ford Motor Credit did not violate Uniform Enforcement of Foreign Judgments Act when it garnished debtor in Ohio but debtor lived in West Virginia.).

{865} ***In re Simon*, No. 15-12181, 2019 WL 3759555 (Bankr. W.D. La. Aug. 8, 2019) (Hodge)** (Car lender's claim did not violate Louisiana law that permitted use of simple interest in calculation of finance charge in installment sale contract.).

§ 138.7 Miscellaneous Claims Issues

{866} ***Reyes v. Kutnerian (In re Reyes)*, No. EC-18-1229-BSL, 2019 WL 1759749 (B.A.P. 9th Cir. Apr. 19, 2019) (not for publication) (Brand, Spraker, Lafferty)** (Chapter 13 debtors' motion to vacate unlawful detainer judgment entered prepetition is barred by *Rooker-Feldman* doctrine.).

{867} ***Barnes v. Henry*, No. 19-cv-00210-DKW-RT, 2020 WL 201457 (D. Haw. Jan. 13, 2020) (Watson)** (Veil piercing may be available to allow plaintiffs' admiralty claim for maintenance and cure to be asserted against the vessel that would then be owned by the Chapter 13 debtor, rather than by the debtor's corporation; but cure and maintenance claim cannot be asserted against the debtor personally because *in personam* liability would be dischargeable in the debtor's Chapter 13 case.).

{868} ***In re Wagner*, No. 17-11252-TPA, 2020 WL 1844615 (Bankr. W.D. Pa. Apr. 9, 2020) (Agresti)** (With one spouse in Chapter 13 and the other in Chapter 12 and after several failed attempts to inspire the parties to complete a state court divorce with equitable distribution of property, the bankruptcy court carries through its threat to perform the equitable distribution of property in the bankruptcy court applying Pennsylvania domestic relations law principles.).

{869} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2020 WL 812990 (Bankr. D. Or. Feb. 18, 2020) (Brown)** (After successfully defending action for misappropriation of trade secrets under Oregon Uniform Trade Secrets Act, debtor's motion for attorney's fees is denied. Trade secrets action was not brought in bad faith and debtor would have incurred same attorney's fees defending non–Trade Secrets Act portion of lawsuit.).

{870} ***Maldonado Perez v. Banco Santander P.R. (In re Maldonado Perez)*, No. 18-00102 (BKT), 2020 WL 741233 (Bankr. D.P.R. Feb. 13, 2020) (Tester)** (Bankruptcy court denied Bankruptcy Rule 9023 relief from judgment that debtor's adversary proceeding to strip bank's lien is beyond jurisdiction of the bankruptcy court because it involves property of a corporation that is not property of the Chapter 13 estate.).

{871} ***In re Al-Saoudi*, No. 10-44521-drd-11, 2020 WL 443831 (Bankr. W.D. Mo. Jan. 27, 2020) (Dow)** (Creditor's motion to vacate discharge entered in prior Chapter 11 case is denied in subsequent Chapter 13 case in which debtor objected to proof of claim on the basis that it could not be allowed in an amount other than the amount established in the prior Chapter 11 case. Creditor's motion was filed more than a year after entry and without a ground that could be considered under Federal Rule of Civil Procedure 60.).

{872} ***In re Digirolamo*, 612 B.R. 726 (Bankr. M.D. La. Jan. 6, 2020) (Dodd)** (Faulty stucco work was not personal liability of Chapter 13 debtor because contract for work was between general contractor and limited liability corporation. There was no privity of contract between the debtor individually and the injured homeowner and no proof sufficient to pierce corporate veil to find debtor was alter ego of LLC.).

{873} ***In re Thiessen*, No. 18-23176 (RDD), 2020 WL 62607 (Bankr. S.D.N.Y. Jan. 3, 2020) (Drain)** (Claim against Chapter 13 debtor for guaranty of attorney's fees in state court matrimonial dispute is barred by New York State law that precluded collection of attorney's fees in matrimonial representation when attorney required debtor to sign confession of judgment without proper disclosures and court approval.).

{874} ***Little v. Career Educ. Corp. (In re Little)*, 610 B.R. 558 (Bankr. D.S.C. Jan. 3, 2020) (Waites)** (Bankruptcy court declines to order arbitration of core bankruptcy issues including abuse of process under § 105(a) and dischargeability under § 523(a)(8) with respect to claims against Colorado Technical University, Inc. Hearing is scheduled with respect to arbitration of related state law claims of unfair trade practices, breach of contract and the like.).

{875} ***In re Bair*, No. 15-61403, 2019 WL 6045481, at *3 (Bankr. N.D. Ohio Nov. 14, 2019) (not for publication) (Kendig)** (Applying § 347, Chapter 13 debtor's objection to claim of Citi is not proper procedure for debtor to obtain funds paid by Chapter 13 trustee to Citi pursuant to confirmed plan but returned to trustee when creditor was not found. Instead, funds are properly paid into the court registry and held for Citi to claim; failing that, money will be paid to Treasury after five years. "[Section] 347(a) would be rendered meaningless[] if a trustee or a debtor could simply ask the court to disallow a claim every time the trustee was unable to locate a creditor during a case. . . . [T]he funds on hand for the Claim belong to Citi—not Debtor. And if the funds remain unpaid 90 days after the Trustee's final distribution under 11 U.S.C. § 1326, they must be paid into the court for disposition as unclaimed funds pursuant to § 347(a).").

{876} ***In re Miller*, No. 19-41236, 2019 WL 6002189, at *1–*2 (Bankr. N.D. Ohio Nov. 12, 2019) (not for publication) (Kendig)** (Unsecured claim holder that states an interest rate on the face of its proof of claim is not entitled to postpetition interest in a

Chapter 13 case; it is not necessary for the debtor or trustee to object to every claim that contains an interest rate in order to disallow postpetition interest. "The dilemma for the court, the chapter 13 trustee, and debtors arises because section nine of the official claim form contains a field for interest . . . . Frequently, unsecured creditors complete this section, raising the question of whether inclusion of the interest rate is a request for payment of interest on an unsecured claim or simply a recitation of the contractual terms of the debt at the time the case was filed? Without a clear answer, the chapter 13 trustee cautiously requires an objection to disallow interest on an unsecured claim. . . . Reading the Code to require a claim objection permits a creditor to file a claim for interest to which it is not entitled with the hope that it will benefit from an unwary debtor or trustee. It also burdens the trustee or debtor with filing objections to disallow payment of unauthorized interest. . . . When a creditor files a proof of claim setting forth an unsecured claim, it is not entitled to interest. Exceptions to the rule are inapplicable and do not support forcing a claim objection. From here forward, the court will not require debtors and/or trustees to file claim objections that simply seek to disallow the payment of interest[.]").

{877} ***DeWitt v. First Nat'l Bank of Pa. (In re DeWitt)*, 608 B.R. 794 (Bankr. W.D. Pa. Nov. 4, 2019) (Deller)** (Chapter 13 debtors are entitled to a Bankruptcy Rule 2004 examination of a mortgagee with the respect to the existence of credit disability insurance and/or the mortgagee's failure to obtain credit disability insurance.).

{878} ***Scott v. Americash Loans LLC (In re Scott)*, 608 B.R. 774 (Bankr. S.D. Ga. Sept. 26, 2019) (Barrett)** (Arbitration clause is enforced in Chapter 13 debtor's action under Georgia's Pay Day Lending Act with respect to a transaction in South Carolina.).

{879} ***In re Rowell*, No. 18-81847, 2019 WL 4132667 (Bankr. N.D. Ill. Aug. 29, 2019) (Lynch)** (Complicated claim objection with respect to purchase and lease of house by debtor and neighbors is resolved by disallowing portions that could not be collected because of statute of frauds and allowing a portion that was cash contributed to purchase price.).

{880} ***In re McNeilly*, No. 18-31057 (AMN), 2019 WL 3540660 (Bankr. D. Conn. Aug. 2, 2019) (Nevins)** (Claim against debtor disallowed for lack of evidence that debtor's son transferred rental payments to debtor as part of fraudulent scheme to defeat judgment against son.).

{881} ***Bank of N.Y. Mellon v. 251 Gotham LLC*, 604 B.R. 71 (Bankr. S.D. Ala. June 18, 2019) (Callaway)** (District court and bankruptcy court in Alabama have jurisdiction to determine bank's adversary proceeding alleging that former Chapter 13 debtor failed to reveal ownership of real property in New York and fraudulently conveyed that property during the now-dismissed Chapter 13 case.).

{882} ***McHenry v. Macomb Cnty. Treasurer (In re McHenry)*, No. 19-04046, 2019 WL 2224002 (Bankr. E.D. Mich. May 21, 2019) (Randon)** (Real estate taxes have priority over first mortgage under Michigan law.).

{883} ***Ebayyah v. Jaber (In re Jaber)*, No. 18-00052-TOM, 2019 WL 2066950 (Bankr. N.D. Ala. May 9, 2019) (Mitchell)** (Claim in excess of $500,000 is reduced to $180,000 based on lack of evidence that creditor advanced more than $180,000.).

{884} ***In re Daniels*, No. 16-20475, 2019 WL 2003924, at *1 (Bankr. N.D. Ind. Mar. 18, 2019) (Ahler)** (That one spouse in a joint Chapter 13 case died is not a ground under § 502 for disallowance of claims that surviving spouse says are separate debts of spouse who died. "Mr. Daniels died during the pendency of this chapter 13 case. The essence of the objections is that he was the one liable for the debts in question; Mrs. Daniels is not; and so, the claims should be denied. While all that may be true, that is not one of the reasons for which claims are denied. Mr. Daniels is still a named debtor in this case; the case still involves him, his debts and his property. So long as he is a named party to the case, any treatment of claims should continue as if he were still alive. This is entirely consistent with the provisions of Rule 1016 of the Federal Rules of Bankruptcy Procedure . . . .").

{885} ***In re Stucky*, No. 15-10864, 2018 WL 8223571, at *1 (Bankr. N.D. Ind. Nov. 8, 2018) (Grant)** (That one spouse in a joint Chapter 13 case died is not a ground under § 502 for disallowance of claims that surviving spouse says are separate debts of spouse who died. "Mr. Stucky died during the pendency of this chapter 13 case. The essence of the objections is that he was the one liable for the debts in question; Mrs. Stucky is not; and so, the claims should be denied. While all that may be true, that is not one of the reasons for which claims are denied. Mr. Stucky is still a named debtor in this case; the case still involves him, his debts and his property. So long as he is a named party to the case, any treatment of claims should continue as if he were still alive. This is entirely consistent with the provisions of Rule 1016 of the Federal Rules of Bankruptcy Procedure, addressing the effect of the debtor's death in a chapter 13 case.").

{886} ***Peterson v. Phares (In re Peterson)*, 609 B.R. 704 (Bankr. N.D. Ohio May 11, 2018) (Woods)** (Disallowance of claim based on a note is not appropriate when improper acceleration did not excuse Chapter 13 debtor's obligation to pay. Unmatured portions of note are part of the claim for bankruptcy purposes. Bankruptcy court lacks jurisdiction to hear debtor's state law claims against lender.).

§ 138.8 Mortgage Claim Issues

{887} ***Farrington v. U.S. Bank Tr. N.A. (In re Farrington)*, 790 F. App'x 490 (3d Cir. Jan. 14, 2020) (Jordan, Bibas, Phipps)** (*Res judicata* barred Chapter 13 debtor's adversary proceeding challenging U.S. Bank's standing to foreclose. State court decided identical standing issue against debtor in prepetition foreclosure action.).

{888} ***Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1078–88 (7th Cir. Nov. 27, 2019) (Bauer, Brennan, St. Eve)** (For reckless and reprehensible loan servicing and debt collection practices during and after completion of Chapter 13 case, after jury trial, Ocwen ordered to pay compensatory damages of $582,000; punitive damages of $3 million awarded by jury are reduced to $582,000. "[I]n December 2009, [debtor] began a Chapter 13 plan under which she was required to cure her default over 42 months while maintaining her ongoing monthly mortgage payments. . . . [I]n October 2011, shortly after it acquired her previous servicer . . . Ocwen sent her a loan statement saying, inexplicably, that she owed $16,000 immediately. . . . Her statements continued to fluctuate: her February 2013 statement said she owed about $7500, her March statement, $9000. A month later, Ocwen now owed *Saccameno* about $1000 in credit . . . . [T]he bankruptcy court issued a notice of final cure, Fed. R. Bankr. P. 3002.1, informing Ocwen that Saccameno had completed her payments. Ocwen never responded to the notice, and the court entered a discharge order on June 29, 2013. . . . Ocwen . . . reviewed the discharge but mistakenly treated it as a dismissal. . . . [E]ach check was being placed into a suspense account and not being applied to the loan. . . . Saccameno would frequently call Ocwen's customer service line and each time was directed to a new, similarly unhelpful person. . . . Ocwen sent Saccameno an offer to refinance her mortgage . . . . Saccameno's counsel diligently walked Ocwen's representative through its own records payment by payment . . . confirming that Saccameno had made each payment. . . . [Ocwen] continues to place most of the blame on what it calls 'an isolated "miscoding" error committed by a lone employee, identified as "Marla."' . . . Her error was one among a host of others, and each error was compounded by Ocwen's obstinate refusal to correct them. . . . We are not sure how many human errors a company like Ocwen gets before a jury can reasonably infer a conscious disregard of a person's rights, but we are certain Ocwen passed it. The record is replete with evidence that Ocwen's servicing of Saccameno's loan was chaos from the moment Ocwen began working on the loan in 2011 to the day of the jury's verdict nearly seven years later. . . . The utter lack of explanation also supports a finding of corporate complicity. . . . The jury heard evidence that *no one* at Ocwen took any steps, whatsoever, to investigate how Marla's mistake . . . was made or how Ocwen would prevent it from happening again. . . . Ocwen had no explanation for how this whole ordeal happened, let alone how it might be avoided in the future. . . . The loan modification offers were even worse. Putting to one side their timing, the terms, especially of the second offer, were far from generous. Why would Saccameno, having then endured four years with Ocwen, want to chain herself to the company three decades more, only to owe it money at the end? . . . Ocwen insisted it had not seen errors like these before, but its representative admitted it had never bothered to look. The jury was not required to accept Ocwen's bare assertion that this was a unique case—especially considering the consent decrees implying it was not—and could have inferred that this is just how Ocwen does business. For that, Illinois law permits punitive damages. . . . [T]he record contains evidence that Ocwen was a recidivist. The consent decrees described how it had treated other customers as it did Saccameno, and that it had continued its ways despite repeated warnings from regulators. The number of opportunities Ocwen had to fix its mistakes is the core fact that justifies punishment in this case. . . . Ocwen's conduct was reprehensible . . . . Ocwen was . . . indifferent to her rights, including those rights that originated from her bankruptcy. No evidence supports that Ocwen was acting maliciously, though the number of squandered chances it had to correct its mistakes comes close.").

{889} ***Lanton v. Ocwen Loan Servicing, LLC*, 793 F. App'x 398 (6th Cir. Nov. 26, 2019) (Boggs, Moore, Stranch)** (Court of appeals reverses dismissal of Chapter 13 debtors' RESPA claims against mortgage servicer—district court applied too narrow analysis of debtors' claim of damages from Ocwen's misapplication of payments and mishandling of escrow.).

{890} ***Lee v. Select Portfolio Servicing, Inc. (In re Lee)*, 781 F. App'x 677 (9th Cir. Oct. 24, 2019) (Farris, Leavy, Rawlinson)** (Dismissal of Chapter 13 debtor's complaint against mortgage servicer was appropriate without leave to amend because amendment would be futile.), *aff'g*, No. CV 18-6851-JFW, 2018 WL 7501124 (C.D. Cal. Dec. 7, 2018) (Walter) (After dismissal of most recent Chapter 13 case in a series of cases filed to stop foreclosure, bankruptcy court appropriately retained jurisdiction to dismiss with prejudice debtor's adversary proceeding challenging the mortgage.).

{891} ***Mohorne v. Beal Bank (In re Mohorne)*, 772 F. App'x 846 (11th Cir. June 12, 2019) (Pryor, Rosenbaum, Grant)** (Bankruptcy court committed no error refusing to reopen a Chapter 13 case closed in 2013 when debtor seeks only to raise challenges to foreclosure that were decided against the debtor many years earlier.).

{892} ***Rickert v. Specialized Loan Servicing LLC (In re Rickert)*, No. MT-19-1120-LBG, 2020 WL 1170732 (B.A.P. 9th Cir. Mar. 9, 2020) (not for publication) (Lafferty, Brand, Gan)** (Specialized Loan Servicing LLC was real party in interest with possession of mortgage note and proof of an assignment. SLS had standing to file claim for mortgage debt in Chapter 13 case. Debtor's persistent meritless arguments to the contrary were rejected and stay relief granted.), *aff'g* No. 18-60937-13, 2019 WL 1959898 (Bankr. D. Mont. Apr. 29, 2019) (Hursh) (Specialized Loan Servicing has standing to file proof of claim on behalf of original holder of mortgage. Prima facie validity of proof of claim under Bankruptcy Rule 3001(f) was not overcome by debtor's frivolous theories gathered from the Internet. SLS tendered evidence that it was in possession of the original note endorsed in blank.).

{893} ***Reilly v. Wells Fargo Bank (In re Reilly)*, No. AZ-19-1187-SFB, 2020 WL 710371 (B.A.P. 9th Cir. Feb. 11, 2020) (not for publication) (Spraker, Faris, Brand)** (Bankruptcy court correctly determined that Wells Fargo was successor by merger to rights of Wachovia and World Savings as original lender to Chapter 13 debtor and debtor's discharge in prior Chapter 7 case did not extinguish Wells Fargo's lien or debt.).

{894} ***Lee v. Nationstar Mortg., LLC (In re Lee)*, No. OR-19-1140-FBS, 2020 WL 710360 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Faris, Brand, Spraker)** (In context of reverse mortgage, bankruptcy court correctly determined that Nationstar could advance funds for payment of property taxes and then charge payments to loan balance. Taxes were due under Oregon law at the time paid by Nationstar notwithstanding that state could not foreclose delinquent taxes for three years.).

{895} ***Thorpe v. TJ 12, LLC (In re Thorpe)*, No. AZ-18-1330-LBF, 2019 WL 3778359 (B.A.P. 9th Cir. Aug. 9, 2019) (not for publication) (Lafferty, Brand, Faris)** (Chapter 13 debtor has plausible claim that transfer of title from family trust to lender for the purpose of saving property from foreclosure was an equitable mortgage that can be managed in Chapter 13 case.).

{896} ***Bayview Loan Servicing, LLC v. Donnan (In re Donnan)*, No. EC-18-1106-BSL, 2019 WL 1922843, at *3–*4 (B.A.P. 9th Cir. Apr. 29, 2019) (not for publication) (Brand, Spraker, Lafferty)** (Prima facie validity of mortgagee's proof of claim that included arrears to be cured through the plan overcame debtor's naked objection with respect to late charges, NSF fees, broker's price opinion fees and property inspection fees; debtor's objection to foreclosure attorney's fees and costs overcame prima facie validity of proof of claim and bankruptcy court should have allowed an evidentiary hearing. "To overcome the Rule 3001(f) presumption, the objecting party must present evidence tending to rebut the claim—evidence with probative force equal to that of the creditor's proof of claim. . . . Bayview's Claim . . . was prima facie evidence of its validity and amount for the prepetition fees and costs. . . . [T]he Claim Objection . . . did specifically question, supported with the breakdown, whether some of the Foreclosure Attorney's Fees and Costs were incurred postpetition. The Donnans also questioned the reasonableness of these fees, which was a plausible complaint given that Bayview's claim for prepetition fees is subject to a reasonableness standard. . . . [T]he Donnans provided sufficient evidence to rebut the Claim's prima facie effect with respect to the Foreclosure Attorney's Fees and Costs.").

{897} ***Trupp v. Bank of Am., N.A.*, No. 3:19-CV-00479-GNS, 2020 WL 1815940 (W.D. Ky. Apr. 9, 2020) (Stivers)** (Chapter 13 debtors' adversary proceeding against Bank of America and others for invasion of privacy, defamation and violations of FDCPA is dismissed because filing a proof of claim is protected by judicial statement immunity with respect to state law causes of action and FDCPA claim is barred by statute of limitations.).

{898} ***Ocwen Loan Servicing, LLC v. Winnecour*, No. 2:19-CV-527-NR, 2020 WL 1532286 (W.D. Pa. Mar. 31, 2020) (Ranjan)** (Bankruptcy court order granting trustee's motion to require loan histories and proof of correction of inappropriate fees and expenses charged in Chapter 13 cases—and prohibiting future charges—is vacated and remanded for further fact finding and legal conclusions.).

{899} ***Konar v. Ocwen Loan Servicing LLC*, No. 7:19-CV-119-D, 2020 WL 1492767 (E.D.N.C. Mar. 23, 2020) (Dever)** (District court dismisses Chapter 13 debtor's misguided appeal of orders that rejected debtor's objection to Ocwen's mortgage claim, denied confirmation of plan and dismissed Chapter 13 case.).

{900} ***Maggio v. Cenlar FSB*, No. CCB-19-1939, 2020 WL 1331930 (D. Md. Mar. 23, 2020) (Blake)** (Allegation that Cenlar FSB falsely claimed to have sent loan modification agreement to Chapter 13 debtors states a claim for breach of contract. Cenlar claimed that it sent final loan modification agreement to debtors by Federal Express but Federal Express records showed Cenlar never delivered package to Federal Express. Cause of action under Maryland consumer protection statutes fails because debtors failed to adequately plead reliance and damages.).

{901} ***Coppedge v. Specialized Loan Servicing LLC (In re Coppedge)*, No. 19-12-MN, 2020 WL 1332993 (D. Del. Mar. 23, 2020) (Noreika)** (In decade-long battle between pro se debtor and mortgagee that included "vague, repetitive, and nonsensical" claims that debts payable in currency had been forgiven by Congress in 1933, stay relief was appropriately granted to mortgagee. Multiple bankruptcy cases and endless litigation and relitigation—all barred by res judicata after state court foreclosure judgment—supported stay relief and other sanctions previously imposed by bankruptcy court and other courts.).

{902} ***Nowling v. SN Servicing Corp.*, No. 19-CV-1605 (PJS/TNL), 2020 WL 1244809 (D. Minn. Mar. 16, 2020) (Schiltz)** (Although factors under *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (May 29, 2001), are all present with respect to Chapter 13 debtors' undisclosed RESPA action against mortgage servicer, judicial estoppel is not appropriate because debtors had no motive to conceal the action. The likelihood of any substantial recovery was very low. Even if revealed, debtors could have amended exemptions to cover any likely damage award. And once revealed in Chapter 13 case—albeit after completion of payments and discharge—Chapter 13 trustee showed no interest in pursuing any potential recovery on behalf of unsecured creditors.).

{903} ***Arkansas v. Wilmington Tr. Nat'l Ass'n*, No. 3:18-CV-1481-L, 2020 WL 1249570, at *8 (N.D. Tex. Mar. 16, 2020) (Lindsay)** (Neither grant of stay relief nor confirmation of plan that included payment of mortgage precluded—by judicial estoppel or res judicata—subsequent challenge to validity of mortgage lien because debtor claims not to have been aware of defect in lien at time of stay relief motion and validity of mortgage lien was not at issue at confirmation of plan. "The court, however, is not convinced that the treatment and allowance of Wells Fargo's claim in Plaintiff's Chapter 13 bankruptcy case was a final judgment or adjudication on the validity of Wells Fargo's lien because no party sought a determination regarding the status or validity of the lien on Plaintiff's homestead in the bankruptcy case, and, while the plan as confirmed and modified provides for the allowance of Wells Fargo's claim, it does not address the validity of the lien that forms the basis of the claim.").

{904} ***Colone v. Marshall (In re Colone)*, No. 19 C 6571, 2020 WL 1233775 (N.D. Ill. Mar. 12, 2020) (Coleman)** (Claim objection based on argument that Bank of America lacked chain of title or ownership of note was properly rejected based on rejection of identical arguments in prior Chapter 13 case.).

{905} ***Opperwall v. Bank of Am., N.A.*, No. 18-cv-07711-JST, 2020 WL 1227170 (N.D. Cal. Mar. 2, 2020) (Tigar)** (After many years of litigation and relitigation, dismissal of Chapter 13 debtor's claim that Bank of America was bound by a nonexistent mortgage modification agreement was appropriate.), *aff'g* No. 18-04090, 2018 WL 6133544 (Bankr. N.D. Cal. Nov. 21, 2018) (Lafferty) (Postdischarge adversary proceeding alleging that Bank of America agreed to modify mortgage is dismissed based on binding effect of confirmation of plan that said debtor would seek mortgage modification and preclusive effect of dismissal of prior adversary proceeding in which debtor made same allegations. Confirmation of plan that "assumed" mortgage modification was binding on debtor and BOA but did not modify underlying mortgage. Debtor was substantially in arrears after years of paying at rate in confirmed plan but debtor failed in two adversary proceedings to demonstrate that BOA agreed to a loan modification. Rule 9011 sanctions awarded to BOA—filing of second adversary proceeding was frivolous and it was brought for improper purpose.).

{906} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 588589 (S.D. Ind. Feb. 6, 2020) (Magnus-Stinson)** (District court declines to consolidate civil actions against Ocwen and PHH in which Chapter 13 debtors claim use of REALServicing system by servicers produced a pattern and practice of broken and abusive mortgage servicing in Chapter 13 cases. Court concludes that factual differences overcome similar legal theories and that cases are at different stages of development.).

{907} ***Hernandez v. Franklin Credit Mgmt. Corp.*, No. C19-0207-JCC, 2020 WL 583814 (W.D. Wash. Feb. 6, 2020) (Coughenour)** (Applying Washington State's reciprocal attorney's fees statute, Chapter 13 debtor recovers $21,945 in attorney's fees from mortgagee after prevailing before district court in claim objection based on time bar to enforcement of deed of trust.).

{908} ***Sutton v. Eagle Vista Equities LLC*, No. 19-cv-03880-EMC, 2020 WL 571056 (N.D. Cal. Feb. 5, 2020) (Chen)** (Based on presumption of regularity of foreclosure sale, bankruptcy court correctly determined that purchaser at mortgage foreclosure sale was a bona fide purchaser whose interests could not be avoided by Chapter 13 debtor.).

{909} ***Guiuan v. Wells Fargo Bank, N.A.*, No. 18-11423 (ES), 2020 WL 219870 (D.N.J. Jan. 15, 2020) (Salas)** (*Pro se* appeal of Chapter 13 debtor's challenge to foreclosure is dismissed for lack of merit and lack of compliance with appellate filing requirements.).

{910} ***Kajla v. U.S. Bank Nat'l Ass'n (In re Kajla)*, No. 19-1043 (MAS), 2019 WL 7288891 (D.N.J. Dec. 30, 2019) (Shipp)** (Chapter 13 debtor's claims of fraud by foreclosing mortgage holder were repeatedly rejected by courts in various challenges by debtor and spouse through four tag-team bankruptcies.).

{911} ***Koola v. Ditech Fin. LLC*, 611 B.R. 251 (D.S.C. Dec. 26, 2019) (Gergel)** (Fannie Mae, U.S. Bank and Ditech, as servicer, all had standing to enforce the note in Chapter 13 case, including standing to seek stay relief, object to confirmation and seek dismissal.), *aff'g* 604 B.R. 240 (Bankr. D.S.C. Jan. 15, 2019) (Waites) (Chapter 13 debtor's motion for new trial of claim objection against mortgagee and servicers is denied because there was ample evidence of standing, copies of lost note were admitted and transfers to bank from Fannie Mae were documented. Ditech as servicer had authority to file proof of claim.).

{912} ***Beach v. Nationstar Mortg. LLC*, No. 4:19-cv-00340-DCN, 2019 WL 6467814 (D. Idaho Dec. 2, 2019) (Nye)** (Chapter 13 debtors' convoluted claims against mortgagee and servicer are barred by judicial estoppel given that debtors conceded in open court that defendants had standing and that debtors would not oppose foreclosure once defendants proved possession of the note. Defendants proved possession of the note and debtors then brought an identical lawsuit raising same issues.).

{913} ***Stone v. JPMorgan Chase Bank, N.A.*, 415 F. Supp. 3d 628, 632–34 (E.D. Pa. Nov. 27, 2019) (McHugh)** (Chapter 13 debtor's "disturbing" claims under FDCPA and Pennsylvania consumer protection statutes that Chase violated Bankruptcy Rule 3002.1 final cure order and discharge order are dismissed because Chase was not a debt collector and (ironically) debtor could not prove reliance when debtor knew that servicer was not accounting correctly but debtor continued to send payments anyway. Debtor's claims of violation of discharge injunction must be presented as a motion for contempt to the bankruptcy court that issued the discharge. "Defendant correctly asserts that it is beyond the reach of the FDCPA because it does not qualify as a 'debt collector' under the statute. . . . Plaintiff cannot state a claim under Pennsylvania's UTPCPL because he cannot show justifiable reliance upon the Defendant's alleged wrongful behavior. . . . Plaintiff submitted what he believed to be his correct mortgage payment to Defendant on a monthly basis, consistently disputing Defendant's contention that he was behind on his mortgage and owed additional fees. . . . As a result, it cannot be said that Plaintiff has 'relied' upon the Defendant's purported misrepresentations or deceptive acts in any meaningful sense. In a somewhat ironic outcome, Plaintiff's knowledge of Defendant's allegedly wrongful behavior . . . bars him from bringing a claim against Defendant under the UTPCPL. . . .").

{914} ***Genrette v. Bank of N.Y. Mellon Tr. Co. (In re Genrette)*, No. 18-1883 (MN), 2019 WL 4778167 (D. Del. Sept. 30, 2019) (Noreika)** (Bankruptcy court correctly refused to approve mortgage loan modification when Chapter 13 debtor opposed the

application—notwithstanding that debtor signed the loan modification agreement. The debtor's new-found opposition effectively rescinded the loan modification agreement.).

{915} ***Self v. Nationstar Mortg. LLC*, No. 2:19-CV-3-D, 2019 WL 4734412 (E.D.N.C. Sept. 26, 2019) (Dever)** (Multi-count complaint against Nationstar for mismanagement of mortgage claim during Chapter 13 case survives in part. In particular, claims of breach of contract as modified by the confirmed plans survive motion to dismiss.).

{916} ***Lawson v. Deutsche Bank Nat'l Tr. Co.*, No. 1:18-cv-14855-NLH, 2019 WL 4386746 (D.N.J. Sept. 13, 2019) (Hillman)** (Bankruptcy correctly determined that state court foreclosure judgment precluded Chapter 13 debtor's challenge to mortgagee's standing because state court rejected debtor's claims of fraud and rejected debtor's arguments about deficiencies in the chain of assignments.).

{917} ***Vitale v. Nationstar Mortg. LLC*, No. 7:19-CV-9-D, 2019 WL 4267867 (E.D.N.C. Sept. 9, 2019) (Dever)** (Chapter 13 debtor's postdischarge complaint against Nationstar survives motion to dismiss with respect to breach of contract, TILA and claims under North Carolina consumer protection statutes when order approving loan modification during Chapter 13 case included escrow in monthly payment but Nationstar declared default and initiated foreclosure on mistaken theory that escrow was not included in monthly payment. Servicer was bound by order that included escrow in monthly mortgage payment. Actions against Fannie Mae were dismissed. Actions against Nationstar under RESPA and TCPA were dismissed.).

{918} ***Green v. Ocwen Loan Servicing, LLC (In re Green)*, No. 18-3351, 2019 WL 4016202 (S.D. Tex. Aug. 26, 2019) (Atlas)** (District court denies motion for interlocutory appeal of bankruptcy court order requiring Ocwen to produce transcripts of proceedings before the CFPB referenced in a complaint by the CFPB against Ocwen in the Southern District of Florida.).

{919} ***In re LeBlanc*, No. 18-11748, 2019 WL 3718122 (E.D. La. Aug. 7, 2019) (Feldman)** (District court denies rehearing of order that Ocwen lost priority because its mortgage referred to the wrong lot number.).

{920} ***Snider v. Wells Fargo Bank, N.A.*, No. 18-cv-06353-RS, 2019 WL 3457854 (N.D. Cal. July 31, 2019) (Seeborg)** (Chapter 13 debtors' effort to stop foreclosure by Wells Fargo is barred by judicial estoppel because debtors did not reveal cause of action against Wells Fargo in prior Chapter 13 case and confirmed plan in prior case allowed that nondisclosure to benefit the debtors.).

{921} ***In re LeBlanc*, No. 18-11748, 2019 WL 2337101 (E.D. La. June 3, 2019) (Feldman)** (Bankruptcy court correctly determined that under Louisiana law metes and bounds description of lot 46 did not create mortgage on lot 47 notwithstanding correct municipal address shared at one time by both lots. Original mortgage with incorrect property description did not create mortgage on lot that was not described. Remand necessary to determine priority of mortgages given subsequent events including a correcting mortgage deed and two intervening encumbrances.), *aff'g and remanding* 593 B.R. 734 (Bankr. E.D. La. Oct. 30, 2018) (Magner) (In battle between lienholders with respect to priority, lien that was released in error by servicer without authority to do so is reinstated because the property description was ambiguous with respect to which of two lots was encumbered; the reinstated mortgage is reduced in priority to the date when the description was corrected, allowing an intervening lienor to have priority.).

{922} ***McGillivray v. Bank of Am., N.A.*, No. 1:18-CV-942-RP, 2019 WL 2288457 (W.D. Tex. May 29, 2019) (Pitman)** (After 17 years of litigation and at least four Chapter 13 cases debtor's challenge to foreclosure is dismissed with prejudice.).

{923} ***Jenkins v. Wells Fargo Bank, N.A. (In re Jenkins)*, No. 16-370, 2019 WL 2270648 (D. Md. May 24, 2019) (Hazel)** (Bankruptcy court committed no error in determining that it lacked subject matter jurisdiction over Chapter 13 debtor's adversary proceeding against mortgagee when confirmed plan provided that mortgage would be dealt with by loan modification or litigation "outside" the plan. Bankruptcy court did not err by reaching jurisdictional question before addressing debtor's request to stay the adversary proceeding.).

{924} ***Sandigo v. Ocwen Loan Servicing, LLC*, No. 17-cv-02727-BLF, 2019 WL 2233051 (N.D. Cal. May 23, 2019) (Freeman)** (On summary judgment in debtor's multi-count complaint against Ocwen for mismanagement of mortgage payment amounts and the de-escrowing and re-escrowing of loan during Chapter 13 case, most of state and federal claims remain for trial because of contested facts; conversion claim under state law is dismissed.).

{925} ***Scott v. U.S. Bank Nat'l Ass'n*, No. 4:19-cv-00308-DGK, 2019 WL 2110579 (W.D. Mo. May 14, 2019) (Kays)** (Bankruptcy court appropriately abstained from Chapter 13 debtor's removed action alleging wrongful foreclosure.).

{926} ***Flamer v. Wells Fargo Bank, N.A.*, No. 1:18-cv-11414-NLH, 2019 WL 2082961 (D.N.J. May 13, 2019) (Hillman)** (Bankruptcy court appropriately dismissed pro se Chapter 13 debtor's complaint challenging mortgage foreclosure and challenging validity of lien based on *res judicata* and *Rooker-Feldman*. Prior Chapter 7 discharge did not affect lien of mortgagee.).

{927} ***Evarts v. U.S. Bank Tr. Nat'l Ass'n*, No. 18-cv-1224-SM, 2019 WL 1992811 (D.N.H. May 6, 2019) (McAuliffe)** (Bankruptcy court correctly overruled debtor's objections to mortgage claim most of which concerned the "deferred principal" amount in a loan

modification agreement.), *aff'g* No. 16-11056-BAH, 2018 WL 6584242 (Bankr. D.N.H. Dec. 12, 2018) (Harwood) (Debtor failed to rebut prima facie validity of mortgage claim and arrearage that included escrow shortage. Prepetition loan modification included large new "deferred principal" balance. Charges for force-placed insurance were ambiguously accounted for by mortgagee but not shown by debtor to be duplicative or excessive. Debtor's own numbers supported large escrow deficiency.).

{928} ***Walton v. Carrington Mortg. Servs., LLC*, No. 1:17-cv-330, 2018 WL 10509379 (E.D. Tenn. Nov. 14, 2018) (McDonough)** (Pro se Chapter 13 debtors' multi-count complaint against mortgagee and servicer is barred by res judicata effect of confirmed plan that surrendered the property.).

{929} ***In re Content*, No. 18-27925 (JKS), 2020 WL 1685844 (Bankr. D.N.J. Apr. 3, 2020) (Sherwood)** (Motion to set aside foreclosure sale that occurred while Chapter 13 case was dismissed and before reinstatement is denied without prejudice when notice to mortgagee may have been defective and debtor's request for equitable relief requires an adversary proceeding.).

{930} ***In re Segui*, No. 17-13441, 2020 WL 1488400, at *2 (Bankr. S.D.N.Y. Mar. 20, 2020) (Morris)** (Chapter 13 debtor's motion to compel discovery from Specialized Loan Servicing is granted with respect to "guidelines, program rules and regulations" used by SLS in denying loss mitigation to debtor. "[T]he Debtor is not challenging the denial of her loan modification request, but rather requesting information about how the Creditor arrived at its determination to deny the Debtor's loss mitigation request. The Creditor's blanket refusal to provide the information . . . does not assist the Debtor in determining whether to appeal and what appeal should address.").

{931} ***Jacobson v. Wells Fargo Bank, N.A. (In re Jacobson)*, No. 19-02094-gmh, 2020 WL 1237930 (Bankr. E.D. Wis. Mar. 13, 2020) (Halfenger)** (Objection to Wells Fargo's proof of clam and debtor's lawsuit against Wells Fargo are precluded in part by *Rooker-Feldman* effect of prepetition foreclosure judgment and in part by collateral estoppel effect of unsuccessful prepetition litigation. Claims of fraud at inception of loan by former spouse were adjudicated against the debtor, or could have been, in state court litigation and cannot be relitigated affirmatively or defensively in claims litigation in Chapter 13 case.).

{932} ***Trevino v. HSBC Mortg. Servs., Inc. (In re Trevino)*, No. 13-7031, 2020 WL 535198, at *3–*21 (Bankr. S.D. Tex. Jan. 31, 2020) (Rodriguez)** (After transfer of loan by HSBC to U.S. Bank/Caliber, Caliber and U.S. Bank are jointly and severally liable for punitive damages of $9,000, statutory damages of $1,000 and attorney's fees for abuse of process, violation of several provisions of the FDCPA and under § 105(a). HSBC filed 3002.1 notice to collect ad valorem taxes that were paid by the trustee through the confirmed plan. Double payment of taxes resulted and HSBC received a refund from the taxing authority. Caliber acquired loan from HSBC subject to the pending 3002.1 notice but did not withdraw or amend the erroneous notice. "Of particular import are the 2010 and 2012 taxes that HSBC paid to Hidalgo County . . . . Notwithstanding the refunding of $4,450.15 on June 7, 2013, HSBC filed its July 24, 2013 Notice of Post-Petition Mortgage Fee, Expenses, and Charges . . . , claiming it was owed $4,450.15 from Plaintiffs' bankruptcy estate. . . . As a consequence of HSBC's 3002.1 Notice, . . . the Trustee filed her motion to dismiss Plaintiffs' case for failure to propose a feasible Plan. . . . On September 30, 2013, HSBC sold Plaintiffs' mortgage loan to USBT, with Caliber as servicer of the loan. . . . Included within the transfer to Caliber was the outstanding 3002.1 Notice. . . . At no time during the period in which Caliber and USBT owned/serviced the mortgage note did they amend, withdraw, or seek leave from this Court to withdraw the 3002.1 Notice. . . . Under Rule 3006, once Plaintiffs filed their Adversary Proceeding against Caliber and USBT, Defendants could not withdraw the 3002.1 Notice without Court intervention. . . . Defendants' complete failure in conducting due diligence and diligently pursuing a withdrawal or modification of the 3002.1 Notice is troublesome. . . . As assignees of the loan, Defendants had a responsibility to ensure the accuracy of all filings with this Court. . . . Defendants' actions, or lack thereof, taken together, constituted a maneuver which undermined the integrity of the bankruptcy system, disrupted the bankruptcy process, and were a deliberate abuse of the judicial process. . . . Defendants must bear the burden of proving its [*sic*] entitlement to the post-petition fees. Under Rule 3002.1(d), the prima facie evidentiary benefits of filing a proof of claim under Rule 3001(f) do not apply to a creditor's notice of post-petition fees . . . . [A] 3002.1 notice that is intended to result in some recovery for the creditor on the debt set out within the notice would be classified as 'debt collection.' . . . [A] proof of claim—or 3002.1 notice—filed in a bankruptcy case would be actionable under the FDCPA if it violated one of the Act's provisions. . . . Because there was a pre-petition arrearage . . . at the time Caliber acquired the mortgage servicing rights from HSBC, Plaintiffs were in default on their loan. Therefore, Caliber is a debt collector under the provisions of the FDCPA. . . . While there is at least one post-[*Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017),] bankruptcy court that holds that the filing of a proof of claim cannot be an unconscionable debt collection practice prohibited by the FDCPA, many other courts continue to evaluate FDCPA claims arising from creditor conduct occurring during a bankruptcy case on their merits. . . . Caliber was not entitled to collect on taxes it was never owed. And by failing to withdraw, failing to seek leave to withdraw, or failing to modify the 3002.1 Notice, Caliber asserted its entitlement to reimbursement of the 2010 taxes. Because Caliber's 3002.1 Notice was a false representation in connection with a debt collection, this Court finds that the filing of the 3002.1 Notice violates § 1692e of the FDCPA . . . . By failing to withdraw, failing to seek leave to withdraw, or failing to modify the 3002.1 Notice, USBT claimed reimbursement of monies under the ad valorem provisions of the contract in which it was not entitled to. As such, this Court finds that USBT breached the Note and Deed of Trust. . . . Because Defendants deliberately abused the bankruptcy process, the Court found that Defendants' actions constituted bad faith. This Court . . . finds that pursuant to § 105(a), Defendants should be jointly and severally liable to Plaintiffs for punitive damages in the sum of $9,000, and should additionally compensate Plaintiffs for their reasonable and necessary attorneys' fees and expenses in prosecuting the abuse of process claim in an amount to be determined . . . . Because Rule

3002.1(i) provides relief in situations involving a lack of notice, rather than incorrect notice, the Court finds that it should deny Plaintiffs' request to award reasonable and necessary fees and expenses under Rule 3002.1(i).").

{933} ***Booker v. U.S. Bank Nat'l Ass'n (In re Booker)*, No. 19-30787 (AMN), 2020 WL 504799 (Bankr. D. Conn. Jan. 30, 2020) (Nevins)** (Prepetition foreclosure judgment preclusively determined U.S. Bank's standing to file proof of claim and also fixed value of property for purposes of stay relief in Chapter 13 case. *Rooker-Feldman* applies and debtor's arguments are precluded by state court judgment.), *reconsideration denied*, No. 19-30787 (AMN), 2020 WL 930091 (Bankr. D. Conn. Feb. 26, 2020) (Nevins).

{934} ***Crockett v. Nationstar Mortg., LLC (In re Crockett)*, No. 19-10030, 2020 WL 425388, at *3 (Bankr. D.D.C. Jan. 27, 2020) (Teel)** (Chapter 13 debtor's multicount complaint against Nationstar and others is dismissed for the most part for failure to state claims under RESPA and failure to allege sufficient facts under many other theories. Claims objections embedded in the adversary proceeding were previously rejected and cannot be raised again in this complaint.).

{935} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (Bankruptcy court lacks jurisdiction with respect to Chapter 13 debtor's complaint that mortgage servicers violated FDCPA by demanding incorrect loan amounts after discharge based on misapplication of payments during Chapter 13 case. Other parts of complaint—including violations of § 524(i) and stay violations under § 362(k)—survive motion to dismiss.).

{936} ***Furrier v. Liberty Home Equity Sols., Inc. (In re Furrier)*, 611 B.R. 491 (Bankr. D. Mass. Jan. 16, 2020) (Bailey)** (Reverse mortgagee's motion to dismiss Chapter 13 debtor's complaint with respect to inherited property is denied; causes of action for failing to respond to payoff requests, for proceeding to foreclosure when debtor had pending sale that would pay mortgage in full and for breach of various duties under state law survive for trial.).

{937} ***In re Vega*, No. 19-20099-PRW, 2020 WL 211408 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** ($10,000 good-faith refundable deposit required by local law to insure that foreclosing mortgagee inspects and maintains property during foreclosure is disallowed as a component of mortgagee's arrearage claim. Mortgagee can file a 3002.1 notice if it is actually required to expend funds for inspections or maintenance during the case. Mortgagee is denied attorney's fees based on borderline frivolousness of claim that the $10,000 deposit is a recoverable advance.).

{938} ***In re Vinson*, No. 19-10544-JGR, 2019 WL 6834842, at *5–*8 (Bankr. D. Colo. Dec. 5, 2019) (Rosania)** (Banks $60,000 claim for attorney's fees for four prepetition foreclosures, a prior Chapter 7 case, and participation in current Chapter 13 case is reduced to $11,785. Fee application was almost incomprehensible with lumped entries, multiple lawyers, and entries for noncompensable work. Petition and plan were filed in a good faith effort to save the debtor's home when the only issue was attorney's fees payable to the mortgagee's counsel. "Under Colorado state law, attorney's fees claimed under a contract are subject to a reasonableness standard, . . . , which is determined by reference to the so-called lodestar factors . . . . It has taken the Court hours to decipher a reasonable fee. The Court reviewed the one hundred and thirty-four pages on two different occasions and took fifteen pages of internal notes. The legal fee statements were in reverse chronological order, the fee summary contained a math error that took several hours to uncover, the attorney time was hopelessly lumped, the categories were hopelessly lumped, the categories were combined between the three promissory notes, three lawyers worked on the file . . . , there were multiple inter-office communications, there was legal research on fundamental bankruptcy law issues, and there was random allocation of fees between categories. . . . The Bank was overly aggressive in the post-petition period, using several lawyers on another one lawyer matter and engaging in far-fetched discovery. The animosity between the parties was palpable.").

{939} ***In re Smith*, No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (Debtor states no ground to alter or amend judgment that state court foreclosure precludes argument that mortgagee lacked standing to seek stay relief.).

{940} ***CitiMortgage, Inc. v. Davis (In re Davis)*, 609 B.R. 324 (Bankr. N.D. Ill. Oct. 28, 2019) (Lynch)** (State court foreclosure removed to bankruptcy court by Chapter 13 debtor is properly remanded to state court. Bankruptcy court has no jurisdiction to consider foreclosure after property vested in the debtor at confirmation and debtor received discharge of debts other than the mortgage. Bankruptcy court previously rejected multiple challenges by debtor to mortgage held by foreclosing creditor.).

{941} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 613 B.R. 225 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (After remand, mortgage note, deed of trust and adjustable rate rider must be read together to conclude that 8% floor applied to loan throughout life of Chapter 13 plan; lenders/servicers did not violate various rules and statutes by flooring the mortgage interest rate at 8%.).

{942} ***Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 609 B.R. 133 (Bankr. E.D. Pa. Oct. 24, 2019), *amended and superseded by*, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019), *vacated in part on reconsideration*, 610 B.R. 787 (Bankr. E.D. Pa. Dec. 20, 2019) (Frank)** (Foreclosure judgment is preclusive of Chapter 13 debtor's argument that Ocwen/U.S. Bank lacked standing to file mortgage claim in Chapter 13 case. FDCPA claims against U.S. Bank fail because U.S. Bank is the creditor holding the debt, not a debt collector. Chapter 13 debtor's claim that merger doctrine disallows mortgagee's claim for attorney's fees and advances after the foreclosure judgment survives in part: fees are allowable but escrow advances are not.).

{943} ***In re Dalziell*, 608 B.R. 245 (Bankr. E.D. Wash. Oct. 7, 2019) (Corbit)** (Applying Washington law, mortgagee with deficiency judgment after foreclosure in 2008 is time barred to assert deficiency claim in Chapter 13 case filed in 2019.).

{944} ***Pierce v. Deutsche Bank Nat'l Tr. (In re Pierce)*, No. 19-05271-LRC, 2019 WL 4686333 (Bankr. N.D. Ga. Sept. 25, 2019) (Craig)** (After dismissal of Chapter 13 case, bankruptcy court abstains in adversary proceeding challenging foreclosing creditor under various theories. One (odd) theory was that debtor owned a secret interest in property subject to foreclosure through a dba that transferred the property without the debtor's signature.).

{945} ***In re Crockett*, No. 19-00101, 2019 WL 4877576 (Bankr. D.D.C. Sept. 23, 2019) (Teel), *amended on reconsideration by* No. 19-00101, 2019 WL 6794441 (Bankr. D.D.C. Dec. 12, 2019) (Teel)** (Chapter 13 debtor's pro se motion to reconsider order denying debtor's objection to claim filed by Nationstar is granted in part: Nationstar's failure to explain disappearance of $1,289.18 of "unapplied funds" requires disallowance of that portion of Nationstar's claim.).

{946} ***In re Bulger*, 606 B.R. 526 (Bankr. W.D.N.Y. Sept. 16, 2019) (Bucki)** (Fees sought by mortgagee for filing proof of claim and objecting to Chapter 13 plan are reduced to amounts that would be allowed by Fannie Mae had the lender not been an individual—$4,000 claim reduced to $1,150. $7,500 attorney's fee requested for defending objection to proof of claim is denied in full because settlement of objection reduced amount of claim—indicating that claim was excessive—and it is not reasonable to require Chapter 13 debtors to pay attorney's fees for defense of an excessive claim.).

{947} ***In re Coleman*, No. 19-11091, 2019 WL 4267563 (Bankr. E.D. La. Sept. 6, 2019) (Magner)** (Omission of legal description for separate lot in mortgage was a substantive error, not a clerical error, so it could not be corrected by a Deed of Correction signed only by the lender. Separate lot was not collateral for mortgagee's loan and value of secured claim is adjusted accordingly.).

{948} ***Llanos v. Cascade Funding Mortg. Tr. 2017-1 (In re Llanos)*, No. 1:19-ap-01036-MT, 2019 WL 4024949 (Bankr. C.D. Cal. Aug. 26, 2019) (Tighe)** (RESPA and FDCPA claims against mortgage holder and servicer are not preempted by Bankruptcy Code because there are no conflicting remedies and some defendants do not hold claims in this Chapter 13 case. On motion to dismiss, Chapter 13 debtor has raised plausible claim that servicer purchased unnecessary force-placed insurance and failed to refund premiums. Servicer's failures to timely respond to notices of error state a claim. Error by servicer with respect to crediting large reinstatement payment states a claim for relief that will require evidence.).

{949} ***In re Gravel*, No. 11-10112, 2019 WL 3783317 (Bankr. D. Vt. Aug. 12, 2019) (Brown)** (Bankruptcy court certifies for direct appeal to Second Circuit its decision, on remand, imposing sanctions on PHH Mortgage Corporation.).

{950} ***In re Fikrou*, No. 19-13180-MKN, 2019 WL 5783260 (Bankr. D. Nev. Aug. 8, 2019) (Nakagawa)** (Foreclosure sale five years before Chapter 13 petition cannot be challenged because judgments of other courts resolved all of debtor's claims of fraud and there is no property interest remaining in debtor to support litigation in the bankruptcy court.).

{951} ***Nelson v. Nationstar Mortg. LLC (In re Nelson)*, No. 18-80037-CRJ-13, 2019 WL 3482821 (Bankr. N.D. Ala. July 31, 2019) (Jessup)** (After two-day trial, pro se Chapter 13 debtors failed to prove Nationstar committed fraud, forgery, or misrepresentation or violated FDCPA. Nationstar had possession of note endorsed in blank and had standing to file proof of claim and to seek foreclosure. Debtors failed to prove any material mistake in proof of claim filed by Nationstar.).

{952} ***In re Venanzio*, 602 B.R. 921 (Bankr. W.D. Pa. July 30, 2019) (Böhm)** (Mortgage holder's proof of claim is disallowed on trustee's objection for two reasons: proof of claim was untimely filed one year after bar date; confirmed plan is res judicata with respect to amount of arrears that may be collected by mortgage holder. Confirmed plan provided for arrearage claim of $4,895—an amount paid by the confirmed plan. Untimely filed claim was for $10,453. Court order states that mortgagee is "disallowed" from collecting larger amount in any action or proceeding.).

{953} ***Prescott v. Wells Fargo Bank, N.A. (In re Prescott)*, No. 17-01007, 2019 WL 3421676, at *6 (Bankr. S.D. Tex. July 29, 2019) (Isgur)** (Wells Fargo violated Final Cure Order by attempting to collect monthly installment that was declared paid by order which deemed mortgage current at end of prior Chapter 13 case. Wells Fargo willfully violated stay in second Chapter 13 case by contacting debtor and demanding payment of amounts that were barred by Final Cure Order in prior Chapter 13 case. Internal accounting errors did not violate stay but stay was violated when those mistakes translated into demands for payment and foreclosure. Negligence and negligent misrepresentation claims against Wells Fargo survive summary judgment when Wells Fargo attempted to collect amounts that were deemed paid by Final Cure Order in prior Chapter 13 case. Breach of contract claims fail because cure order eliminated any errors Wells Fargo may have made in crediting payments during prior Chapter 13 case. "The source of this discrepancy was likely the response Wells Fargo filed . . . to the Trustee's Notice of Final Cure Payment. In its response, Wells Fargo admitted that Mr. Prescott 'paid in full the amount required to cure the default.' . . . Wells Fargo also contradictorily stated that Mr. Prescott owed payments for both November 1 and December 1, 2015 . . . . No hearing was held regarding Wells Fargo's response and . . . the Court entered its Cure Order, which deemed Mr. Prescott current on his mortgage payment and that his next payment was due in December 2015. . . . [T]he

reason for this discrepancy is irrelevant; Wells Fargo's claim for the November 2015 payment was eliminated by the Cure Order. Wells Fargo failed to challenge the Cure Order via reconsideration or appeal and it became a final, binding order, which held that Mr. Prescott's next payment was due on December 1, 2015. Accordingly, Wells Fargo's attempt to collect the November 2015 mortgage payment is a violation of the Court's Cure Order, which deemed Mr. Prescott current on his mortgage payments through December 2015.").

{954} ***McLain v. Citizens Bank, N.A. (In re McLain)*, 604 B.R. 108 (Bankr. D. Mass. July 26, 2019) (Katz)** (Chapter 13 debtor's complaint against junior mortgage holder states claim for breach of contract, for breach of covenant of good faith and for violations of state consumer protection laws with respect to debtor's obligations as intended third-party beneficiary of mortgage when debtor was not personally liable but debtor signed mortgage to secure the debt.).

{955} ***In re Spencer*, No. 12-20854-13, 2019 WL 4410352 (Bankr. D. Kan. July 24, 2019) (Berger)** (State court orders determined CitiMortgage's standing to file proof of claim for mortgage in Chapter 13 case but debtor's objection to that claim is sustained because proof of claim was untimely filed—after the 90-day deadline in the former version of Bankruptcy Rule 3002(c). Section 502(b)(9) requires disallowance of claim notwithstanding years of extended litigation of other issues.).

{956} ***Laforest v. Branch Banking & Tr. Co. (In re Laforest)*, No. 19-4011-PWB, 2019 WL 2612717 (Bankr. N.D. Ga. June 24, 2019) (Bonapfel)** (Chapter 13 debtor's complaint for wrongful foreclosure survives dismissal when debtor alleges that bank misrepresented that it had cancelled foreclosure sale but went ahead with sale anyway. Debtor would have filed bankruptcy sooner to stop the foreclosure but for the misrepresentation. Other claims under various federal statutes including RESPA, HAMP, TARP and EESA fail to state viable actions.).

{957} ***In re Wood*, No. 16-30102-dof, 2019 WL 2571799 (Bankr. E.D. Mich. June 21, 2019) (Oppermann)** (Chapter 13 debtor's objection to mortgage claim is overruled to the extent debtor (incongruously) complains that he received too much money at a real estate closing. Debtor's Qualified Written Request is sustained and mortgagee must give full accounting of loan payments and disbursements.).

{958} ***In re Lewis*, No. 15-15696-MKN, 2019 WL 5884339 (Bankr. D. Nev. June 10, 2019) (Nakagawa)** (After nearly four years in Chapter 13 with no confirmed plan and several mortgage claim assignments, Wilmington loses motion for stay relief based on absence of evidence from which bankruptcy court could grant relief.).

{959} ***Garcia v. DLJ Mortg. Capital Inc. (In re Garcia)*, No. 15-00297, 2019 WL 2385731 (Bankr. D.P.R. June 4, 2019) (Tester)** (Mortgage does not validly encumber Chapter 13 debtor's property when "tracto"—chain of title—shows that property was owned by someone other than the debtor at the time the debtor purported to encumber the property.).

{960} ***Levings v. JPMorgan Chase Bank, Nat'l Ass'n (In re Levings)*, No. 18-08010-TRC, 2019 WL 2236696 (Bankr. E.D. Okla. May 22, 2019) (Cornish)** (Motion to reconsider dismissal of adversary proceeding challenging endorsement of note to Chase is denied for lack of any basis. State court already ruled against debtor's claims of fraud by Chase and further litigation is properly left to state court.).

{961} ***Davis v. CitiMortgage, Inc. (In re Davis)*, No. 14-96129, 2019 WL 2108048 (Bankr. N.D. Ill. May 10, 2019) (Lynch)** (Bankruptcy court relinquishes jurisdiction to state court over two-party dispute between Chapter 13 debtor and CitiMortgage. Dispute remained after discharge in the Chapter 13 case. Debtor's challenge to validity and/or amount of mortgage will have no effect on any other creditor. Chapter 13 discharge did not affect CitiMortgage and CitiMortgage has stay relief. CitiMortgage withdrew its proof of claim before adversary proceeding was filed.).

{962} ***In re Ihejurobi*, No. 18-13380-RAG, 2019 WL 2016612 (Bankr. D. Md. May 6, 2019) (Gordon), *aff'd*, No. SAG-19-1391, 2019 WL 5102679 (D. Md. Oct. 11, 2019) (Gallagher)** (Chapter 13 debtor's objections to Wells Fargo's $1.7 million lien on real estate are frivolous. Statute of limitations on foreclosure is 12 years based on "seal" of signatures in debt instrument. Failure to add unpaid interest to principal is factually false and only makes confirmation impossible. Prior Chapter 7 discharge did not eliminate lienholder's *Johnson* claim and lienholder did not violate discharge injunction by filing proof of claim in current case.).

{963} ***Kennedy v. Caliber Home Loans (In re Kennedy)*, No. 18-00114-5-JNC, 2019 WL 2366419 (Bankr. E.D.N.C. May 3, 2019) (Callaway)** (Chapter 13 debtor's complaint against Caliber Home Loans under various state and federal theories for refusing mortgage payments, botching loan modifications and general mismanagement of mortgage relationship is dismissed with leave to amend.).

{964} ***Prescott v. Wells Fargo Bank, N.A. (In re Prescott)*, No. 17-01007, 2019 WL 1889491 (Bankr. S.D. Tex. Apr. 26, 2019) (Isgur)** (Nonfiling spouse's untimely motion to intervene in debtor's adversary proceeding against Wells Fargo for violation of the stay and failure to account for payments in prior Chapter 13 case is denied.).

§ 138.9 Claim Reduction under § 502(k) after BAPCPA
§ 138.10 Chapter 7 Trustee Compensation: § 1326(b)(3) after BAPCPA

PART 8: CONVERSION AND DISMISSAL

§ 139.1 Summary of Part 8
§ 139.2 BAPCPA: More Grounds; Changed Consequences
A. STATUTES AND RULES DISCUSSED IN PART 8
§ 140.1 11 U.S.C. § 1307: Conversion and Dismissal
§ 140.2 11 U.S.C. § 706: Conversion to Chapter 13
§ 140.3 11 U.S.C. § 1112(d): Conversion to Chapter 13
§ 140.4 11 U.S.C. § 348: Effects of Conversion
§ 140.5 11 U.S.C. § 349: Effects of Dismissal
§ 140.6 Bankruptcy Rule 1017: Procedure for Conversion or Dismissal
§ 140.7 Bankruptcy Rule 1019: New Lists, Reports and So Forth
B. CONVERSION TO CHAPTER 7
1. PROCEDURE AND GROUNDS FOR CONVERSION
§ 141.1 Conversion by Debtor

{965} ***In re Webster*, No. 16-11147, 2020 WL 1867904, at *2 (Bankr. M.D. La. Apr. 14, 2020) (Dodd)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), trustee's objection to Chapter 13 debtor's conversion to Chapter 7 is overruled when basis for objection is "ordinary" failure to make payments and failure to turn over tax refund—insufficient proof of bad faith to prevent statutory right to convert. "The chapter 13 trustee's motion does not allege facts that if proven would support a finding that the debtor has concealed assets, made misrepresentations in his schedules or engaged in any other conduct that constitutes bad faith. She alleges facts that are neither unusual nor extraordinary: many debtors fall behind in payments and fail to turn over tax refunds. Absent proof of more, those actions or inactions alone are insufficient evidence of bad faith to prevent a debtor's statutory right under section 1307(a) to convert to a chapter 7 liquidation.").

§ 141.2 Conversion on Request of Creditor or Trustee

{966} ***In re Nichols*, No. 4:18-bk-09638-BMW, 2020 WL 881443 (Bankr. D. Ariz. Feb. 21, 2020) (Whinery)** (Bankruptcy court denies motion for stay pending appeal of order converting Chapter 13 case to Chapter 7 and denying debtors' competing motion to dismiss. Bankruptcy court found debtors' conduct to be in bad faith and abusive of bankruptcy.).

{967} ***In re Boyd*, No. 18-00832-NPO, 2019 WL 5061163 (Bankr. S.D. Miss. July 30, 2019) (Olack)** (Motion to convert to Chapter 7 is denied when trustee is holding postpetition wages which have not been distributed that would have to be returned to the debtor if conversion were granted. In addition, prepetition wrongful death case remains an asset of the Chapter 13 estate and postpetition car accident claim would be lost as an asset if the case converted to Chapter 7. That debtor lied during the Chapter 13 case to defraud grocery store of $1,200 cash can be addressed in various ways in the Chapter 13 case.).

§ 141.3 Cause for Conversion

{968} ***Clark v. S&J Adver., Inc.*, 611 B.R. 669 (E.D. Cal. Nov. 15, 2019) (Nunley)** (Conversion from Chapter 13 to Chapter 7 is appropriate based on abuse of the bankruptcy process when Chapter 13 debtors played fast and loose with respect to the value of an interest in a corporation. Debtors valued the interest at $42,250 in their schedules. Corporation then offered to buy the debtors' interest for $247,000. Debtors then argued that $247,000 was not enough but proposed and confirmed a plan based on the lower valuation in the schedules without revealing the true higher value.).

{969} ***In re Klosinski*, No. 18-12543-MKN, 2019 WL 5880400 (Bankr. D. Nev. July 2, 2019) (Nakagawa)** (Conversion to Chapter 7 based on unreasonable delay that is prejudicial to creditors is appropriate when debtor must pay homeowners' association in full because of substantial value in property but debtor has no visible means to do so in spite of numerous opportunities to amend plan or to sell the property.).

§ 141.4 Cause for Conversion Added or Changed by BAPCPA

{970} ***In re Calascibetta*, No. 19-20558-PRW, 2020 WL 260992 (Bankr. W.D.N.Y. Jan. 16, 2020) (Warren)** (After 220 days in a Chapter 13 case in which debtor failed to make payments, failed to comply with orders to provide for $400,000 tax claim and failed to demonstrate any ability to reorganize, debtor's motion to convert to Chapter 11 is denied and creditor's motion to convert to Chapter 7 is granted. Cause for conversion included prejudicial delay, failure to make payments and failure to offer a confirmable plan under § 1307(c)(1), (c)(3) and (c)(4).).

§ 141.5 Conversion *Sua Sponte*
§ 141.6 Automatic Conversion: The "Drop Dead" Clause
2. EFFECTS OF CONVERSION
a. IN GENERAL

§ 142.1 New Schedules, Statement, Meeting of Creditors and Deadlines
§ 142.2 Deadlines and Filing Requirements at Conversion after BAPCPA

{971} ***JM Burns Steel Supply, Inc. v. Floyd (In re Floyd)*, No. 18-1024, 2019 WL 4054106 (Bankr. W.D. Ky. Aug. 27, 2019) (Lloyd)** (After conversion from Chapter 13 to Chapter 7, debtors are denied discharge under almost every subsection of § 727 based on numerous misrepresentations, omissions of assets, secret bank accounts, unrevealed inheritances and transfers and fraud on creditors. Many of the grounds for barring discharge in the Chapter 7 case arose from false statements in schedules filed at conversion from Chapter 13 to Chapter 7.).

§ 142.3 Application of § 707(b) Abuse Test at Conversion
§ 142.4 Notice Issues under § 342 at Conversion
§ 142.5 On Postpetition Claims

{972} ***In re Sylvester*, No. 19-11716, 2019 WL 5102238 (E.D. La. Oct. 11, 2019) (Lemmon)** (Because there may be equity in the estate, after conversion from Chapter 13 to Chapter 7, the debtor has standing to object to a claim for administrative expenses that arose from a successful creditor recovery action during the Chapter 13 portion of the case.).

§ 142.6 On Relief from Stay

{973} ***In re Hardison*, No. 2:06-bk-20225, 2020 WL 1547906, at *3–*10 (Bankr. S.D. W. Va. Mar. 31, 2020) (Volk)** (After seven years in a Chapter 13 case without a confirmed plan and six years in Chapter 7 after conversion, stay relief granted to mortgagee for "cause." "[T]he Hardisons' mortgage note is in practically irretrievable default. Their last remittance was the September 2005 payment, over fourteen years ago. . . . This regrettable saga must come to a close.").

b. ON ENTITLEMENT TO POSTPETITION PROPERTY

§ 143.1 In Cases Filed before October 22, 1994
§ 143.2 In Cases Filed after October 22, 1994

{974} ***Brown v. Barclay (In re Brown)*, 953 F.3d 617, 618–24 (9th Cir. Mar. 23, 2020) (Schroeder, Friedland, Nelson)** (Funds fraudulently conveyed by debtor during Chapter 13 case remain in constructive possession of debtor at conversion to Chapter 7 for purposes of § 348(f)(1)(A) and are recoverable by Chapter 7 trustee. "[T]he debtor made unauthorized and fraudulent transfers of funds during the Chapter 13 proceeding. After the Bankruptcy Court converted the proceedings to Chapter 7 in response, the debtor argued that the transferred funds were no longer in the estate. . . . We agree that the funds should remain property of the estate, but we must endeavor to harmonize that result with the language of § 348(f)(1) . . . . [Section] 348(f)(1)(A) . . . effectively adopted the Chapter 7 approach, by defining the converted estate to exclude assets acquired after the initial filing. . . . This means that, after conversion to Chapter 7, creditors are barred from recovering property that was acquired by the debtor after filing the Chapter 13 petition. . . . Congress, in § 348(f)(1)(A), limited the property of the converted estate to include only property that 'remains in the possession of or is under the control of the debtor on the date of conversion.' . . . This second limitation prevents creditors from seeking to recover funds that were lawfully spent during the Chapter 13 proceeding and therefore no longer property of the estate. . . . The BAP majority . . . [concluded] that because the funds were not spent in good faith on ordinary living expenses, they remained part of the converted estate. . . . Although the BAP majority's approach . . . seems sensible, the statute does not say that. . . . The debtor Jason transferred the funds out of his actual possession to a close family member, in an effort to avoid payments to his creditors . . . . In analogous criminal contexts, courts have consistently rejected efforts to evade the operation of the law by disguising ownership of fraudulently obtained funds or contraband. . . . We therefore hold that those funds remained within his constructive possession or control, and hence should be considered property of the converted estate under § 348(f)(1)(A)."), *aff'g* BAP No. SC–17–1068–AKuS, 2018 WL 2308267 (B.A.P. 9th Cir. May 21, 2018) (not for publication) (Alston, Kurtz, Spraker) (After conversion from Chapter 13 to Chapter 7, Chapter 7 trustee can recover inheritance received by debtor during Chapter 13 case that was transferred in bad faith to debtor's siblings. Notwithstanding plain language of § 348(f)(1), property transferred in bad faith before conversion remained property of the bankruptcy estate that could be recovered by the Chapter 7 trustee under § 549 when debtor did not use the inherited funds for necessary expenses during the Chapter 13 case. Shortly after filing a Chapter 13 case, the debtor received $64,267.97 from a probate estate. During the Chapter 13 case, without notice or court order, the debtor distributed $12,372 to each of his brothers. After conversion, the Chapter 7 trustee sought to avoid the postpetition transfers to the brothers under § 549. "Section 549 did not give Jason control over the transferred Inheritance Proceeds during his chapter 13 case within the meaning of section 348(f)(1)(A). . . . At best, Jason had a claim against his brothers and a right to initiate a lawsuit against them to attempt to recover the Inheritance Proceeds. . . . Thus, the bankruptcy court erred by concluding the Inheritance Proceeds remained property of Jason's chapter 7 estate under section 348(f)(1)(A) because Jason maintained control over them. . . . The Inheritance Proceeds Jason transferred to his brothers became property of estate in the converted case under section 348(f)(1) because Jason did not use those particular funds for ordinary and necessary living expenses. Declining to strictly apply the plain language of section 348(f)(1)(A), this Panel and other courts have consistently imposed a good faith requirement when a case is converted from chapter 13 to another chapter. . . . '[I]n enacting [s]ection 348(f), Congress intended to equalize the treatment of a debtor in a Chapter 13 case that is subsequently converted to a Chapter 7 case with the treatment of a debtor who filed a Chapter 7 petition originally.' . . . That code section, however, 'was never designed to be a safe harbor for debtors who fraudulently and

surreptitiously dispose of property of the estate while in chapter 13.' . . . [C]ases support the proposition that Congress did not intend section 348(f)(1)(A) to allow debtors to freely dispose of property during chapter 13 proceedings that would otherwise have been part of the chapter 7 estate had the case been originally filed under chapter 7. Section 348(f)(1) only shields assets from becoming property of the estate if the debtor used the assets for 'ordinary' and 'necessary' living expenses prior to conversion. . . . [P]roperty of the chapter 13 estate on the petition date which later leaves the debtor's possession or control, but was not used for ordinary and necessary expenses, flows into the chapter 7 estate upon conversion. . . . The Inheritance Proceeds were property of Jason's estate as of the petition date. Jason never asserted his transfer of the Inheritance Proceeds to his brothers was done to pay his ordinary and necessary living expenses. . . . The bankruptcy court correctly determined that the Inheritance Proceeds were recoverable . . . under section 549 because the transferred Inheritance Proceeds remained property of the post-conversion estate under section 348(f)(1)(A).").

{975} ***Castillo v. E.M. Dimitri, D.O. Prof'l Med. Corp.*, No. 19-10888, 2020 WL 1689871 (E.D. La. Apr. 7, 2020) (Guidry)** (Wrongful discharge action that arose when Chapter 13 debtor was terminated from employment after confirmation and one month before conversion to Chapter 7 is barred by judicial estoppel notwithstanding that action did not become property of Chapter 7 estate. District court does not reveal nature of reliance by bankruptcy court on nondisclosure one month before conversion.).

{976} ***El-Scari v. Comprehensive Mental Health Servs.*, No. 4:19-00179-CV-RK, 2019 WL 5386489, at *3 (W.D. Mo. Oct. 21, 2019) (Ketchmark)** (Judicial estoppel has no application when race discrimination and retaliation claims arose during Chapter 13 case that was immediately converted to Chapter 7. In absence of bad faith allegation, cause of action is not property of the Chapter 7 estate and judicial estoppel is not implicated. "Assets acquired post-petition are only included in the estate of a case converted from Chapter 13 under § 348 as a penalty for converting in bad faith. § 348(f)(2). . . . [T]he alleged discrimination occurred after Plaintiff filed her original bankruptcy petition. As a result, her potential claims would not have been included in the converted Chapter 7 bankruptcy estate even if she had disclosed them to the bankruptcy court[.]").

{977} ***In re Braun*, No. 17-30532-btf7, 2020 WL 53818, at *2 (Bankr. W.D. Mo. Jan. 2, 2020) (Fenimore)** (Inheritance received 233 days after Chapter 13 petition is not property of Chapter 7 estate when debtors converted to Chapter 7 before inheritance is paid; applying § 348(f)(1)(A), inheritance did not exist at Chapter 13 petition and was not in the debtor's control on the date of conversion. Inheritance is not property of the Chapter 7 estate and is not subject to turnover to the trustee after conversion. "There is no evidence in the record that the debtors converted their chapter 13 case to chapter 7 in bad faith. So § 348(f)(2) does not apply . . . . Because the inheritance was neither property of the estate as of the filing of the chapter 13 petition nor in the possession of or under the control of the debtors on the date of conversion . . . under § 348(f)(1)(A) . . . the inheritance is not property of the debtors' chapter 7 estate.").

§ 143.3 Payments Held by Chapter 13 Trustee at Conversion: § 1326(a)(2) after BAPCPA
§ 143.4 Priorities after Conversion: Two Trustees and a DSO

{978} ***In re Sylvester*, No. 19-11716, 2020 WL 1140890 (E.D. La. Mar. 9, 2020) (Lemmon)** (After conversion from Chapter 13 to Chapter 7, bankruptcy court appropriately awarded administrative expense to attorney that prosecuted successful fraudulent conveyance action against Chapter 13 debtor. However, fee award is vacated for findings with respect to reasonableness. Creditor that prosecuted fraudulent conveyance action had derivative standing to pursue the avoidance action and Chapter 13 trustee joined as a party in that litigation. Decision is not clear with respect to what priority the administrative expense would have in the Chapter 7 case.).

§ 143.5 Bad-Faith Conversion
c. ON EXEMPTIONS AND LIEN AVOIDANCE
§ 144.1 Exemptions at Conversion
§ 144.2 Lien Avoidance at Conversion
d. ON SECURED CLAIMS
§ 145.1 In Cases Filed before October 22, 1994
§ 145.2 In Cases Filed after October 22, 1994

{979} ***In re Jackson*, No. 16-42695-drd7, 2020 WL 536018, at *2–*4 (Bankr. W.D. Mo. Feb. 3, 2020) (Dow)** (Applying § 348(f), after conversion from Chapter 13 to Chapter 7, value of car for purposes of redemption under § 722 is not reduced by payments during Chapter 13 phase of case. When debtor chose not to file insurance claim for damage to car during Chapter 13 case, repaired value, not "as is" value, determines redemption amount after conversion. "[T]he pre-BAPCPA version specified that, for purposes of valuation, allowed secured claims in a chapter 13 were to carry through to any converted case, with the valuation reduced by payments made pursuant to the plan. In contrast, the amended version of § 348(f) explicitly states that valuations of allowed secured claims will not apply to a case converted to chapter 7. . . . [I]t is implicit from the language carving out chapter 7 cases that the payments made previously [ ] by the chapter 13 trustee are irrelevant to the valuation of the secured claim. . . . [T]he redemption value is not to be reduced by payments made to the secured creditor under the previous chapter 13. . . . The appropriate time for valuing collateral for purposes of redemption is the date the motion to redeem is filed or, if contested, the hearing date on the motion. . . . [A] debtor who chooses not to submit an insurance claim on damage to collateral should not be able to reap the benefits of his or her inaction. . . . [I]t

would create a windfall in favor of the debtor who could redeem the property at a lower value, then collect the insurance proceeds and repair the damaged property, and enjoy the enhanced value at the expense of the lienholder.").

§ 145.3 Lienholders' Rights at Conversion under § 348(f) after BAPCPA

{980} ***In re Pettit*, No. 05-19986-ta7, 2019 WL 1975844, at *6 (Bankr. D.N.M. Apr. 30, 2019) (Thuma)** (After conversion from Chapter 13 to Chapter 7, PHH Mortgage is no longer bound by the confirmed plan and can both charge the debtor fees and expenses and apply payments consistent with the mortgage contract. PHH is bound by orders during the Chapter 13 case to the extent those orders may affect entitlement to postpetition fees or expenses or may require specific application of payments during the Chapter 13 portion of the case. "After Debtor elected to convert her case . . . the parties were once again governed by the loan documents Debtor signed. . . . PHH was free to apply loan payments in accordance with the loan documents, rather than as directed by the chapter 13 plan and the Code. . . . PHH is not prohibited from charging Debtor for postpetition attorney fees and expenses if allowed by the mortgage, nor from applying the loan payments as allowed therein.").

C. CONVERSION TO CHAPTER 11

§ 146.1 Standing, Procedure and Grounds for Conversion to Chapter 11

{981} ***Burgess v. Powers*, No. 3:19-CV-2711-B, 2019 WL 7037581 (N.D. Tex. Dec. 20, 2019) (Boyle)** (Conversion from Chapter 13 to Chapter 11 is not automatic. Bad-faith conversion need not be addressed by bankruptcy court before the underlying Chapter 13 case is dismissed with a bar to refiling to stop bad-faith use of bankruptcy to stop foreclosure and other creditor action.).

{982} ***In re Elwell*, No. 17-51442, 2020 WL 762214, at *2 (Bankr. D. Conn. Feb. 14, 2020) (Manning)** (Mortgagee's motion to dismiss is granted and debtor's competing motion to convert from Chapter 13 to Chapter 11 is denied when debtor has failed to confirm a plan for two years and any reorganization is dependent on speculative appeal of litigation with mortgagee that debtor lost. "A motion to convert under section 1307(d) may also be denied and a case dismissed under section 1307(c) where the proposed plan is predicated on the outcome of litigation that remains pending because the feasibility of such a plan is speculative and protracted.").

{983} ***In re Calascibetta*, No. 19-20558-PRW, 2020 WL 260992 (Bankr. W.D.N.Y. Jan. 16, 2020) (Warren)** (After 220 days in a Chapter 13 case in which debtor failed to make payments, failed to comply with orders to provide for $400,000 tax claim and failed to demonstrate any ability to reorganize, debtor's motion to convert to Chapter 11 is denied and creditor's motion to convert to Chapter 7 is granted. Cause for conversion included prejudicial delay, failure to make payments and failure to offer a confirmable plan under § 1307(c)(1), (c)(3) and (c)(4).).

{984} ***In re Bello*, 610 B.R. 583, 585 (Bankr. E.D. Mich. Jan. 15, 2020) (Tucker)** (After finding that debtor was not eligible for Chapter 13, conversion to Chapter 11 is allowed subject to reservation of creditor's right to seek further conversion or dismissal based on bad faith and misconduct during Chapter 13 case. "While [*Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007)], concerned a debtor's motion to convert from Chapter 7 to Chapter 13, this Court has held that *Marrama*'s holding and reasoning applies [*sic*] as well to a motion to convert to Chapter 11.").

§ 146.2 Strategic Considerations: Costs and Benefits of Conversion to Chapter 11

{985} ***In re Monge*, No. 19-10475-t11, 2020 WL 1649616 (Bankr. D.N.M. Apr. 2, 2020) (Thuma)** (After conversion from Chapter 13 to Chapter 11, motion to reconsider stay relief is denied for ample cause including that debtors failed to pay mortgage since 2008, conveyed property to son to foil continuing foreclosure effort and debtors did nothing to advance either in the Chapter 13 case or after conversion to Chapter 11.).

§ 146.3 Incentives to Convert to Chapter 11 after BAPCPA

D. CONVERSION TO CHAPTER 12

§ 147.1 Standing, Procedure and Strategic Considerations

§ 147.2 Incentives to Convert to Chapter 12 after BAPCPA

E. CONVERSION TO CHAPTER 13

1. CONVERSION FROM CHAPTER 7 TO CHAPTER 13

§ 148.1 Procedure

§ 148.2 Absolute Right of Debtor?

{986} ***Woodberry v. McDermott (In re Woodberry)*, No. 19-CV-12576, 2020 WL 1508604, at *2–*4 (E.D. Mich. Mar. 30, 2020) (Steeh)** (With fraudulent conveyance and § 727 discharge actions pending, bankruptcy court appropriately denied Chapter 7 debtor's motion to convert to Chapter 13 for lack of good faith. Debtor failed to disclose significant transfers and acted in bad faith throughout Chapter 7 case. "[T]he Chapter 7 Trustee has initiated an adversary proceeding against Debtor's wife to avoid and recover the transfers, and United States Trustee against Debtor, seeking to deny his discharge because Debtor has concealed, destroyed, falsified or failed to keep recorded information . . . . Debtor's *pro se* status cannot excuse the fraudulent transfers he made which are proper grounds for the

denial of his motion to convert his Chapter 7 case to Chapter 13."), *aff'g* 604 B.R. 336 (Bankr. E.D. Mich. Aug. 21, 2019) (Shefferly) (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), *Alt v. United States (In re Alt)*, 305 F.3d 413, 414 (6th Cir. Oct. 2, 2002) (Daughtrey, Clay, Williams), and *Copper v. Copper (In re Copper)*, 426 F.3d 810 (6th Cir. Oct. 18, 2005) (Boggs, Norris, Cook), pro se motion to convert from Chapter 7 to Chapter 13 is denied: debtor transferred assets before the bankruptcy petition to defeat collection of a judgment; debtor filed inaccurate statements and schedules; debtor was abusive toward opposing parties and attorneys; and debtor litigated frivolously and in bad faith.).

{987} ***Campbell v. Conway*, 611 B.R. 38 (M.D. Pa. Jan. 23, 2020) (Brann)** (Denial of conversion from Chapter 7 to Chapter 13 was not abuse of discretion when two bankruptcy cases were filed on eve of foreclosures, debtor's income information kept changing, debtor's dairy farm was making less and less money, family trust was unable to distribute additional funds to support a plan and milk prices were not likely to recover in time to fund a plan. Speculative income from a closed quarry on the debtor's property would not save the case.), *aff'g* 598 B.R. 775 (Bankr. M.D. Pa. Apr. 23, 2019) (Opel) (Citing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), lack of good faith and lack of feasibility bar Chapter 7 debtor from converting to Chapter 13. Evidence of bad faith included timing of filing on eve of foreclosure and multiple amendments to schedules showing dramatic changes in income. Feasibility failed because of speculative nature of gas royalties and farming income.).

{988} ***Bush v. Nathan (In re Bush)*, No. 19-11425, 2019 WL 4416313 (E.D. Mich. Sept. 16, 2019) (Cox)** (Conversion from Chapter 7 to Chapter 13 denied for bad faith when debtor failed to reveal employment discrimination lawsuit then tried to convert when Chapter 7 trustee discovered the lawsuit and proposed to settle the lawsuit out from under the debtor. Meager proposed plan was evidence that conversion was a bad-faith effort to continue to use bankruptcy to avoid paying creditors while shielding employment discrimination lawsuit from those same creditors.).

{989} ***In re Wester*, No. 19-13140-SDM, 2020 WL 233168 (Bankr. N.D. Miss. Jan. 14, 2020) (Maddox)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), bankruptcy court refuses conversion from Chapter 7 to Chapter 13 when motion was filed to control inheritance that would pay unsecureds in full if case remained in Chapter 7. Debtors wanted to use inheritance to pay off HELOC and proposed 100% plan that court found could not be funded because debtors had no disposable income.).

{990} ***In re Cyrilla*, No. 18-20017-GLT, 2020 WL 96680, at *2 (Bankr. W.D. Pa. Jan. 8, 2020) (Taddonio)** (After conversion from Chapter 11 to Chapter 7, debtor is not eligible for conversion to Chapter 13 because debts at time of original Chapter 11 petition exceeded eligibility limits in § 109(e); postpetition events cannot change eligibility calculus and conversion does not effect a change in the petition date for eligibility purposes. "[T]he Bankruptcy Code requires that eligibility be determined as of the petition date, which conversion does not change. . . . [T]here is unanimous agreement among published decisions that postpetition events, such as the reduction of debts, are not considered in determining whether a debtor is eligible for the desired chapter. . . . ").

{991} ***In re Feliciano*, No. 19-05016 (EAG), 2019 WL 7041858 (Bankr. D.P.R. Dec. 19, 2019) (Godoy)** (Not bad faith for purposes of *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), at conversion from Chapter 7 to Chapter 13 that the debtor converted after the Chapter 7 trustee discovered a preferentially perfected security interest in the debtor's car. Car lender's choice to record its security interest during the preference period was not within debtor's control and converting to Chapter 13 was the only obvious way for debtor to keep the car.).

{992} ***In re Dale*, 610 B.R. 524 (Bankr. E.D.N.C. Dec. 9, 2019) (Humrickhouse)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), conversion from Chapter 7 to Chapter 13 is denied based on bad faith intent to wrest control of discrimination lawsuit from Chapter 7 trustee. Debtor failed to prove sufficient regular income to cover the value of the employment discrimination settlement negotiated by the Chapter 7 trustee. Also, debtor proposed not to pay a substantial student loan if allowed to convert to Chapter 13.).

{993} ***In re Tillman*, No. 19-12224-JDW, 2019 WL 6127483 (Bankr. N.D. Miss. Nov. 18, 2019) (Woodard)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), conversion from Chapter 7 to Chapter 13 is denied when debtor concealed $17,000 interest in real property and did not credibly testify that she was unaware of owning the property until confronted by Chapter 7 trustee at meeting of creditors. Did not help that debtor was deeded the property by her parents and the debtor then mortgaged the property and repaid that debt before filing the Chapter 13 case.).

{994} ***In re Phillips*, No. 19-00450, 2019 WL 3849245 (Bankr. D.D.C. Aug. 14, 2019) (Teel)** (Chapter 7 debtor's motion to convert to Chapter 13 is denied based on debt limitation problem under § 109(e), subject to evidentiary review.).

{995} ***In re Wood*, 601 B.R. 754 (Bankr. W.D. Ky. May 15, 2019) (Stout)** (Citing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, L. Ed. 2d 956 (Feb. 21, 2007), conversion from Chapter 7 to Chapter 13 is denied because debtor lacks regular income sufficient to fund Chapter 13 plan, debtor lacks good faith evidenced by multiple opportunistic amendments to schedules of income and expenses and case is a two-party dispute involving years of litigation between debtor and former in-laws.).

{996} ***In re Fletcher*, 599 B.R. 282, 287–88 (Bankr. E.D. Va. Apr. 23, 2019) (Huennekens)** (Section 109(g) does not distinguish between serial filers and simultaneous bankruptcy petitions; wife is ineligible to convert Chapter 7 case to Chapter 13 notwithstanding that current case was filed before order was entered voluntarily dismissing wife's prior Chapter 13 case. Applying § 109(g)(2) and "causal relationship" theory, in joint Chapter 7 case, husband but not wife is eligible to convert to Chapter 13. Wife is not eligible because prior Chapter 13 case was voluntarily dismissed after filing of current Chapter 7 case and current case was filed to stop foreclosure by creditor that filed stay relief motion two years before dismissal of wife's prior case. "Mrs. Fletcher requested and obtained the voluntary dismissal of the Prior Chapter 13 Case approximately two years after Lakeview filed its Motion for Relief from Stay. . . . A causal connection undoubtedly exists between the Motion for Relief from Stay and Mrs. Fletcher's voluntary dismissal of the Prior Chapter 13 Case. . . . The Debtors filed the Current Case on the night before the scheduled foreclosure. . . . Debtors here readily concede that they filed the Current Case 'to get a little bit more time in the house.' . . . The timeline of events in this case and the admissions made by the Debtors establish a direct causal connection between the Motion for Relief from Stay, the impending foreclosure, the filing of the Current Case, and Mrs. Fletcher's voluntary dismissal of the Prior Chapter 13 Case. This connection is precisely what section 109(g)(2) was enacted to prevent.").

§ 148.3 Effects of Conversion from Chapter 7 to Chapter 13

{997} ***Acclaim Legal Servs., P.L.L.C. v. Terry (In re Freeman)*, No. 19-13412, 2020 WL 1473903 (E.D. Mich. Mar. 26, 2020) (Steeh)** (After conversion from Chapter 7 to Chapter 13, attorney's fees for work during the Chapter 7 case are not allowable under § 330(a)(4)(B) because opposing a § 707(b) motion to dismiss and filing multiple amended means test forms did not benefit the debtor or anyone else.).

{998} ***Bush v. Nathan (In re Bush)*, No. 19-11425, 2019 WL 4416313 (E.D. Mich. Sept. 16, 2019) (Cox)** (At attempted conversion from Chapter 7 to Chapter 13, debtor not entitled to exemption in proceeds of settlement of employment discrimination lawsuit under § 522(d)(11)(E) because debtor did not seek recovery for loss of future earnings.).

{999} ***In re Brayan*, 602 B.R. 350, 351 (Bankr. E.D. Mich. Apr. 22, 2019) (Tucker)** (At conversion from Chapter 7 to Chapter 13, bankruptcy court sua sponte refuses stipulation that would have allowed Chapter 7 trustee an administrative expense claim for compensation when Chapter 7 trustee did not distribute any funds before conversion. "[T]he Court will not approve the Chapter 7 Trustee obtaining any fee or administrative expense if this case is converted to Chapter 13, without the Chapter 7 Trustee having made any disbursements or having turned over any money to any non-debtor parties in interest. . . . [U]nder the plain language of 11 U.S.C. § 326(a), a Chapter 7 trustee is not entitled to any compensation, when a Chapter 7 case is converted to Chapter 13 with the Chapter 7 trustee having made no disbursements.").

§ 148.4 Conversion to Chapter 13 after BAPCPA

{1000} ***In re Estilette*, No. 18-11692, 2020 WL 1493546, at *1–*3 (Bankr. S.D. Ala. Jan. 27, 2020) (Barrett)** (Resolving a statutory anomaly created by BAPCPA, at conversion from Chapter 7 to Chapter 13, bankruptcy court orders that payments commence under § 1326(a) and the applicable commitment period runs from 30 days after the order for conversion. "Section 1326(a) (1) provides chapter 13 plan payments are to commence 'not later than 30 days after the date of filing of the plan or the order for relief, whichever is earlier.' . . . A statutory anomaly arises when a case filed as a chapter 7 converts to a chapter 13 more than 30 days after the petition date. A 'plan' is not filed in a chapter 7 case and debtors do not make monthly plan payments in a chapter 7. Nevertheless, the 'order for relief' in such a converted case remains the petition date, not the conversion date. 11 U.S.C. § 348. . . . [T]he plain language of § 1326(a), as amended in 2005, produces an absurd, if not an impossible result . . . . Section 1326(a) provides 'unless the court orders otherwise' plan payments commence not later than 30 days from the filing of the plan or the order for relief, whichever is earlier. . . . [T]he Court ORDERS plan payments and the applicable commitment period to commence 30 days from entry of the order converting the case from a chapter 7 to a chapter 13.").

{1001} ***In re Freeman*, 607 B.R. 317, 323 (Bankr. E.D. Mich. Nov. 4, 2019) (Tucker)** (When Chapter 7 case converts to Chapter 13, debtor's counsel can recover fees as a priority administrative expense under § 330(a)(4)(B) for work done in the Chapter 13 case but cannot recover fees for work during the Chapter 7 phase of the case. "[T]he better and more reasonable interpretation is that the phrase 'in connection with the bankruptcy case' in § 330(a)(4)(B) refers, in the context of a converted case, to the Chapter 13 phase of the case only."), *aff'd*, No. 19-13412, 2020 WL 1473903 (E.D. Mich. Mar. 26, 2020) (Steeh).

2. CONVERSION FROM OTHER CHAPTERS TO CHAPTER 13

§ 149.1 Conversion from Chapter 11 to Chapter 13

{1002} ***Askri v. Fitzgerald*, 612 B.R. 500 (E.D. Va. Feb. 18, 2020) (Ellis)** (Conversion of Chapter 11 case to Chapter 7 rather than conversion to Chapter 13 was appropriate in sixth bankruptcy case in seven years filed by debtor and/or spouse to stop foreclosure. Debtor made no mortgage payments in seven years and arrearage of $500,000 far exceeded ability to pay in any bankruptcy case. Conversion to Chapter 13 from Chapter 11 is not available because debtor's conversion request came after the bankruptcy court had already converted the Chapter 11 case to Chapter 7.).

§ 149.2 Conversion from Chapter 12 to Chapter 13
3. RECONVERSION TO CHAPTER 13
§ 150.1 Reconversion from Chapter 7 or Chapter 11 to Chapter 13

{1003} ***In re Andrews*, No. 19-58083, 2020 WL 1503461 (Bankr. E.D. Mich. Mar. 27, 2020) (Tucker)** (Applying strict construction of § 706(a), debtor cannot convert case from Chapter 7 to Chapter 13 because case was previously converted from Chapter 13 to Chapter 7.).

§ 150.2 Reconversion to Chapter 13 after BAPCPA

{1004} ***Reid v. Cohen*, No. PWG-19-752, 2020 WL 886181 (D. Md. Feb. 24, 2020) (Grimm)** (Debtors' appeal of denial of motion to reconvert to Chapter 13 is dismissed when debtors failed to designate the record on appeal and failed to timely file brief. Reconversion was denied based on ineligibility, inability to propose a feasible plan and lack of good faith.), *dismissing appeal of* No. 18-21383-LSS, 2019 WL 1004707 (Bankr. D. Md. Feb. 26, 2019) (Simpson) (Reconversion to Chapter 13 after conversion from Chapter 13 to Chapter 7 is permissive but not appropriate in this case. Debtors are not eligible for Chapter 13 because unsecured portion of mortgage debt exceeds debt limitation in § 109(e). Proposed plan is not feasible because debtors cannot afford to cure mortgage default that exceeds $442,000. Debtors have exhausted all good-faith uses of bankruptcy to keep their home.).

{1005} ***In re Frazier*, No. 17-01314, 2019 WL 4732377, at *2 (Bankr. N.D. Iowa Sept. 26, 2019) (Collins)** (Adopting holistic view of § 706, motion to reconvert to Chapter 13 notwithstanding prior conversion from Chapter 13 to Chapter 7 is granted conditioned that the debtor file a feasible plan and demonstrate good faith. "Reconversion to Chapter 13 is arguably prohibited by the plain language of 11 U.S.C. § 706(a). . . . This conclusion necessarily follows, however, only if § 706(a) is interpreted without considering subsections (c) and (d) of § 706. . . . This Court finds that the better authority for this case provides when § 706(a) and § 706(b) are read in conjunction, it logically follows that courts have discretion to permit a reconversion to Chapter 13 despite the apparent prohibition found in § 706(a). . . . Permitting reconversion is the more rational interpretation as it does not render other subsections of § 706 superfluous.").

{1006} ***In re Landry*, No. 18-55697-LRC, 2019 WL 2386109 (Bankr. N.D. Ga. June 4, 2019) (Craig)** (Reconversion from Chapter 7 to Chapter 13 after prior conversion from Chapter 13 to Chapter 7 is denied for lack of good faith and lack of feasibility. Evidence indicated that "sovereign citizen" had no intention of paying any debts but only sought to delay and litigate. Creditors were better off in Chapter 7 with a trustee to investigate concealed assets.).

{1007} ***In re Sherman*, 600 B.R. 453 (Bankr. D.N.M. May 24, 2019) (Jacobvitz)** (If reconversion to Chapter 13 from Chapter 7 is permissible, this debtor failed to prove reconversion is appropriate. Debtor has not paid mortgage since 2011. Debtor has insufficient income to pay $92,000 prepetition arrears on mortgage. Debtor discharged personal liability in prior Chapter 7 case and has made no payments or progress toward confirmation in current Chapter 13 case in a year.).

F. DISMISSAL
1. DISMISSAL BY DEBTOR
§ 151.1 Procedure, Timing and Form
§ 151.2 Absolute Right of Debtor?

{1008} ***Weakley v. Marshall*, No. 3:19-cv-00549-RDP-JHE, 2020 WL 136870, at *2 (N.D. Ala. Jan. 13, 2020) (Proctor)** (District court finds no statutory or constitutional basis for habeas corpus relief for Chapter 13 debtor ordered by state criminal court to pay restitution through the Chapter 13 plan. That dismissal of Chapter 13 case by the debtor might result in incarceration raises no right to relief in the district court. "Weakley does not point to any authority to support that a right to dismiss a Chapter 13 bankruptcy petition is constitutional in nature. In fact, any right to dismiss a Chapter 13 petition is statutory—it is wholly a creation of the bankruptcy code itself. *See* 11 U.S.C. § 1307(b) . . . . That Weakley has a statutory right under the bankruptcy code to dismiss his Chapter 13 petition does not mean that exercising that right exempts him from the consequences of doing so, nor does it make those consequences a matter of constitutional import solely because they might result in the imposition of a suspended sentence. Neither of these objections hold water.").

{1009} ***In re Marinari*, No. 17-00922, 2019 WL 5102174, at *4 (E.D. Pa. Oct. 11, 2019) (Pappert)** (Distinguishing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), Chapter 13 debtor has absolute right to dismiss if case was not previously converted. "[Section] 1307(b) gives debtors an absolute right to dismiss their unconverted Chapter 13 proceedings. . . . Congress wrote an explicit exception from mandatory dismissal for cases that had already been converted. That exception counsels against reading in an exception for a debtor's bad faith or for cases with pending conversion motions. . . . Although a debtor's right to dismiss under § 1307(b) is absolute, it need not be unconditional. Courts may, for example, impose appropriate filing restrictions when dismissing the debtor's case . . . or impose sanctions for bad-faith conduct . . . . *Marrama* . . . does not compel a different conclusion."), *aff'g*, 596 B.R. 809, 819 (Bankr. E.D. Pa. Feb. 15, 2019) (Chan) (Judgment creditor offered no basis to reconsider order granting debtor's voluntary dismissal of Chapter 13 case under § 1307(b),

notwithstanding creditor's claims of abuse and bad faith by debtor. "The question of whether § 1307(b) gives debtors an absolute right to dismiss a chapter 13 case has deeply divided courts. . . . The Second Circuit Court of Appeals and some lower courts have held that this section does confer an absolute right to voluntary dismissal . . . . On the other hand, the Fifth Circuit Court of Appeals, Eighth Circuit Court of Appeals, and Ninth Circuit Court of Appeals have determined that any right to dismissal § 1307(b) confers does not apply to debtors acting in bad faith[.]").

{1010} ***In re Cenk*, 612 B.R. 323, 326–29 (Bankr. W.D. Pa. Feb. 27, 2020) (Taddonio)** (Notwithstanding allegations of bad faith and abuse, debtor's motion to dismiss Chapter 13 case is granted. Dismissal of a not previously converted Chapter 13 case is mandatory until an appellate court tells the bankruptcy courts that bad faith or other misconduct can be considered. "[T]here is significant disagreement at the circuit level about whether a debtor's right to dismiss under section 1307(b) is truly absolute. The United States Court of Appeals for the Second Circuit has held that a chapter 13 debtor 'has an absolute right to dismiss a Chapter 13 petition under § 1307(b), subject only to the limitation explicitly stated in that provision[.]' . . . In contrast, the United States Courts of Appeal for the Fifth, Eighth, and Ninth Circuits have all held that a debtor's right to voluntarily dismiss a chapter 13 case is qualified by an implied exception for bad faith conduct or abuse of the bankruptcy system. . . . The United States Court of Appeals for the Third Circuit has yet to confront the issue head on. . . . While the Court would appreciate the discretion to handle an array of factual circumstances differently, particularly to prevent abuse of the bankruptcy system, the existence of such discretion is doubtful.").

{1011} ***In re Nichols*, No. 4:18-bk-09638-BMW, 2020 WL 881443 (Bankr. D. Ariz. Feb. 21, 2020) (Whinery)** (Bankruptcy court denies motion for stay pending appeal of order converting Chapter 13 case to Chapter 7 and denying debtors' competing motion to dismiss. Bankruptcy court found debtors' conduct to be in bad faith and abusive of bankruptcy.), *denying stay pending appeal of* No. 4:18-bk-09638-BMW, 2020 WL 504745 (Bankr. D. Ariz. Jan. 30, 2020) (Whinery) (Absolute right to dismiss Chapter 13 case is qualified by *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. Sept. 24, 2008) (Fletcher, Paez, Schwarzer). After 17 months in Chapter 13 without any progress toward confirmation, voluntary dismissal is denied and conversion to Chapter 7 is ordered. Debtors have been camped out in Chapter 13 while they deal with criminal charges. Debtors failed to file tax returns and have not acted in good faith.).

{1012} ***In re Bolling*, 609 B.R. 454 (Bankr. D. Conn. Dec. 18, 2019) (Manning)** (Debtor has absolute right to dismiss Chapter 13 case that was not previously converted but under § 349(a) court conditions dismissal with prejudice to refiling for two years based on series of filings to stop foreclosure sales and no evidence of attempt by debtor to actually pay debts through a Chapter 13 plan.).

{1013} ***In re Smith*, No. 19-40227, 2019 WL 2406940, at *5 (Bankr. N.D. Ohio June 6, 2019) (not for publication) (Kendig)** (Right to voluntarily dismiss Chapter 13 case is not absolute when debtor has three times abused bankruptcy relief by filing Chapter 13 cases to stop long-running foreclosure and then immediately dismissed each case. Dismissal is vacated to allow foreclosing bank to seek *in rem* relief after nearly 15 years of trying to complete a foreclosure. Foreclosing bank has standing to seek to vacate order of dismissal to then pursue *in rem* relief. "U.S. Bank clearly and convincingly persuaded the court that Debtor's conduct in filing this case, stopping the sheriff's sale, then dismissing the case with no notice, was unfair, especially in light of the history between the parties and Debtor's pattern of filings. The court will therefore vacate the dismissal order and reinstate the case to allow U.S. Bank to proceed to seek in rem relief promptly."), *stay denied,* No. 19-40227, 2019 WL 3774152 (Bankr. N.D. Ohio Aug. 9, 2019) (not for publication) (Kendig).

§ 151.3 Strategic Considerations: Consequences of Voluntary Dismissal

2. DISMISSAL ON REQUEST OF PARTY IN INTEREST

§ 152.1 Procedure, Timing and Form

{1014} ***In re Ruiz*, 776 F. App'x 750 (3d Cir. July 23, 2019) (McKee, Shwartz, Bibas)** (District court appropriately dismissed appeal of order dismissing Chapter 13 case based on pro se former spouse's failure to file a brief.).

{1015} ***Liebman v. Ocwen Loan Servicing, LLC (In re Liebman)*, 772 F. App'x 839 (11th Cir. June 7, 2019) (Wilson, Pryor, Grant)** (Pro se debtor's appeal of dismissal of Chapter 13 case and of bankruptcy court's refusal to retroactively stay foreclosure fails because debtor failed to brief any relevant issue.).

{1016} ***Smith v. U.S. Bank Nat'l Ass'n (In re Smith)*, No. 19-8021, 2019 WL 4271977 (B.A.P. 6th Cir. Sept. 10, 2019) (Buchanan, Opperman, Wise)** (BAP denies motion for permission to appeal nonfinal order vacating dismissal of Chapter 13 case to permit creditor to seek *in rem* stay relief. BAP engages in a complicated discussion of when bankruptcy court orders are final after *Bullard v. Blue Hills Bank*, ___ U.S. ___, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (May 4, 2015), and in light of *Ritzen Group, Inc. v. Jackson Masonry, LLC (In re Jackson Masonry, LLC)*, 906 F.3d 494 (6th Cir. Oct. 16, 2018) (Sutton, McKeague, Thapar), *cert. granted*, ___ U.S. ___, 139 S. Ct. 2614, 204 L. Ed. 2d 263 (May 20, 2019).).

{1017} ***Bey v. U.S. Bank Nat'l Ass'n (In re Bey)*, No. 3:18-CV-02093 (KAD), 2020 WL 292323 (D. Conn. Jan. 21, 2020) (Dooley)** (U.S. Bank had standing to seek dismissal of Chapter 13 case under § 1307(c) because it was holder of strict foreclosure judgment by assignment from Bank of America.).

{1018} ***Burgess v. Powers*, No. 3:19-CV-2711-B, 2019 WL 7037581 (N.D. Tex. Dec. 20, 2019) (Boyle)** (Motion for injunction, treated as a motion for stay pending appeal of dismissal, is denied. Debtor filed nine bankruptcy cases and innumerable appeals of actions in other courts with respect to mortgage and other debts that had not been paid in more than a decade. Chapter 13 case was bad-faith continuation of that litigation. Debtor did not comply with Bankruptcy Rule 8007 by first asking bankruptcy court for stay.).

{1019} ***Kufrvoich v. DeHart*, No. 3:19-1057, 2019 WL 4081282, at *2 (M.D. Pa. Aug. 29, 2019) (Mannion)** (Mortgagee granted intervention by district court in Chapter 13 debtor's appeal of bankruptcy court order dismissing Chapter 13 case. "[I]ntervenor seeks intervention because it wants to voice its opposition to the reinstatement of appellant's Chapter 13 Bankruptcy Case.").

{1020} ***Nero v. Waage (In re Nero)*, 605 B.R. 242 (M.D. Fla. Aug. 26, 2019) (Merryday)** (In third Chapter 13 case filed to stop foreclosure, 22 days' notice of hearing on motion to dismiss was adequate notwithstanding debtor's counsel was suspended from practice. Debtor had no due process or other right to counsel and debtor's choice not to appear rather than retain substitute counsel was debtor's choice, with consequences.).

{1021} ***Cody v. Micale*, No. 7:19-MC-4, 2019 WL 2438792 (W.D. Va. June 11, 2019) (Urbanski)** (Pro se Chapter 13 debtor does not need permission to appeal dismissal of case to district court because dismissal is a final order. No provision of Bankruptcy Code or other federal law—for example, 28 U.S.C. § 1915(d)—authorizes appointment of counsel to represent debtor on appeal of dismissal of Chapter 13 case.).

{1022} ***In re Zuniga*, 606 B.R. 781 (Bankr. N.D. Ill. Oct. 4, 2019) (Schmetterer)** (Chapter 13 debtor's failure to respond to motions to dismiss is fatal: allegations of bad faith, inaccuracies and other misconduct related to ongoing state court litigation are deemed admitted and fully support dismissal of the case.).

§ 152.2 Cause for Dismissal—In General

{1023} ***In re Grasty*, No. 19-3199, 2020 WL 1623755 (7th Cir. Apr. 2, 2020) (Wood, Flaum, Barrett)** (Chapter 13 debtor's "unfounded" and "extreme" claims of bias cannot erase fact that case was appropriately dismissed for material default in payments under § 1307(c)(6).).

{1024} ***Bote v. Derham-Burk*, 801 F. App'x 498 (9th Cir. Mar. 4, 2020) (Paez, Bea, Jack)** (Not an abuse of discretion for bankruptcy court to grant U.S. trustee's motion to dismiss when debtor failed to complete payments under plan within 60 months required by plan.), *aff'g* No. 3:18-cv-02246-WHO, 2018 WL 5454150 (N.D. Cal. Oct. 29, 2018) (Orrick) (Dismissal for cause was appropriate when Chapter 13 debtor waited four and a half years to object to plan-busting priority claim that could not be paid in 60 months. Debtor's objection to the large priority claim straddled hearing on trustee's motion to dismiss and debtor failed to timely object to dismissal motion.).

{1025} ***Taneja v. Preuss (In re Taneja)*, 789 F. App'x 907 (2d Cir. Dec. 2, 2019) (Walker, Lynch, Sullivan)** (Dismissal of Chapter 13 case for cause was appropriate when pro se debtor failed to prove regular or stable income that would fund any confirmable plan.), *aff'g* No. 17-CV-9429 (JGK), 2019 WL 1949839 (S.D.N.Y. Apr. 19, 2019) (Koeltl) (Third motion for "reconsideration" of order affirming bankruptcy court's dismissal of Chapter 13 case is denied for complete lack of merit.).

{1026} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Dismissal of Chapter 13 case based on ineligibility was appropriate because noncontingent liquidated unsecured debts exceeded § 109(e) limitations.).

{1027} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (Bankruptcy court committed no error in dismissing case for unreasonable delay that was prejudicial under § 1307(c)(1) when debtor failed to propose a confirmable plan, failed to file required documents and otherwise failed to perform duties.).

{1028} ***Burton v. Maney (In re Burton)*, 610 B.R. 633 (B.A.P. 9th Cir. Jan. 14, 2020) (Lafferty, Taylor, Faris)** (Chapter 13 case filed by debtors who abandoned a defunct marijuana business is dismissed *sua sponte* without an evidentiary hearing because bankruptcy court found that possibility of recovery in contract litigation remaining after closure of marijuana business threatened to engage trustee and court in "illegal conduct." Incongruously, BAP found no abuse of discretion that bankruptcy court dismissed Chapter 13 case based on failure of debtors to prove the negative—that the litigation would not produce proceeds from an illegal enterprise—and found it was not an abuse of discretion to reach that conclusion without affording the debtors an opportunity to put on evidence.).

{1029} ***Ibrahim v. Bankowski (In re Ibrahim)*, No. MB 18-020, 2019 WL 4127600 (B.A.P. 1st Cir. Aug. 28, 2019) (Tester, Cabán, Fagone)** (Bankruptcy court appropriately denied motion for relief from order dismissing Chapter 13 case when debtor failed to comply with court orders to file a confirmable plan and failed to file adversary proceeding challenging prepetition foreclosure sale.).

{1030} ***Lawson v. Wells Fargo Bank, N.A. (In re Lawson)*, No. CC-19-1011-TaSKu, 2019 WL 3503064 (B.A.P. 9th Cir. July 31, 2019) (not for publication) (Taylor, Spraker, Kurtz)** (Dismissal of Chapter 13 case under § 1307(c)(1), (c)(4) and (c)(5) was appropriate for debtor who made no payments to the trustee, failed to provide for $959,000 claim of Wells Fargo, failed to make mortgage payments since 2010 and failed to propose anything that looked like a confirmable plan.).

{1031} ***Colone v. Marshall (In re Colone)*, No. 19 C 6571, 2020 WL 1233775 (N.D. Ill. Mar. 12, 2020) (Coleman)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c)(1) and (c)(5) after six-month delay, three unconfirmable plans and debtor failed to make all payments required by § 1326.).

{1032} ***Kufrovich v. DeHart*, No. 3:19-1057, 2019 WL 5721910 (M.D. Pa. Nov. 5, 2019) (Mannion)** (Bankruptcy court committed no error in granting trustee's motion to dismiss Chapter 13 case based on debtor's failure to make plan payments.).

{1033} ***Bristol v. Branigan*, No. PJM 18-02957, 2019 WL 4600304 (D. Md. Sept. 20, 2019) (Messitte)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c) when debtor failed to commence payments within 30 days as required by § 1326. That debtor claims her attorney told her not to begin making payments until a motion for stay relief was filed does not change result.).

{1034} ***Shek v. Burchard*, No. 19-cv-00588-EMC, 2019 WL 2191811 (N.D. Cal. May 20, 2019) (Chen)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c) when debtor paid $6,925 on January 4 instead of $10,460 by January 3 as ordered.).

{1035} ***Duggan v. Tanglewood Villa Owners Ass'n, Inc.*, No. 4:18-CV-554, 2019 WL 2077714 (E.D. Tex. May 10, 2019) (Crone)** (Dismissal with prejudice to refiling for 120 days was appropriate when Chapter 13 case was pending for more than a year and debtor failed to produce a confirmable plan after numerous extensions of time; unreasonable delay was combined with many instances of "contumacious conduct.").

{1036} ***O'Hara v. Napolitano*, No. 3:18-cv-01899 (JAM), 2019 WL 2066962 (D. Conn. May 10, 2019) (Meyer)** (Chapter 13 debtor stated no ground for relief from order dismissing case when challenge to dismissal is that Ocwen's nonrecourse claim should not have been allowed. The debtor signed the mortgage but not the note that it secured but debtor's dispute of that nonrecourse liability had no real relevance to dismissal of the case.).

{1037} ***De Galofre v. US Bank Nat'l Ass'n*, No. 0:18-cv-60511-UU, 2018 WL 9458260 (S.D. Fla. Oct. 2, 2018) (Ungaro)** (Bankruptcy court did not abuse discretion when it dismissed Chapter 13 case based on debtor's failure to commence payments under § 1326 and other procedural deficiencies including a missed meeting of creditors and incomplete motions.).

{1038} ***Ferguson v. Sapir (In re Ferguson)*, No. 17 Civ. 2051 (PAE), 2018 WL 9963877 (S.D.N.Y. Mar. 27, 2018) (Engelmayer)** (Bankruptcy court appropriately dismissed Chapter 13 case based on debtor's failure to propose a confirmable plan when plan would pay trustee $80,000 but would not pay mortgage arrears of $157,000.).

{1039} ***In re Berk*, No. DG 17-04498, 2020 WL 1651228 (Bankr. W.D. Mich. Apr. 2, 2020) (Dales)** (Not "excusable neglect" that Chapter 13 debtor mailed payment that was received one day after deadline that triggered automatic dismissal. Debtor could have provided payment in person or by delivery other than by mail. Order of dismissal was issued instantaneously and mailed to creditors, making it complicated to unscramble the egg.).

{1040} ***In re Horton*, No. 20-00033, 2020 WL 1328796, at *2 (Bankr. D.D.C. Mar. 19, 2020) (Teel)** (Chapter 13 case filed to stop eviction with respect to property that was foreclosed before the petition and is not property of the estate is filed in bad faith; case is dismissed with bar to refiling for 180 days. Debt with respect to property was discharged in prior Chapter 7 case. Debtor failed to file a plan in current Chapter 13 case and did not need bankruptcy to deal with any existing debts—all were discharged in prior Chapter 7 case. "Filing this bankruptcy case to stay the eviction of Horton served no legitimate bankruptcy purpose. Horton no longer owns the Property[.]").

{1041} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{1042} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is

necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

{1043} ***In re Elwell*, No. 17-51442, 2020 WL 762214, at *2 (Bankr. D. Conn. Feb. 14, 2020) (Manning)** (Mortgagee's motion to dismiss is granted and debtor's competing motion to convert from Chapter 13 to Chapter 11 is denied when debtor has failed to confirm a plan for two years and any reorganization is dependent on speculative appeal of litigation with mortgagee that debtor lost. "A motion to convert under section 1307(d) may also be denied and a case dismissed under section 1307(c) where the proposed plan is predicated on the outcome of litigation that remains pending because the feasibility of such a plan is speculative and protracted.").

{1044} ***In re Lewis*, No. 15-15696-MKN, 2019 WL 5777647 (Bankr. D. Nev. Oct. 3, 2019) (Nakagawa)** (Motion to dismiss Chapter 13 case for lack of eligibility—filed four years after petition—is granted when *pro se* debtor scheduled no visible source of income and mortgagee filed a proof of claim indicating arrearages of more than $96,000. Debtor's responsive claim that there are undisclosed assets and sources of income only made the matter worse for the debtor.).

{1045} ***In re Malone*, No. 19-80149-TRC, 2019 WL 4686330 (Bankr. E.D. Okla. Sept. 25, 2019) (Cornish)** (Noting that *In re Pratola*, 578 B.R. 414 (Bankr. N.D. Ill. Dec. 27, 2017) (Baer), was reversed, 589 B.R. 779 (N.D. Ill. Aug. 31, 2018) (Dow), dismissal is mandatory when student loan debt exceeds eligibility limit in § 109(e).).

{1046} ***In re Assadi*, No. 16-52008 MEH, 2019 WL 3295073 (Bankr. N.D. Cal. July 22, 2019) (Hammond)** (Cause for dismissal under § 1307(c) that debtor with confirmed Chapter 13 plan failed to pay postconfirmation sales taxes and does not have financial ability to fix that problem.).

{1047} ***In re Dawood*, 602 B.R. 640, 644–45 (Bankr. E.D. Mich. July 19, 2019) (Tucker)** (To support its decision in a related Chapter 11 case involving property used as a medical marijuana dispensary, bankruptcy court sua sponte dismisses Chapter 13 case with two-year bar to refiling and with *in rem* relief with respect to debtor's interest in property. Court finds that Chapter 13 case was filed in bad faith for sole purpose of upsetting dismissal of related Chapter 11 case and for improper purpose of disrupting state court litigation over disposition of marijuana-related property. "The Court will enter an *in rem* order, which will prevent the automatic stay under 11 U.S.C. § 362(a) from arising, with respect to the . . . Property or actions taken against that property, in any future bankruptcy case filed within two years . . . . The Court has authority to order such *in rem* relief under 11 U.S.C. § 105(a) and by analogous authority under 11 U.S.C. § 362(d)(4). . . . Section 362(d)(4) does not literally apply here, because the Court is not acting on the motion of a secured creditor. But when combined with § 105(a), § 362(d)(4) does lend support, by analogy, to the *in rem* relief being granted here.").

§ 152.3 Cause for Dismissal Added or Changed by BAPCPA

{1048} ***Rees v. Marshall*, No. 19-cv-3004, 2020 WL 616465 (N.D. Ill. Feb. 10, 2020) (Blakey)** (Bankruptcy court did not abuse discretion by refusing Rule 60 relief from order dismissing Chapter 13 case in 58th month of 60-month plan notwithstanding that debtors tendered sufficient money to pay unsecured creditors the 93.78% required by confirmed plan. Applying an "extraordinary circumstances" standard, the bankruptcy court refused Rule 60 relief from the dismissal order and the district court embraced the double-negative that the bankruptcy court's exercise of discretion was not "unreasonable.").

{1049} ***Lall v. Powers*, No. 3:19-CV-00398-X, 2020 WL 619916 (N.D. Tex. Feb. 7, 2020) (Starr)** (Bankruptcy court appropriately dismissed Chapter 13 case and refused debtor's Federal Rule of Civil Procedure 59 motion to vacate dismissal and reinstate the case when the grounds offered were a modified plan filed after dismissal and a challenge to mortgage foreclosure that was not new.).

{1050} ***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)** (Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. Alternatively, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's failure to file schedules and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.).

{1051} ***In re Davis*, No. 19-36077-KLP, 2020 WL 581505 (Bankr. E.D. Va. Feb. 5, 2020) (Phillips)** (In fourth bankruptcy case in 10 years, motion to reconsider order denying further extension of time to file necessary documents and dismissing Chapter 13 case is denied because debtor offered no ground for reconsideration and court committed no error.).

{1052} ***In re Lawrence*, No. 17-00233, 2019 WL 2428497 (Bankr. D.D.C. June 10, 2019) (Teel)** (Reconsideration denied of order dismissing Chapter 13 case after debtor transferred real property without notice or court authority.).

{1053} ***In re Whaley*, 772 F. App'x 346 (7th Cir. June 24, 2019) (Kanne, Barrett, Brennan)** (Dismissal of Chapter 13 petition based on bad faith and other causes under § 1307(c) was appropriate when debtor failed to file proof of income, failed to make all required payments during the three months that the Chapter 13 case was pending, failed to attend meeting of creditors, failed to file a plan and debtor was attempting to use Chapter 13 petition to get back car that was towed by city for nonpayment of parking tickets.), *aff'g* Nos. 17-cv-7341, 18-cv-3397, 2018 WL 4030593 (N.D. Ill. Aug. 24, 2018) (Blakey) (Evidence of bad faith justifying dismissal for cause included failure to provide pay advices, failure to appear at meeting of creditors, failure to provide tax returns and failure to prove regular income.).

{1054} ***Bauman v. Skelton (In re Bauman)*, No. SC-18-1190-SLG, 2020 WL 1899557 (B.A.P. 9th Cir. Apr. 16, 2020) (not for publication) (Spraker, Lafferty, Gan)** (Dismissal of fifth bankruptcy since 2010 was appropriate based on debtor's failure to commence payments required by § 1326(a)(1) and failure to provide tax return required by § 521(e)(2)(A). Chapter 13 trustee has standing to seek dismissal based on both of those grounds.).

{1055} ***Steiner v. Wilmington Sav. Fund Soc'y, FSB (In re Steiner)*, 613 B.R. 176, 179 (B.A.P. 8th Cir. Mar. 23, 2020) (Saladino, Schermer, Shodeen)** (After 10 Chapter 13 cases since 2010, all filed to stop foreclosures, debtors' current Chapter 13 cases were appropriately dismissed with 180-day bar to refiling. "[T]he bankruptcy court found the Steiners' filings were part of a 'long-running scheme to manipulate and abuse the Bankruptcy Code and the bankruptcy system to the extreme detriment of their creditors, particularly Wilmington Savings.'").

{1056} ***Aguilar v. Specialized Loan Servicing, LLC (In re Aguilar)*, No. CC-19-1112-GTaL, 2020 WL 710349 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Gan, Taylor, Lafferty)** (In ninth bankruptcy case filed by debtor and/or spouse in war with real estate lender and servicers, dismissal under § 1307(c)(4) was appropriate based on debtors' failure to make payments required by § 1326.).

{1057} ***In re Buhl*, No. 3:19-CV-01190 (KAD), 2020 WL 1849393 (D. Conn. Apr. 13, 2020) (Dooley)** (Bankruptcy court appropriately dismissed Chapter 13 case with one-year bar to refiling after debtor and spouse filed six tag-team bankruptcies each timed to stop foreclosure or foil eviction. Bad-faith evidence included history of filings, failure to make payments and admission by debtor that filings were intended to keep debtors in home that they were not paying for.), *aff'g* No. 19-30803 (AMN), 2019 WL 3302400 (Bankr. D. Conn. July 22, 2019) (Nevins) (Cause for dismissal with one-year bar to refiling under §§ 1307(c), 1307(c)(4) and 349(a) included three bankruptcy filings to stop foreclosure and eviction, failure to make any payments in current case, lack of good-faith intention to reorganize and two-party nature of underlying dispute.), *amending and superseding* No. 19-30803 (AMN), 2019 WL 3282970 (Bankr. D. Conn. July 19, 2019) (Nevins) (Third Chapter 13 case filed to stay foreclosure or to stop eviction is dismissed with bar to refiling for one year. Cause included failure to commence payments under § 1307(c)(4), a pattern of filings to stop foreclosure and eviction and the two-party nature of the case.).

{1058} ***Koola v. Ditech Fin. LLC*, 611 B.R. 251 (D.S.C. Dec. 26, 2019) (Gergel)** (Failure to confirm multiple amended plans and inability to fund any plan that would resolve huge mortgage arrearage are cause for dismissal.).

{1059} ***In re Bartley*, No. 3:19-CV-00400 (KAD), 2019 WL 6467353 (D. Conn. Dec. 2, 2019) (Dooley)** (Tag-team bankruptcies and multiple meritless state court and bankruptcy court lawsuits with respect to foreclosure demonstrate bad-faith abuse by Chapter 13 debtor that justified denial of extension of stay and dismissal with prejudice to refiling for two years.).

{1060} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Dismissal of fourth petition since 2016 was appropriate for bad faith based on evidence that debtor lacked sufficient income to fund a plan and serial filings to stop sale of property were abusive.).

{1061} ***Bunyan v. Remick*, No. 8:18-cv-1519-T-36, 2019 WL 4805428 (M.D. Fla. Oct. 1, 2019) (Honeywell)** (Dismissal with 180-day bar to refiling is appropriate under § 109(g)(1) when debtor with six prior bankruptcies failed to obtain a prepetition briefing, failed to file required documents, failed to comply with several orders about deficiencies in documents and failed to appear at the hearing on dismissal.).

{1062} ***Woodroffe v. Waage*, No. 8:18-cv-1437-T-36, 2019 WL 4644425 (M.D. Fla. Sept. 24, 2019) (Honeywell)** (Bankruptcy court appropriately denied confirmation and dismissed third Chapter 13 case when plan made no provision for mortgage and debtor failed to appear at confirmation hearing after failing to file required amended plan. Unreasonable delay resulted for purposes of § 1307(c)(1).).

{1063} ***Nero v. Waage (In re Nero)*, 605 B.R. 242 (M.D. Fla. Aug. 26, 2019) (Merryday)** (Bankruptcy court correctly determined that debtor was not eligible and that Chapter 13 case had to be dismissed because debtor failed to obtain briefing within 180 days before the petition. Briefing in prior case more than 180 days before current petition and briefing in current case after filing the petition do not satisfy § 109(h).).

{1064} ***Lall v. Powers*, No. 3:19-CV-0398-B, 2019 WL 2249717 (N.D. Tex. May 24, 2019) (Boyle)** (District court denies stay pending appeal of dismissal of fourth bankruptcy case when there is substantial evidence of bad faith including that debtor has not paid mortgage in 11 years.).

{1065} ***In re Hartley*, No. 19-31049 (AMN), 2020 WL 1908326 (Bankr. D. Conn. Apr. 14, 2020) (Nevins)** (Cause for dismissal of second Chapter 13 case that debtor did not pay pre- or postpetition property taxes across two cases spanning several years and debtor lacks financial ability to protect mortgage lender from priming statutory lien of taxing authority. Request for two-year bar to refiling is denied because mortgage lender still has equity cushion and debtor's litigation strategy in bankruptcy court and in state court foreclosure action does not rise to level of bad faith.).

{1066} ***In re McClain*, No. 19-11325, 2020 WL 1867906 (Bankr. M.D. La. Apr. 14, 2020) (Dodd)** (Bankruptcy court declined to reconsider dismissal of second Chapter 13 case in which debtors failed to make required payments to trustee, failed to make payments directly to mortgage holder and debtors' fluctuating incomes are too unstable to maintain a Chapter 13 case.).

{1067} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{1068} ***In re Via*, No. 3:19-bk-33999-SHB, 2020 WL 1015264 (Bankr. E.D. Tenn. Feb. 27, 2020) (Bauknight)** (In eleventh bankruptcy case since 2002, dismissal with five-year bar to refiling is appropriate because of extraordinary abuse by debtor, including failing to file documents, failing to comply with court orders, failing to pay filing fees and failing to pay creditors.).

{1069} ***In re Johnson*, 613 B.R. 471 (Bankr. N.D. Okla. Jan. 29, 2020) (Michael)** (Chapter 13 case is dismissed for bad faith after totality-of-circumstances review. Sole purpose of filing was to defeat or minimize state court sanctions judgment against debtor, an attorney, for professional misconduct in litigation. Case is one creditor case in which debtor would relitigate state court sanctions judgment if permitted. If confirmed, proposed plan would pay 15% of judgment while shielding assets in trust with wife worth more than $700,000.).

{1070} ***In re Othello*, No. 19-51502, 2020 WL 232836 (Bankr. D. Conn. Jan. 14, 2020) (Manning)** (*Pro se* fourth Chapter 13 petition filed without necessary documents is dismissed as abusive and filed in bad faith with two-year bar to refiling under §§ 349(b) and 105(a).).

{1071} ***In re Meltzer*, No. 19-21110-PRW, 2020 WL 129441 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** (Third *pro se* Chapter 13 petition filed to stop foreclosure is dismissed for cause—including bad faith, prejudicial delay, failure to make payments and lack of adequate protection—with 18-month bar to refiling under § 1307(c)(1), (c)(3) and (c)(4) and §§ 105(a) and 349(a). *In rem* relief is also appropriate under § 362(d)(4)(B). Court declines to dismiss "with prejudice" to discharge of debts in a future bankruptcy case.).

{1072} ***In re Perkins*, No. 19-51202 (JAM), 2020 WL 223910 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Dismissal with two-year bar to refiling is appropriate in third bare-bones Chapter 13 filing within a year. All cases were filed to stop foreclosures. Debtor did not file necessary documents. Debtor failed to appear at meeting of creditors. Debtor did not move to impose a stay despite fact that no stay was in effect because of § 362(c)(4).).

{1073} ***In re Partch*, No. 19-51084, 2020 WL 211447 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Second Chapter 13 case within a year is dismissed with bar to refiling for two years based on bad faith and abuse of bankruptcy process. Multiple bankruptcy cases and litigation in other courts were filed to impede foreclosure on an inherited home. Debtor failed to comply with duties in the bankruptcy cases and did not respond to dismissal motion. Debtor did not seek to extend stay under § 362(c)(3) and did not demonstrate any intent to propose a confirmable plan.).

{1074} ***In re Blige*, No. 19-40222-EJC, 2019 WL 3959982 (Bankr. S.D. Ga. Aug. 21, 2019) (Coleman)** (Fourth Chapter 13 case since 2010 is dismissed with prejudice to refiling for three years when, acting through son with power of attorney, debtor filed petition that misrepresented illness when truth was debtor was incarcerated. Meeting of creditors conducted by phone from Georgia to California. Son in California answered questions revealing that debtor was incarcerated. Debtor through son misled everyone to believe that the debtor was in ill health, not in jail.).

{1075} ***In re Ballentine*, 605 B.R. 710 (Bankr. M.D.N.C. Apr. 4, 2019) (Aron)** (Dismissal with 180-day bar to refiling is appropriate when Chapter 13 case was filed in bad faith to stop foreclosure of reverse mortgage. Debtor lied about ownership of trust property, failed to make postpetition payments and has no disposable income from which to make any plan payments.).

{1076} ***In re Foster*, No. 18-80466, 2019 WL 7841547 (Bankr. M.D.N.C. Feb. 8, 2019) (James)** (After six years of litigation with Wells Fargo, two Chapter 13 cases, 15 months without confirmation and nine amended plans that failed to address that Wells Fargo had not been paid since 2012, motions to reconsider or vacate order dismissing Chapter 13 case are denied and stay pending appeal of dismissal is denied.).

{1077} ***In re Goldsmith*, No. 19-24475-JAD, 2019 WL 7599885 (Bankr. W.D. Pa. Jan. 17, 2019) (Deller)** (Dismissal of third bankruptcy filed to stop eviction is not reconsidered given that debtor failed to file documents necessary to maintain the Chapter 13 case, debtor failed to commence payments to the Chapter 13 trustee, debtor lacks regular income and only ground for relief from dismissal order is debtor's desire for a stay to stop eviction.).

{1078} ***In re Johnson*, No. 3:18-bk-659-JAF, 2018 WL 9415066 (Bankr. M.D. Fla. Oct. 1, 2018) (Jennemann)** (After surrender of home in prior Chapter 7 case and order enjoining debtor from opposing foreclosure under *Failla v. Citibank, N.A. (In re Failla)*, 838 F.3d 1170 (11th Cir. Oct. 4, 2016) (Marcus, Pryor, Lawson), Chapter 13 case filed to stop foreclosure was filed in bad faith, is abusive and must be dismissed. Chapter 13 case is dismissed with 180-day bar to refiling and with stay relief to mortgagee.).

§ 152.5 Cause Not Found

{1079} ***Gross v. Rojas (In re Gross)*, No. CC-18-1218-SKuTa, 2019 WL 3731535 (B.A.P. 9th Cir. Aug. 7, 2019) (not for publication) (Spraker, Kurtz, Taylor)** (BAP reverses dismissal of Chapter 13 case: 14-month delay getting to confirmation was not unreasonable or prejudicial for § 1307(c)(1) purposes given litigation to avoid lien and litigation to recharacterize a tax lien. Bankruptcy court did not give debtors reasonable opportunity to fix remaining problems with plan for § 1307(c)(5) purposes. Debtors made all payments during 14-month delay and responded to all objections from trustee.).

{1080} ***Touroo v. Terry (In re Touroo)*, No. 18-13365, 2019 WL 2590751, at *2–*3 (E.D. Mich. June 25, 2019) (Steeh)** (Embracing *In re Klaas*, 858 F.3d 820, 823 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court had discretion to allow debtors to complete Chapter 13 plan payments a few weeks after expiration of five-year limitation. Remand necessary for bankruptcy court to consider factors in *Klaas*. Confirmed plan required the debtors to remit their 2017 tax refund. Debtors failed to do so and trustee moved to dismiss. Approximately three weeks after expiration of five-year duration of confirmed plan debtor submitted missing tax refund to the trustee. "[A] debtor may modify a plan after it has been confirmed. A debtor may modify a plan to 'extend or reduce the time for . . . payments,' 11 U.S.C. § 1329(a)(2), but may not modify the plan to extend its length beyond five years, 11 U.S.C. § 1329(c). . . . [T]he first weekly payment under the confirmed plan was due no later than August 7, 2013, . . . the plan expired no later than August 7, 2018. . . . Debtors submitted their 2017 tax refund to the Trustee on August 27, 2018. . . . This court is persuaded . . . that the *Klaas* decision properly accounts for the statutory context in determining that courts are not *required* to dismiss a case under § 1307(c) if a debtor has not timely completed all of the plan payments. The Code unambiguously gives bankruptcy courts discretion under such circumstances . . . bankruptcy courts have discretion to allow debtors to cure a default after the end of the five-year period.").

{1081} ***In re Lopez*, No. 15-04334, 2019 WL 4879131 (Bankr. D.P.R. Oct. 1, 2019) (Tester)** (Denying reconsideration of prior decision rejecting motion to dismiss for bad faith.), *denying motion to amend of*, No. 15-04334, 2019 WL 2406937, at *6 (Bankr. D.P.R. June 6, 2019) (Tester) (Creditor failed to prove that theft of car 15 years before Chapter 13 petition was part of a fraudulent scheme or otherwise indicative of bad faith for § 1307(c) or § 1325(a)(7) purposes. That almost all debt was owed to one objecting creditor and that petition was filed on the eve of state court foreclosure of judgment lien was not indicative of bad faith when filing Chapter 13 enabled the debtor to void the judgment lien under § 522(f) and debtor could then claim exemption in property. "[T]his court has not found a single case in the First Circuit that holds that a Debtor filing one petition for relief in order to save their property from a public auction is grounds for a finding of bad faith. . . . Debtor's use of the Code's protections and privileges under sections 506 and 522 . . . does not constitute bad faith. It is the right of every debtor who seeks bankruptcy relief. . . . Debtor's act of filing the petition on the eve of a public auction does not reflect an improper motive for seeking bankruptcy relief. A debtor may appropriately resort to chapter 13 to resolve financial difficulties caused by the debtor's own mistakes.").

{1082} ***In re Simmons*, 608 B.R. 602, 606–13 (Bankr. S.D. Ga. Sept. 30, 2019) (Barrett)** (Direct payment of home mortgage is payment "outside" the Chapter 13 plan and default in postconfirmation direct payments is not a ground for dismissal or for denial of discharge. Trustee filed notice of completion of plan payments and notice of final cure payment. BONY responded that the debtor was delinquent on postpetition direct mortgage payments in the amount of $47,334.88. Stay relief was granted and the trustee, previously unaware of the default in direct payments, moved to dismiss. "The Southern District of Georgia, like many districts, is a non-conduit jurisdiction allowing debtors to pay their post-petition mortgage payments directly to the lender . . . . Debtors are current in their payments to the Trustee but have not made all their post-petition payments to their respective lenders. . . . [T]he current majority [concludes] that 'payments under the plan' includes direct post-petition mortgage payments. . . . The minority position, and the one adopted by this Court, finds that post-petition mortgage payments paid directly by debtor are not 'payments under the plan' and a debtor's failure to make such payments standing alone does not merit the dismissal of a debtor's bankruptcy case, the denial of their discharge, and most likely the loss of their home. . . . [D]irect post-petition mortgage payments are debts paid outside of the bankruptcy and a debtor's failure to make all of these payments, standing alone does not constitute a material default with respect to a term of a plan under § 1307(c)(6) and is not per se grounds for a denial of discharge.").

{1083} ***In re Dean*, No. 18-35976-KLP, 2019 WL 4312108 (Bankr. E.D. Va. Sept. 11, 2019) (Phillips)** (Evidence failed to prove unreasonable delay for purposes of dismissal under § 1307(c) when five failed attempts at confirmation were partially explained as counsel's errors and sixth proposed plan might be confirmable.).

{1084} ***In re Melly*, No. 18-26036-RG, 2019 WL 1953661 (Bankr. D.N.J. Apr. 29, 2019) (Sherwood)** (Not bad faith sufficient to support dismissal of Chapter 13 case before confirmation that case was filed to enable debtor to pay one large judgment creditor from future income rather than from liquidation of property. Good faith could be raised again as an objection to confirmation if or when the debtor proposed a confirmable plan.).

§ 152.6 Strategic Considerations
§ 152.7 *Sua Sponte* Dismissal

{1085} ***Gándara-Gorritz v. Scotiabank de P.R.*, 603 B.R. 871 (D.P.R. Sept. 6, 2019) (Besosa)** (Bankruptcy court did not abuse discretion by dismissing Chapter 13 case sua sponte consistent with local rule that required debtor to take some action within 14 days after the denial of plan confirmation. Debtor did nothing and court entered order dismissing case. On motion to reconsider, debtor offered no evidence with respect to why dismissal was not appropriate.).

{1086} ***Boateng v. Grigsby*, No. PJM 18-2948, 2019 WL 1767424 (D. Md. Apr. 22, 2019) (Messitte)** (In third bankruptcy case filed on the eve of foreclosure, deficient and incomplete submissions indicative of abuse of the bankruptcy system justified *sua sponte* dismissal of Chapter 13 case after repeated warnings and broken deadlines.).

3. EFFECTS OF DISMISSAL

§ 153.1 In General

{1087} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (Appeal of grant of stay relief was moot because underlying Chapter 13 case was dismissed, terminating the stay.).

{1088} ***Marshall v. McCarty (In re Marshall)*, 611 B.R. 861 (B.A.P. 8th Cir. Feb. 18, 2020) (Saladino, Nail, Dow)** (Chapter 13 debtor lacks standing to appeal final report of trustee because debtor has not offered any theory by which she is impacted, much less harmed, by the final report. After case was dismissed for debtor's failure to make payments, the Chapter 13 trustee issued a final report and account. Debtor disputes some of the information in the final report but none of the disputed items affects the debtor financially or in any other cognizable way.).

{1089} ***Bullock v. Simon*, No. 19-cv-310-SMY, 2020 WL 1472063 (S.D. Ill. Mar. 26, 2020) (Yandle)** (Dismissal of Chapter 13 case based on material default in payments renders moot the appeal of orders that required the debtor to amend the confirmed plan to account for the settlement of an undisclosed workers' compensation action.).

{1090} ***Steed v. Educational Credit Mgmt. Corp. (In re Steed)*, No. 19-5219-JWC, 2020 WL 1596476 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (Chapter 13 debtor's objection to student loan claim that included issues under § 523(a)(8) is moot and is dismissed because debtor dismissed underlying Chapter 13 case. Bankruptcy court exercises discretion to abstain with respect to various included causes of action.).

{1091} ***In re Hernandez*, 612 B.R. 20, 22–23 (Bankr. D. Conn. Jan. 17, 2020) (Manning)** (Because all property of the Chapter 13 estate vested in debtor at confirmation under § 1327(b), at dismissal after confirmation § 349(b)(3) has no application and all funds held by the trustee must be returned to the debtor. *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), supports this outcome and contrary cases have overlooked vesting effect under § 1327(b). "In this case, as will be true in virtually all Chapter 13 plans confirmed by this Court, the property of the estate vested in the Debtor upon confirmation . . . pursuant to section 1327(b) . . . . The Court finds it is not necessary to turn to section 349(b)(3) because section 1327(b) establishes that the funds vested with the Debtor when the First Amended Plan was confirmed. The cases that rely on section 349(b)(3) to establish a trustee's authority to distribute funds to a debtor in a confirmed but subsequently dismissed Chapter 13 case have not directly addressed the vesting language in section 1327(b). . . . Because property of the estate has already vested in a debtor upon confirmation pursuant to section 1327(b), there is no property to *revest* in the debtor . . . pursuant to section 349(b)(3). Therefore, there is no question that the funds must be returned to the Debtor. . . . Although *Harris* involved conversion rather than dismissal of a case, *Harris* recognizes that section 1327(b) vests all property of the estate in the debtor unless a plan or confirmation order provides otherwise. . . . [I]f the case is subsequently converted or dismissed, that vested property remains that of the debtor.").

{1092} ***In re Marve*, No. 15-32251-jda, 2019 WL 5688178, at *3 (Bankr. E.D. Mich. Nov. 1, 2019) (Applebaum)** (That counsel competently represented the debtor and has not been paid for postpetition services is not "cause" for § 349(b)(3) purposes; funds on hand at dismissal are returned to the debtor without paying balance due for fees. "[T]he 'for cause' language in § 349(b) was deliberately included by Congress, presumably to address circumstances where it would be unfair or inappropriate to allow funds to be returned to

a debtor. The cases arising under § 349(b) generally address situations in which creditors or other parties were uniquely disadvantaged by the circumstances or implications of dismissing the chapter 13 case . . . . Routine attorney fees are a different matter. . . . [C]ompetently performed services . . . are not atypical in a dismissed chapter 13 case. . . . [T]hese services simply do not rise to the level of 'cause' required by § 349(b)(3).").

{1093} ***Pierce v. Deutsche Bank Nat'l Tr. (In re Pierce)*, No. 19-05271-LRC, 2019 WL 4686333 (Bankr. N.D. Ga. Sept. 25, 2019) (Craig)** (After dismissal of Chapter 13 case, bankruptcy court abstains in adversary proceeding challenging foreclosing creditor under various theories. One (odd) theory was that debtor owned a secret interest in property subject to foreclosure through a dba that transferred the property without the debtor's signature.).

{1094} ***In re Baldwin*, No. 14-23702, 2018 WL 8223412, at *3 (Bankr. N.D. Ind. Aug. 31, 2018) (Ahler)** (Judgment creditor's motion to reopen dismissed Chapter 13 case—treated as a motion for relief from dismissal order under Rule 60(b)(6)—is denied when purpose of motion is to recover unclaimed funds that belong to the debtor. When Chapter 13 case was dismissed, trustee attempted to return funds on hand to the debtor but was unable to locate debtor. Trustee eventually paid funds to clerk of the bankruptcy court. "The court has a duty to 'to disburse unclaimed funds to the "rightful owners," 28 U.S.C. § 2041, upon "full proof of the right thereto." 28 U.S.C. § 2042.' . . . Pursuant to 11 U.S.C. § 1326(a)(2), money held by a chapter 13 trustee at dismissal before confirmation is ordinarily returned to the debtor, less any § 503(b) administrative expenses. . . . Debtor's case was dismissed prior to confirmation and the trustee made no distributions to any creditors. As such, the trustee rightfully attempted to return the funds held to Debtor—the owner of the funds. When Debtor did not claim the funds, they were deposited with the clerk. While on deposit with the clerk, Claimant has failed to show this Court any enforceable right to those funds.").

§ 153.2 Consequences of Dismissal Added or Changed by BAPCPA

{1095} ***In re Schaffer*, 606 B.R. 228 (E.D. Pa. Oct. 23, 2019) (Kenney)** (Failure to accurately or completely disclose assets during prior Chapter 13 case was one reason stay relief was appropriate in subsequent Chapter 11 case filed after voluntary dismissal of prior Chapter 13 case.).

{1096} ***In re Evans*, No. 19-40193-JMM, 2020 WL 739258, at *5–*9 (Bankr. D. Idaho Feb. 13, 2020) (Meier)** (Applying § 1326(a)(2), in derogation of 28 U.S.C. § 586(e), in Chapter 13 case dismissed before confirmation, Chapter 13 trustee must regurgitate compensation and reimbursement of expenses collected from payments by debtor. "Section 1326(b) requires the trustee to pay the trustee's percentage fee before or at the time of each payment to creditors under the plan. . . . Section 1326(a)(2) only allows the trustee to pay creditors after a plan is confirmed. . . . If the trustee cannot pay creditors until a plan is confirmed pursuant to § 1326(a)(2), then § 1326(b) is not operative until a plan is in effect. . . . Because § 1226(b)(2) and § 1326(b)(2) contain almost identical language, but § 1226(a)(2) expressly allows a trustee to deduct a percentage fee in unconfirmed cases, and § 1326(b)(2) is inoperative until a plan is in effect, the Court does not find § 1326(b)(2) permits trustee fees to be paid regardless of whether a plan is confirmed. . . . Just as § 586(e) does not contemplate that once a fee is collected, any part of it should be refunded to the debtor, it also does not contemplate that any portion of the fee is irrevocable. . . . [T]his Court concludes it must rely on the text of the statute, and its interpretation thereof, and not decide the matter based on conflicting public policy arguments.").

{1097} ***In re Elms*, 603 B.R. 11, 15–19 (Bankr. S.D. Ohio July 16, 2019) (Humphrey)** (At dismissal of Chapter 13 case after confirmation, *Harris v. Viegelahn*, __ U.S. __, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), dictates that all funds on hand be returned to the debtors, not distributed to creditors and not used to pay administrative expenses. "[T]he court finds that the distinction between conversion of a case to Chapter 7, as was involved in *Harris*, and dismissal of a case does not warrant a different conclusion as to the disposition of the funds held by the Trustee. . . . [T]he Supreme Court was quite clear in *Harris* that the Chapter 13 plan ceased upon conversion, and the Chapter 13 trustee was statutorily required to return to the debtor any funds which the trustee was holding at the time of conversion. . . . The distinction between conversion to Chapter 7 as opposed to dismissal of the Chapter 13 case does not change this consequence. There is no reason to conclude that a Chapter 13 plan is defunct after conversion, but survives after dismissal. . . . [B]ankruptcy courts which have opined on the issue following *Harris* have applied the rationale of *Harris* to find that funds on hand with a Chapter 13 trustee at the time of a post-confirmation dismissal should be distributed to the debtors absent 'cause' under § 349(b) for ordering otherwise. . . . [N]o party has argued that this court should 'for cause, order[ ] otherwise' under § 349(b) as to the distribution of the funds to the debtors. . . . [T]he Bankruptcy Code does not define what constitutes 'cause' under § 349(b) to order the funds on hand be paid to someone other than the debtors. . . . The court will address any case in which 'cause' for varying from the general rule of distribution to the debtors is raised, considering the unique circumstances of each case.").

{1098} ***In re Crespin*, No. 17-11234 ta13, 2019 WL 2246540, at *2–*6 (Bankr. D.N.M. May 23, 2019) (Thuma)** (At dismissal before confirmation, allowed attorney's fees are paid from funds held by the trustee and no trustee compensation can be deducted from funds paid to the attorney. "The rule in this district is that if a chapter 13 plan is not confirmed, all payments made by the debtor to the trustee must be refunded to the debtor without deducting the trustee's percentage fee. . . . This rule was not adopted because of perceived fairness to the trustee . . . . Were the Court drafting the law, it would pay the trustee her percentage fee in cases that fail pre-confirmation. . . . The trustee does a lot of work in failed cases and deserves to be paid for that work. Furthermore, the trustee's percentage fee is calculated in such a way that debtors in successful cases are forced to shoulder the expense of failed cases. . . . [T]he

trustee may not make payments under unconfirmed plans. . . . The trustee begins earning her percentage fees when the post-confirmation distributions begin. § 1326(b)(2). . . . § 1326(a)(1)(C) allows *debtors* to make pre-confirmation adequate protection payments and requires them to report the payments to the trustee. The payments are not made 'under' the debtor's unconfirmed plan. Rather, they are made pursuant to §§ 361, 362(d)(1), and 1325(a)(1)(C). . . . There is no mention in chapter 13 of trustees making pre-confirmation adequate protection payments. . . . The better reading of the local rule is that it allows debtors to assign the trustee the task of making pre-confirmation adequate protection payments, in exchange for her normal fee. . . . The local rule does not transform adequate protection payments into plan payments . . . . When a chapter 13 is dismissed, the trustee must return held funds to the debtor after paying § 503(b) claims. § 1326(a)(2) . . . . The deduction from debtor's refund for administrative expenses is not a 'plan' payment. Rather, the payment is in lieu of a proposed plan payment that will never be made.").

§ 153.3 Court-Imposed Conditions and Restrictions on Dismissal

{1099} ***Bauman v. Billingslea (In re Bauman)*, No. SC-19-1060-LGS, 2020 WL 1672770 (B.A.P. 9th Cir. Apr. 6, 2020) (unpublished) (Lafferty, Gan, Spraker)** (After six bankruptcy cases, including four Chapter 13 cases, pro se debtor's motion to extend time for appeal of dismissal with prejudice to refiling for one year was appropriately denied by bankruptcy court. Debtor presented no excusable neglect. Claim of lack of notice was refuted by mailbox rule.).

{1100} ***Steiner v. Wilmington Sav. Fund Soc'y, FSB (In re Steiner)*, 613 B.R. 176, 179 (B.A.P. 8th Cir. Mar. 23, 2020) (Saladino, Schermer, Shodeen)** (After 10 Chapter 13 cases since 2010, all filed to stop foreclosures, debtors' current Chapter 13 cases were appropriately dismissed with 180-day bar to refiling. "[T]he bankruptcy court found the Steiners' filings were part of a 'long-running scheme to manipulate and abuse the Bankruptcy Code and the bankruptcy system to the extreme detriment of their creditors, particularly Wilmington Savings.'").

{1101} ***In re Buhl*, No. 3:19-CV-01190 (KAD), 2020 WL 1849393 (D. Conn. Apr. 13, 2020) (Dooley)** (Bankruptcy court appropriately dismissed Chapter 13 case with one-year bar to refiling after debtor and spouse filed six tag-team bankruptcies each timed to stop foreclosure or foil eviction. Bad-faith evidence included history of filings, failure to make payments and admission by debtor that filings were intended to keep debtors in home that they were not paying for.), *aff'g* No. 19-30803 (AMN), 2019 WL 3302400 (Bankr. D. Conn. July 22, 2019) (Nevins) (Cause for dismissal with one-year bar to refiling under §§ 1307(c), 1307(c)(4) and 349(a) included three bankruptcy filings to stop foreclosure and eviction, failure to make any payments in current case, lack of good-faith intention to reorganize and two-party nature of underlying dispute.), *amending and superseding* No. 19-30803 (AMN), 2019 WL 3282970 (Bankr. D. Conn. July 19, 2019) (Nevins) (Third Chapter 13 case filed to stay foreclosure or to stop eviction is dismissed with bar to refiling for one year. Cause included failure to commence payments under § 1307(c)(4), a pattern of filings to stop foreclosure and eviction and the two-party nature of the case.).

{1102} ***In re Bartley*, No. 3:19-CV-00400 (KAD), 2019 WL 6467353 (D. Conn. Dec. 2, 2019) (Dooley)** (Tag-team bankruptcies and multiple meritless state court and bankruptcy court lawsuits with respect to foreclosure demonstrate bad-faith abuse by Chapter 13 debtor that justified denial of extension of stay and dismissal with prejudice to refiling for two years.).

{1103} ***Bunyan v. Remick*, No. 8:18-cv-1519-T-36, 2019 WL 4805428 (M.D. Fla. Oct. 1, 2019) (Honeywell)** (Dismissal with 180-day bar to refiling is appropriate under § 109(g)(1) when debtor with six prior bankruptcies failed to obtain a prepetition briefing, failed to file required documents, failed to comply with several orders about deficiencies in documents and failed to appear at the hearing on dismissal.).

{1104} ***Nero v. Waage (In re Nero)*, 605 B.R. 242 (M.D. Fla. Aug. 26, 2019) (Merryday)** (Not abuse of discretion that bankruptcy court dismissed Chapter 13 case and barred refiling for two years in third bankruptcy case filed in bad faith to defeat a foreclosing creditor.).

{1105} ***Duggan v. Tanglewood Villa Owners Ass'n, Inc.*, No. 4:18-CV-554, 2019 WL 2077714 (E.D. Tex. May 10, 2019) (Crone)** (Dismissal with prejudice to refiling for 120 days was appropriate when Chapter 13 case was pending for more than a year and debtor failed to produce a confirmable plan after numerous extensions of time; unreasonable delay was combined with many instances of "contumacious conduct.").

{1106} ***In re Hartley*, No. 19-31049 (AMN), 2020 WL 1908326 (Bankr. D. Conn. Apr. 14, 2020) (Nevins)** (Cause for dismissal of second Chapter 13 case that debtor did not pay pre- or postpetition property taxes across two cases spanning several years and debtor lacks financial ability to protect mortgage lender from priming statutory lien of taxing authority. Request for two-year bar to refiling is denied because mortgage lender still has equity cushion and debtor's litigation strategy in bankruptcy court and in state court foreclosure action does not rise to level of bad faith.).

{1107} ***In re Horton*, No. 20-00033, 2020 WL 1328796, at *2 (Bankr. D.D.C. Mar. 19, 2020) (Teel)** (Chapter 13 case filed to stop eviction with respect to property that was foreclosed before the petition and is not property of the estate is filed in bad faith; case is dismissed with bar to refiling for 180 days. Debt with respect to property was discharged in prior Chapter 7 case. Debtor failed to file a

plan in current Chapter 13 case and debtor did not need bankruptcy to deal with any existing debts—all were discharged in the prior Chapter 7 case. "Filing this bankruptcy case to stay the eviction of Horton served no legitimate bankruptcy purpose. Horton no longer owns the Property[.]").

{1108} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{1109} ***In re Via*, No. 3:19-bk-33999-SHB, 2020 WL 1015264 (Bankr. E.D. Tenn. Feb. 27, 2020) (Bauknight)** (In eleventh bankruptcy case since 2002, dismissal with five-year bar to refiling is appropriate because of extraordinary abuse by debtor, including failing to file documents, failing to comply with court orders, failing to pay filing fees and failing to pay creditors.).

{1110} ***In re Othello*, No. 19-51502, 2020 WL 232836 (Bankr. D. Conn. Jan. 14, 2020) (Manning)** (*Pro se* fourth Chapter 13 petition filed without necessary documents is dismissed as abusive and filed in bad faith with two-year bar to refiling under §§ 349(b) and 105(a).).

{1111} ***In re Meltzer*, No. 19-21110-PRW, 2020 WL 129441 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** (Third *pro se* Chapter 13 petition filed to stop foreclosure is dismissed for cause—including bad faith, prejudicial delay, failure to make payments and lack of adequate protection—with 18-month bar to refiling under § 1307(c)(1), (c)(3) and (c)(4) and §§ 105(a) and 349(a). *In rem* relief is also appropriate under § 362(d)(4)(B). Court declines to dismiss "with prejudice" to discharge of debts in a future bankruptcy case.).

{1112} ***In re Perkins*, No. 19-51202 (JAM), 2020 WL 223910 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Dismissal with two-year bar to refiling is appropriate in third bare-bones Chapter 13 filing within a year. All cases were filed to stop foreclosures. Debtor did not file necessary documents. Debtor failed to appear at meeting of creditors. Debtor did not move to impose a stay despite fact that no stay was in effect because of § 362(c)(4).).

{1113} ***In re Partch*, No. 19-51084, 2020 WL 211447 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Second Chapter 13 case within a year is dismissed with bar to refiling for two years based on bad faith and abuse of bankruptcy process. Multiple bankruptcy cases and litigation in other courts were filed to impede foreclosure on an inherited home. Debtor failed to comply with duties in the bankruptcy cases and did not respond to dismissal motion. Debtor did not seek to extend stay under § 362(c)(3) and did not demonstrate any intent to propose a confirmable plan.).

{1114} ***In re Johnson*, No. 19-57871-WLH, 2020 WL 61827, at *2–*4 (Bankr. N.D. Ga. Jan. 6, 2020) (Hagenau)** (Not appropriate to dismiss sixth bankruptcy case with bar to refiling under § 109(g)(1) because default in payments in current case was not alone sufficient to prove willful failure to abide by court order. Conduct in a particular case is at issue under § 109(g), not debtor's history of filings. "The dismissal of the case was not a mistake or a surprise. Debtor's payment was returned for insufficient funds and she knew it. She took no action to remedy the situation despite written notice from the Trustee, so her actions were not inadvertent. . . . Section 109(g)(1) prohibits refiling by a debtor who has 'willfully' failed to abide by order of the court or to appear before the court to prosecute the case. The court must look to the circumstances of the particular case to determine willfulness. A mere failure to make a payment under a chapter 13 plan or failure to appear at the first meeting or a court hearing, will not, in itself, be sufficient to sustain a finding of willful conduct under this subsection. . . . [I]t appears that dismissal was based on the Debtor's failure to pay rather than on her failure to prosecute the chapter 13 case as a whole. Debtor failed to make the required plan payments to the Chapter 13 Trustee, but she did not otherwise willfully fail to abide by the Court's orders. While the Debtor has a long history of bankruptcy filings, the Trustee sought dismissal with prejudice pursuant to [§]109(g), under which the Court must consider the Debtor's conduct in a particular case rather than the debtor's history of filings and dismissals. Therefore, the Court finds grounds exist to modify the Dismissal Order prohibiting the Debtor from refiling the case within 180 days of its dismissal.").

{1115} ***In re Toggas*, No. 19-00598, 2019 WL 7172878 (Bankr. D.D.C. Dec. 23, 2019) (Teel)** (Stay pending appeal is denied with respect to orders dismissing Chapter 13 case and imposing equitable servitude on real property to prevent abusive debtor and spouse from continuing to file tag-team bankruptcies to stop foreclosure.).

{1116} ***In re Bolling*, 609 B.R. 454 (Bankr. D. Conn. Dec. 18, 2019) (Manning)** (Debtor has absolute right to dismiss Chapter 13 case that was not previously converted but under § 349(a) court conditions dismissal with prejudice to refiling for two years based on series of filings to stop foreclosure sales and no evidence of attempt by debtor to actually pay debts through a Chapter 13 plan.).

{1117} ***In re Blige*, No. 19-40222-EJC, 2019 WL 3959982 (Bankr. S.D. Ga. Aug. 21, 2019) (Coleman)** (Fourth Chapter 13 case since 2010 is dismissed with prejudice to refiling for three years when, acting through son with power of attorney, debtor filed petition that misrepresented illness when truth was debtor was incarcerated. Meeting of creditors conducted by phone from Georgia to California. Son in California answered questions revealing that debtor was incarcerated. Debtor through son misled everyone to believe that the debtor was in ill health, not in jail.).

{1118} ***Glassman v. Feldman (In re Feldman)*, No. 17-01050-cec, 2019 WL 3849301 (Bankr. E.D.N.Y. Aug. 15, 2019) (Craig)** (Bankruptcy court declines to reconsider order dismissing Chapter 13 case with prejudice and awarding sanctions including attorney's fees for misconduct by debtor (an attorney) during Chapter 13 case.).

{1119} ***In re Dawood*, 602 B.R. 640, 644–45 (Bankr. E.D. Mich. July 19, 2019) (Tucker)** (To support its decision in a related Chapter 11 case involving property used as a medical marijuana dispensary, bankruptcy court sua sponte dismisses Chapter 13 case with two-year bar to refiling and with *in rem* relief with respect to debtor's interest in property. Court finds that Chapter 13 case was filed in bad faith for sole purpose of upsetting dismissal of related Chapter 11 case and for improper purpose of disrupting state court litigation over disposition of marijuana-related property. "The Court will enter an *in rem* order, which will prevent the automatic stay under 11 U.S.C. § 362(a) from arising, with respect to the . . . Property or actions taken against that property, in any future bankruptcy case filed within two years . . . . The Court has authority to order such *in rem* relief under 11 U.S.C. § 105(a) and by analogous authority under 11 U.S.C. § 362(d)(4). . . . Section 362(d)(4) does not literally apply here, because the Court is not acting on the motion of a secured creditor. But when combined with § 105(a), § 362(d)(4) does lend support, by analogy, to the *in rem* relief being granted here.").

{1120} ***In re Ballentine*, 605 B.R. 710 (Bankr. M.D.N.C. Apr. 4, 2019) (Aron)** (Dismissal with 180-day bar to refiling is appropriate when Chapter 13 case was filed in bad faith to stop foreclosure of reverse mortgage. Debtor lied about ownership of trust property, failed to make postpetition payments and has no disposable income from which to make any plan payments.).

{1121} ***In re Johnson*, No. 3:18-bk-659-JAF, 2018 WL 9415066 (Bankr. M.D. Fla. Oct. 1, 2018) (Jennemann)** (After surrender of home in prior Chapter 7 case and order enjoining debtor from opposing foreclosure under *Failla v. Citibank, N.A. (In re Failla)*, 838 F.3d 1170 (11th Cir. Oct. 4, 2016) (Marcus, Pryor, Lawson), Chapter 13 case filed to stop foreclosure was filed in bad faith, is abusive and must be dismissed. Chapter 13 case is dismissed with 180-day bar to refiling and with stay relief to mortgagee.).

{1122} ***In re Welling*, No. 18-30900 HCD, 2018 WL 8223570 (Bankr. N.D. Ind. May 22, 2018) (Dees)** (Fourth Chapter 13 case since 2005 is dismissed with prejudice to eligibility for any relief under Title 11 until the $310 filing fee is paid in the current case.).

§ 153.4 Reinstatement after Dismissal

{1123} ***Lall v. Powers*, No. 3:19-CV-00398-X, 2020 WL 619916 (N.D. Tex. Feb. 7, 2020) (Starr)** (Bankruptcy court appropriately dismissed Chapter 13 case and refused debtor's Federal Rule of Civil Procedure59 motion to vacate dismissal and reinstate the case when the grounds offered were a modified plan filed after dismissal and a challenge to mortgage foreclosure that was not new.).

{1124} ***Davis v. Bates*, No. 3:19cv388, 2020 WL 428115 (E.D. Va. Jan. 27, 2020) (Lauck)** (Chapter 13 debtor's efforts to reopen closed case and vacate dismissal are rejected by district court for lack of appellate jurisdiction. Nothing debtor did was a timely appeal of orders that denied reopening and that refused to vacate dismissal based on failure to make payments.).

{1125} ***In re Content*, No. 18-27925 (JKS), 2020 WL 1685844 (Bankr. D.N.J. Apr. 3, 2020) (Sherwood)** (Motion to set aside foreclosure sale that occurred while Chapter 13 case was dismissed and before reinstatement is denied without prejudice when notice to mortgagee may have been defective and debtor's request for equitable relief requires an adversary proceeding.).

{1126} ***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)** (Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. In any case, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's failure to file schedules and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.).

{1127} ***In re Stewart*, No. 18-00482, 2020 WL 597843, at *1 (Bankr. D.D.C. Feb. 4, 2020) (Teel)** (Motion to reopen dismissed, closed Chapter 13 case is denied because reopening more than a year after closing serves no purpose. The Chapter 13 case would still be dismissed and the debtor's offer of amended schedules would have no effect on the added creditors. "Even though the case is a dismissed case, it is a closed case for which a motion to reopen may be filed. . . . Upon reopening, the case would remain a dismissed case in which Stewart is not entitled to the protection of the automatic stay against future collection efforts by creditors . . . . [N]othing would be gained by reopening the case to permit Stewart to add creditors to the schedules. . . . Stewart may mistakenly think that a reopening of the case would vacate the order dismissing the case. Reopening of a dismissed case is not the appropriate vehicle for setting aside an order dismissing the case. Instead, such relief must be sought via a motion under Fed. R. Bankr. P. 9023 or 9024. . . . Stewart's motion does not offer any grounds that, under those rules, would justify vacating the order dismissing the case, particularly in light of the case having been dismissed more than a year before Stewart filed her motion to reopen the case.").

{1128} ***In re Taharaka*, No. 18-00697, 2020 WL 96678 (Bankr. D.D.C. Jan. 8, 2020) (Teel)** (Motion to set aside dismissal of Chapter 13 case is unnecessary when purpose is to allow debtor to seek contempt of an order requiring a mortgagee to file an affidavit with respect to escrow distributions. Moreover, mortgagee substantially complied with the affidavit requirement by affirmation of an employee.).

{1129} ***In re Johnson*, No. 19-57871-WLH, 2020 WL 61827 (Bankr. N.D. Ga. Jan. 6, 2020) (Hagenau)** (Reopening dismissed Chapter 13 case was not warranted by any ground in Federal Rule of Civil Procedure 60. Sixth bankruptcy case was dismissed for nonpayment after default by debtor under order that allowed prior case to continue.).

{1130} ***In re Smith*, No. 19-40227, 2019 WL 3774152 (Bankr. N.D. Ohio Aug. 9, 2019) (not for publication) (Kendig)** (Stay pending appeal is denied with respect to bankruptcy court determination that U.S. Bank had standing to seek to set aside dismissal to allow bank to then seek *in rem* relief to foreclose.), *denying stay of* No. 19-40227, 2019 WL 2406940, at *5 (Bankr. N.D. Ohio June 6, 2019) (not for publication) (Kendig) (Right to voluntarily dismiss Chapter 13 case is not absolute when debtor has three times abused bankruptcy relief by filing Chapter 13 cases to stop long-running foreclosure and then immediately dismissed each case. Dismissal is vacated to allow foreclosing bank to seek *in rem* relief after nearly 15 years of trying to complete a foreclosure. Foreclosing bank has standing to seek to vacate order of dismissal to then pursue *in rem* relief. "U.S. Bank clearly and convincingly persuaded the court that Debtor's conduct in filing this case, stopping the sheriff's sale, then dismissing the case with no notice, was unfair, especially in light of the history between the parties and Debtor's pattern of filings. The court will therefore vacate the dismissal order and reinstate the case to allow U.S. Bank to proceed to seek in rem relief promptly.").

{1131} ***Dougherty v. Security Credit Union (In re Dougherty)*, No. 11-33926-dof, 2019 WL 2529362, at *1–*6 (Bankr. E.D. Mich. June 17, 2019) (Opperman)** (Wages garnished between dismissal and reinstatement of Chapter 13 case are not property of the estate and are not subject to turnover under § 542(a). "[T]he case was dismissed on March 28, 2018 for failure to timely complete a case under 11 U.S.C. § 1307(c). . . . [T]he case was reopened on October 29, 2018. . . . Between the dismissal and the reinstatement of the Debtor's bankruptcy case, Defendant received disbursements from the Debtor's earnings . . . for wages earned from May 12, 2018 through October 26, 2018. . . . A debtor's interest in garnished funds is 'terminated with finality' upon the garnishing creditor's pre-petition receipt. . . . [S]ince dismissal of a bankruptcy petition revests property of the bankruptcy estate in the party that owned it prior to the filing of the bankruptcy petition, there is no longer a bankruptcy estate after a petition has been dismissed. . . . Debtor did not cite, nor could the Court find, any authority holding that reinstating a bankruptcy case has a retroactive impact on what is deemed property of the estate. . . . The wages were not property of the estate when they were garnished in the gap period. . . . As such, the garnished wages have never been property of the bankruptcy estate, and 11 U.S.C. § 542 is therefore inapplicable.").

PART 9: DISCHARGE

§ 154.1 Summary of Part 9

A. STATUTES AND RULES DISCUSSED IN PART 9

§ 155.1 11 U.S.C. § 523: Exceptions to Discharge
§ 155.2 11 U.S.C. § 524: Effects of Discharge and Discharge Hearing
§ 155.3 11 U.S.C. § 1328: Discharge
§ 155.4 Bankruptcy Rule 1016: Death or Incompetency of Debtor
§ 155.5 Bankruptcy Rule 4007: Time for Filing Complaint Objecting to Dischargeability
§ 155.6 Bankruptcy Rule 4008: Discharge Hearing

B. TIMING AND PROCEDURE CONSIDERATIONS: BEFORE AND AFTER BAPCPA

§ 156.1 Timing and Procedure for Discharge and Objecting to Discharge

{1132} ***Myers v. United States Tr.*, No. 8:19-cv-00637-PX, 2020 WL 758157 (D. Md. Feb. 13, 2020) (Xinia)** (After 15 bankruptcy appeals and five civil cases, district court denies rehearing of dismissal of appeal of bankruptcy court order denying Chapter 13 debtor's request to discharge debts.).

{1133} ***Barnes v. Henry*, No. 19-cv-00212-DKW-RT, 2019 WL 7116098 (D. Haw. Dec. 23, 2019) (Watson)** (Incomprehensible appeal of bankruptcy court order granting Chapter 13 discharge and lifting protective orders is rejected.).

{1134} ***In re Dedo*, No. 18-00657, 2020 WL 961311 (Bankr. D.D.C. Feb. 24, 2020) (Teel)** (Motion by creditor for leave to file complaint to determine dischargeability of debt under § 523(a)(3) is denied without prejudice to creditor's right to file a complaint objecting to dischargeability under § 523(a)(3). Stay relief is allowed to permit creditor to pursue its claims against debtor—including its § 523(a)(3) action—in state court. Leave of court is not required to file a complaint under § 523(a)(3) and a motion is not the proper route to that determination.).

{1135} ***Formador, Inc. v. Ortiz Franco (In re Ortiz Franco)*, 610 B.R. 163, 167 (Bankr. D.P.R. Dec. 27, 2019) (Lamoutte)** (On convoluted facts, motion to reconsider denial of request to extend time to file a complaint under § 523(a)(2) was not an amendable

complaint to which an untimely complaint could relate. Complaint against Chapter 13 debtor was untimely and dismissed. Sanctions were not imposed notwithstanding that bankruptcy court warned plaintiff that it had to file a timely complaint and that the time to do so had expired. "Fed. R. Bankr. P. 4004(a) and 4007(c) establish a sixty (60) day time limit within which a creditor may file a complaint to dispute the discharge of the debtor under § 727(a) of the Bankruptcy Code and the dischargeability of debts under § 523(c) of the Bankruptcy Code [. . .]. This time limit begins to run from the first date set for the meeting of creditors under 341(a) of the Bankruptcy Code.").

{1136} ***In re Bales*, No. 18-52257, 2019 WL 3436870 (Bankr. E.D. Ky. July 30, 2019) (Wise)** (Motion to extend deadline to object to discharge under Bankruptcy Rule 4004(b)(1) is denied because § 727 does not apply in Chapter 13 cases and, in any case, Rule 4004(b) required that motion be filed before expiration of the time for filing a complaint objecting to discharge.).

§ 156.2 Limitations on Successive Discharges
§ 156.3 Time for Determining Dischargeability of Debt

{1137} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602221 (Bankr. W.D. Tenn. Apr. 1, 2019) (Latta)** (Fraud counterclaim by former spouse in debtor's adversary proceeding to determine dischargeability of debts in divorce decree is dismissed as untimely filed six years after complaint deadline for § 523(c) actions. Court rejects equitable tolling argument based on claim that former spouse did not have notice that debtor would seek to discharge debts to former spouse.).

§ 156.4 Domestic Support Obligation Certification
§ 156.5 Instructional Course Requirement
§ 156.6 Delay of Discharge: § 522(q)(1) and Pending Proceedings

C. DISCHARGE AFTER COMPLETION OF ALL PAYMENTS

1. FULL-PAYMENT DISCHARGE

§ 157.1 Broadest Discharge Available

{1138} ***Weaver v. Hartman (In re Hartman)*, No. 18-ap-00054, 2019 WL 5616256 (Bankr. N.D. W. Va. Sept. 27, 2019) (Flatley)** (Complaint to bar Chapter 13 debtor's discharge under various subsections of § 727 is dismissed because § 727 does not apply in Chapter 13 cases.).

{1139} ***Pool v. Winstead (In re Winstead)*, 605 B.R 432 (Bankr. S.D. Miss. Sept. 24, 2019) (Olack)** (Complaint to bar discharge under § 727 is dismissed because § 727 does not apply in Chapter 13 cases.).

§ 157.2 BAPCPA Shrank the Discharge
§ 157.3 Completion of Payments after BAPCPA

{1140} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 524–25 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (Completion of payments that would cut off trustee's motion to modify under § 1329 had not occurred when confirmed plan provided for 59 monthly payments and debtor tendered total amount from sale of property in 48th month; payments are not complete unless debtor modifies the plan to shorten plan term. Citing *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. Dec. 18, 2007) (Klein, Montali, Jury), "[w]e have held that, as a general proposition, payments are not 'complete' when the debtor pays them early, unless the debtor modifies the plan pursuant to § 1329 to shorten its term . . . . We have also rejected a chapter 13 plan with an indefinite duration, which would have allowed the debtor to 'complete' his plan whenever he paid off all priority and secured claims. *In re Escarcega*, 573 B.R. 219 [(B.A.P. 9th Cir. Sept. 6, 2017) (Jury, Faris, Brand)]. . . . Mr. Black's plan payments were not 'complete' when he made the lump-sum payment, because he did not modify his plan to shorten its duration. . . . Because Mr. Black's income is less than the applicable median, his 'applicable commitment period' was thirty-six months. . . . But he proposed a fifty-nine month term, probably because he could not afford a larger monthly payment and therefore needed more time to generate plan funding sufficient to meet other confirmation requirements. . . . [T]he statute does not tie the plan modification time limit to the 'applicable commitment period.' Section 1329(a) cuts off the right to modify a plan upon 'completion of payments under such [i.e., the original] plan.' If Congress meant to terminate the modification right upon expiration of the applicable commitment period, it could and would have said exactly that.").

{1141} ***Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 77–84 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)** (For purposes of modification under § 1329 and discharge under § 1328, direct payments to mortgagee are payments "under the plan" and default in direct payments means payments have not been completed—notwithstanding that debtor has completed payments required by the plan to be paid to the trustee. Because direct payments were not made and thus payments under the plan were not complete, debtor's motion to modify plan to surrender residence was timely. However, because 67 months passed since the first payment was due and surrender is a "payment" for § 1329(c) purposes, plan cannot be amended to surrender residence to mortgagee. Confirmed plan provided that $65,000 prepetition mortgage arrears would be cured by loan modification or plan would be modified to pay arrears in some other fashion. Plan also provided for direct payment of all postpetition mortgage payments to Wells Fargo. Debtors failed to make postpetition mortgage payments, increasing default to $123,819. No loan modification occurred and no other provision was made for the pre- or postpetition arrears. Debtor ultimately moved to modify the plan to surrender the residence to Wells Fargo 67 months after the first plan

payment was due. "[C]ourts have held in the discharge context of § 1328(a) . . . that a debtor's direct payments to a creditor for a debt treated by the plan are payments under the plan. Precisely, when the chapter 13 plan provides for the curing of prepetition mortgage arrears and a debtor's direct postpetition maintenance payments in accordance with § 1322(b)(5), such direct payments are 'payments under the plan.' . . . [T]he overwhelming majority of courts . . . have interpreted the term 'payments' in § 1328(a) to include direct payments by the debtor to a creditor. . . . While the question of whether a debtor has completed 'all payments under the plan' was not at issue in [*Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (June 7, 1993)], construing this language in § 1328(a) narrowly to include only those payments made to the chapter 13 trustee proves difficult given the Supreme Court's broad construction of 'provided for by the plan,' in that same section, to include claims that are merely referred to in the plan. . . . Only two courts have held that a debtor's direct payments on a nonmodifiable, nondischargeable residential mortgage loan under § 1322(b)(5) are not 'payments under the plan' for purposes of § 1328(a). . . . *In re Gibson*, 582 B.R. 15, 24 ([Bankr. C.D. Ill. Mar. 5, 2018) (Perkins)]. . . . *In re Rivera*, [599 B.R. 335, 339–42 (Bankr. D. Ariz. Mar. 29, 2019) (Wanslee)]. . . . While *Gibson* and *Rivera* are thoughtful and well-intended decisions, we respectfully disagree. And we perceive some flaws with interpreting the phrase 'payments under the plan' to include only those payments made to the trustee. One is the different outcomes that would result in conduit versus non-conduit jurisdictions. . . . [W]hether postpetition mortgage payments are paid directly by the debtor or paid by the chapter 13 trustee should not be dispositive of granting a discharge under § 1328(a). . . . A direct-pay debtor should not receive a discharge that a conduit debtor would not. . . . [T]he promise to maintain postpetition payments to a mortgage creditor is a mandatory element of the treatment of claims subject to § 1322(b)(5), and it is not severable. . . . We have difficulty reconciling that a debtor can receive a discharge after failing to make maintenance payments under § 1322(b)(5), when that same failure is grounds for case dismissal. . . . [S]imply because debtors prior to 2011 were flying under the radar and receiving discharges despite not making all maintenance payments as required under § 1322(b)(5), does not mean that such practice was correct or give it any legitimacy. Perhaps as an unintended consequence, Rule 3002.1 has merely exposed the problem at a point in the case where modification to cure the postpetition arrears is no longer an option. . . . The computation of disposable income to pay creditors under § 1325(b) takes into account the promised direct payments for housing, including § 1322(b)(5) maintenance payments. Debtors who fail to make these payments, which often amount to tens of thousands of dollars, benefit from years of living without mortgage payments at the expense of creditors. . . . [W]e join the overwhelming majority of courts holding that a chapter 13 debtor's direct payments to creditors, if provided for in the plan, are 'payments under the plan' for purposes of a discharge under § 1328(a) and hold that this same rule should apply in the context of post-confirmation plan modifications under § 1329(a). . . . Because the Mrdutts failed to satisfy the obligation of their prepetition arrears, and also failed to make their direct postpetition mortgage payments, their Plan payments were not 'complete' under § 1329(a). . . . [S]urrender is a form of payment for purposes of § 1329(c). . . . The court had no authority to modify a plan that allowed for payment beyond the 60-month time limit.").

{1142} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley)** (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.), *reconsideration denied*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley).

{1143} ***Touroo v. Terry (In re Touroo)*, No. 18-13365, 2019 WL 2590751, at *2–*3 (E.D. Mich. June 25, 2019) (Steeh)** (Embracing *In re Klaas*, 858 F.3d 820, 823 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court had discretion to allow debtors to complete Chapter 13 plan payments a few weeks after expiration of five-year limitation. Remand necessary for bankruptcy court to consider factors in *Klaas*. Confirmed plan required the debtors to remit their 2017 tax refund. Debtors failed to do so and trustee moved to dismiss. Approximately three weeks after expiration of five-year duration of confirmed plan debtor submitted missing tax refund to the trustee. "[A] debtor may modify a plan after it has been confirmed. A debtor may modify a plan to 'extend or reduce the time for . . . payments,' 11 U.S.C. § 1329(a)(2), but may not modify the plan to extend its length beyond five years, 11 U.S.C. § 1329(c). . . . [T]he first weekly payment under the confirmed plan was due no later than August 7, 2013, . . . the plan expired no later than August 7, 2018. . . . Debtors submitted their 2017 tax refund to the Trustee on August 27, 2018. . . . This court is persuaded . . . that the *Klaas* decision properly accounts for the statutory context in determining that courts are not *required* to dismiss a case under § 1307(c) if a debtor has not timely completed all of the plan payments. The Code unambiguously gives bankruptcy courts discretion under such circumstances . . . bankruptcy courts have discretion to allow debtors to cure a default after the end of the five-year period.").

{1144} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized

in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

{1145} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

{1146} ***In re Simmons*, 608 B.R. 602, 606–13 (Bankr. S.D. Ga. Sept. 30, 2019) (Barrett)** (Direct payment of home mortgage is payment "outside" the Chapter 13 plan and default in postconfirmation direct payments is not a ground for dismissal or for denial of discharge. Trustee filed notice of completion of plan payments and notice of final cure payment. BONY responded that the debtor was delinquent on postpetition direct mortgage payments in the amount of $47,334.88. Stay relief was granted and the trustee, previously unaware of the default in direct payments, moved to dismiss. "The Southern District of Georgia, like many districts, is a non-conduit jurisdiction allowing debtors to pay their post-petition mortgage payments directly to the lender . . . . Debtors are current in their payments to the Trustee but have not made all their post-petition payments to their respective lenders. . . . [T]he current majority [concludes] that 'payments under the plan' includes direct post-petition mortgage payments. . . . The minority position, and the one adopted by this Court, finds that post-petition mortgage payments paid directly by debtor are not 'payments under the plan' and a debtor's failure to make such payments standing alone does not merit the dismissal of a debtor's bankruptcy case, the denial of their discharge, and most likely the loss of their home. . . . [D]irect post-petition mortgage payments are debts paid outside of the bankruptcy and a debtor's failure to make all of these payments, standing alone does not constitute a material default with respect to a term of a plan under § 1307(c)(6) and is not per se grounds for a denial of discharge.").

2. EXCEPTIONS TO FULL-PAYMENT DISCHARGE BEFORE BAPCPA

§ 158.1 Alimony, Maintenance or Support

§ 158.2 Student Loans
§ 158.3 Driving while Intoxicated
§ 158.4 Criminal Restitution and Criminal Fines
§ 158.5 Claims Not Provided for by the Plan or Disallowed under § 502
§ 158.6 Postpetition Claims
§ 158.7 Long-Term Debts
3. EXCEPTIONS TO FULL-PAYMENT DISCHARGE ADDED OR CHANGED BY BAPCPA
§ 159.1 Taxes

{1147} ***California Franchise Tax Bd. v. Berkovich (In re Berkovich)*, 610 B.R. 893, 898–900 (Bankr. C.D. Cal. Jan. 23, 2020) (Tighe)** (Completed Chapter 13 plan does not discharge state taxes under § 523(a)(1)(B)(i) with respect to which debtor was required but did not file correcting report of changes to amounts reported to the IRS. That IRS filed a report of corrected assessments with state taxing authority did not relieve debtor of obligation to provide corrected reports and notices. California Franchise Tax Board filed complaint in 2019 to determine dischargeability of Chapter 13 debtor's taxes for 2003, 2004 and 2005. Chapter 13 plan was confirmed in 2012 but debtor failed to report to FTB additional assessments of federal income taxes for the prior years. IRS filed notices of amendment with FTB. Debtor did not. Addressing 2005 amendments to § 523(a)(1)(B), "[i]f [26 U.S.C.] § 6020(b) can no longer provide an equivalent return, the IRS filing the changes or corrections to Debtor's federal tax assessment with the FTB would likewise not be equivalent to Debtor filing the corrections with the FTB. . . . Debtor never reported the changes . . . . Although the IRS eventually provided the FTB this information, it does not satisfy Debtor's obligation . . . to file the report himself with the FTB. The fact that he filed tax returns years before the IRS assessments does not excuse him from this later requirement. Congress amended the statute to require both a return and any subsequent required report and revised it at the same time to emphasize the debtor's individual duty.").

{1148} ***Kriss v. United States (In re Kriss)*, No. 18-01064-BAH, 2019 WL 4745361 (Bankr. D.N.H. Oct. 1, 2019) (Harwood)** (Applying *Fahey v. Massachusetts Department of Revenue (In re Fahey)*, 779 F.3d 1 (1st Cir. Feb. 18, 2015) (Torruella, Thompson, Kayatta), and rejecting *Beard v. Commissioner*, 82 T.C. 766 (May 24, 1984), *aff'd*, 793 F.2d 139 (6th Cir. June 24, 1986) (Keith, Nelson, Edwards), late-filed returns are not "returns" for purposes of § 523(a)(1)(B) and hanging paragraph at the end of § 523(a); IRS did not violate discharge injunction with respect to postpetition interest and priority taxes that were not paid during the Chapter 13 case. Court leaves for another day the question whether the bankruptcy court has jurisdiction to award attorney's fees and actual damages for violation of the discharge injunction when debtor did not exhaust administrative remedies with respect to the IRS. Emotional distress damages are definitely not recoverable from the IRS under any circumstances.).

{1149} ***Campagna v. IRS (In re Campagna)*, No. A18-8332, 2019 WL 4554512 (Bankr. D. Neb. Sept. 19, 2019) (Saladino)** (Discharge in Chapter 13 case did not discharge taxes with respect to which returns were filed late and within two years of bankruptcy for purposes of § 523(a)(1)(B)(ii). That debtor objected to proof of claim and inadequate notice may have misled IRS to not respond to objection do not change determination that the underlying taxes were not discharged.).

{1150} ***In re Widick*, No. BK10-40187, 2019 WL 4894543 (Bankr. D. Neb. Sept. 10, 2019) (Saladino)** (IRS did not violate discharge injunction by offsetting tax refund and Social Security payments to collect interest on nondischargeable taxes and penalties that were paid without interest through completed Chapter 13 plan.).

§ 159.2 False Representations and Fraud: § 523(a)(2)

{1151} ***Superior Cleaning Serv. LLC v. Munoz (In re Munoz)*, 784 F. App'x 653 (10th Cir. Oct. 29, 2019) (Eid, Kelly, Carson)** (Bankruptcy court appropriately apportioned state court judgment to determine that $2 of that judgment was nondischargeable in a Chapter 13 case under § 523(a)(2)(A).), *aff'g in part, appeal dismissing in part* 592 B.R. 736 (D. Colo. Sept. 5, 2018) (Martinez) (Citing *Cohen v. de la Cruz*, 523 U.S. 213, 118 S. Ct. 1212, 140 L. Ed. 2d 341 (Mar. 24, 1998), state court judgment for nominal damages of $2 was nondischargeable under § 523(a)(2); remand necessary to address recovery of $91,000 in attorney fees.), *report and recommendation adopting in part, rejecting in part*, No. 17-cv-01910-WJM-STV, 2018 WL 4697328 (D. Colo. July 3, 2018) (Varholak) (Citing *Cohen v. de la Cruz*, 523 U.S. 213, 118 S. Ct. 1212, 140 L. Ed. 2d 341 (Mar. 24, 1998), magistrate judge recommends that bankruptcy court erred in finding only $2 of state court judgment nondischargeable. Damages for contract breach based on claims of fraud could include entire amount of resulting judgment within § 523(a)(2) as interpreted by the Supreme Court in *Cohen*. Attorney fees awarded under contract after judgment for fraud would also be nondischargeable.).

{1152} ***Atlantic Trade LLP v. Aung (In re Aung)*, 611 B.R. 145 (Bankr. D. Mass. Jan. 31, 2020) (Bailey)** (Chapter 13 debtor committed false representations and false pretenses in connection with sale of grocery store sushi counters that debtor did not own; judgment debts were nondischargeable under § 523(a)(2)(A).).

{1153} ***Wheeler Bros., Inc. v. Jones (In re Jones)*, 611 B.R. 685 (Bankr. M.D. Ala. Jan. 24, 2020) (Creswell)** (District court judgment that debtor committed willful, malicious and intentional fraud collaterally estops Chapter 13 debtor from litigating nondischargeability under § 523(a)(2)(A). District court judgment for sanctions for discovery abuse lacked findings necessary for preclusion and remains for trial.).

{1154} ***Beabout v. Medlin (In re Medlin)*, 611 B.R. 547 (Bankr. E.D.N.C. Dec. 16, 2019) (Warren)** (Awkwardly pleaded § 523(a)(2) action against Chapter 13 debtor fails on motion to dismiss because debtor's forgery of signature came after extension of credit and plaintiff's indemnity claim does not fit the exception to dischargeability.).

{1155} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2019 WL 6768712 (Bankr. D. Or. Dec. 11, 2019) (not for publication) (Brown)** (Complex nondischargeability proceeding against Chapter 13 debtor under § 523(a)(2) fails for lack of proof of intent to defraud and reliance. Case arose out of a landscaping business in which the debtor was an employee who also did business with his employer. Irregularities in the contract relationship between the debtor and employer obscured whether debtor committed fraud or simply breach of contract and ongoing employer/employee relationship put reliance in question.).

{1156} ***Banco Popular De P.R. v. Rosario (In re Rosario)*, No. 18-00016, 2019 WL 6627479 (Bankr. D.P.R. Dec. 5, 2019) (Tester)** (Material disputed facts with respect to allegations of fraud preclude summary judgment in adversary proceeding to revoke confirmation under § 1330 and to determine debt nondischargeable under § 523(a)(2)(A). Contested facts include home purchase on behalf of an under-aged baseball player and an unrecorded mortgage.).

{1157} ***Tobias v. Alvarado (In re Alvarado)*, 608 B.R. 877 (Bankr. W.D. Okla. Nov. 27, 2019) (Loyd)** ($132,000 obtained by Chapter 13 debtor by false pretenses—through abuse of a friendship—is a nondischargeable debt under § 523(a)(2)(A).).

{1158} ***Contreras v. Arguelles (In re Arguelles)*, No. 5:18-ap-7046, 2019 WL 5075943 (Bankr. W.D. Ark. Oct. 9, 2019) (Barry)** (A convoluted, deconstruction of default judgment and jury determination of damages renders punitive damages portion of state court judgment nondischargeable for fraud under § 523(a)(2)(A) and other portion of judgment nondischargeable for embezzlement of a car under § 523(a)(4).).

{1159} ***Weaver v. Hartman (In re Hartman)*, No. 18-ap-00054, 2019 WL 5616256 (Bankr. N.D. W. Va. Sept. 27, 2019) (Flatley)** (Complaint for fraud under § 523(a)(2) and (a)(4) fails because no claim is made that debtor misrepresented facts or committed fraud before creditor invested in debtor's gun business and failure to pay creditor a share of profits was breach of contract, perhaps, but not fraud.).

{1160} ***Pool v. Winstead (In re Winstead)*, 605 B.R 432 (Bankr. S.D. Miss. Sept. 24, 2019) (Olack)** (Complaint objecting to dischargeability under § 523(a)(2)(A) and (B) is dismissed when no misrepresentation or fraud is alleged and no document is referenced. After dismissal of complaint to bar dischargeability under § 523 court acknowledges that debtor may seek attorney's fees under § 523(d).).

{1161} ***Kansas v. Jones (In re Jones)*, No. 19-4018, 2019 WL 4670876 (Bankr. W.D. Mo. Sept. 23, 2019) (Dow)** (Administrative determination by Kansas Department of Labor that debtor "willfully and knowingly" made false statements to obtain unemployment benefits collaterally estops Chapter 13 debtor to litigate nondischargeability under § 523(a)(2)(A).).

{1162} ***Washington Cty. Dep't of Hous. Servs. v. Hall (In re Hall)*, No. 18-03121-dwh, 2019 WL 4281911 (Bankr. D. Or. Sept. 9, 2019) (not for publication) (Hercher)** (Interpreting *Lamar, Archer & Cofrin, LLP v. Appling*, ___ U.S. ___, 138 S. Ct. 1752, 201 L. Ed. 2d 102 (June 4, 2018), and *Husky International Electronics, Inc. v. Ritz*, ___ U.S. ___, 136 S. Ct. 1581, 194 L. Ed. 2d 655 (May 16, 2016), Chapter 13 debtor's failure to inform state department of housing services of increase in income that resulted in overpayment of benefits is a deceptive omission by conduct—not a "statement" with respect to financial condition—and is nondischargeable under § 523(a)(2) notwithstanding writing requirement in § 523(a)(2)(B).).

{1163} ***Azalea City Credit Union v. Cochran (In re Cochran)*, No. 18-14-JCO, 2019 WL 4072846 (Bankr. S.D. Ala. Aug. 28, 2019) (Oldshue)** (After conversion from Chapter 13 to Chapter 7, debt to credit union was dischargeable under § 523(a)(2) and (a)(4) because fraud on credit union was carried out by debtor's business partner without the debtor's knowledge or participation.).

{1164} ***Workman v. Higgins (In re Higgins)*, No. 16-00352-MDC, 2019 WL 3959981 (Bankr. E.D. Pa. Aug. 21, 2019) (Coleman)** (Applying high standards of Delaware law, creditor failed to prove that corporate veil should be pierced to hold Chapter 13 debtor personally liable for $750,000 investment in corporation that traded coins and precious metals. Nondischargeability complaint against debtor under fraud exceptions in § 523(a) fails because veil-piercing theory fails and there is no claim against the debtor personally.).

{1165} ***DMM Grp., Inc. v. Hanna (In re Hanna)*, 603 B.R. 571 (Bankr. S.D. Tex. July 19, 2019) (Bohm)** (Chapter 13 debtor's guarantee of $150,000 loan to business is nondischargeable under § 523(a)(2)(A): debtor made false representations and engaged in false pretenses including that intended use of funds was expansion of business when business was barely in "survival mode" and could not expand. Debtor failed to reveal litigation against business and knew at time of loan that business could not repay the loan.).

{1166} ***Ideal Dev. Concepts, L.L.C. v. Gross (In re Gross)*, No. 18-05262, 2019 WL 2335912 (Bankr. N.D. Ga. May 31, 2019) (Hagenau)** (Summary judgment not appropriate in nondischargeability action under § 523(a)(2) and (a)(4) when Chapter 13 debtor's

affidavit puts in dispute whether debtor forged plaintiff's endorsement stamp on insurance checks and whether debtor intended to defraud the creditor.).

{1167} ***Ebayyah v. Jaber (In re Jaber)*, No. 18-00052-TOM, 2019 WL 2066950 (Bankr. N.D. Ala. May 9, 2019) (Mitchell)** (Section 523(a)(2) cause of action fails because plaintiff failed to prove that Chapter 13 debtor falsely represented intent to convey stock when plaintiff completed payment of purchase price.).

{1168} ***Graham v. Graham (In re Graham)*, 600 B.R. 90 (Bankr. D. Kan. May 9, 2019) (Somers)** (Overpayment of support to debtor by former spouse was not result of misrepresentations or fraud by debtor so overpayment was not nondischargeable under § 523(a)(2).).

{1169} ***Ameri Best, LLC v. Holmes (In re Holmes)*, 599 B.R. 357 (Bankr. D. Kan. Apr. 25, 2019) (Berger)** (On summary judgment, payday lender's § 523(a)(2) complaint fails because lender was better off as a result of debtors' renewal of loan three days before Chapter 13 petition—debtors paid (exorbitant) interest to renew. Also, debtors' affidavits that they intended to repay the rolling payday loan create material dispute of fact with respect to intent. Court notes that attorney's fees are in play under § 523(d).).

{1170} ***Pacific Office Automation, Inc. v. Duran (In re Duran)*, No. 4:17-ap-00523-BMW, 2019 WL 1801593 (Bankr. D. Ariz. Apr. 23, 2019) (Whinery)** (Jury verdict for breach of contract and tortious interference with contractual relationships is not sufficient to preclude litigation of § 523(a)(2)(A) or § 523(a)(6) actions against Chapter 13 debtor because state court actions did not require findings of intent or willfulness. Without discussion whether § 523(a)(6) applies in Chapter 13 cases, § 523(a)(6) cause of action remains for trial in the bankruptcy court. Debtor not entitled to preclusion with respect to state court dismissal of fraud and punitive damages claims because clear and convincing evidence standard applied under state law, not preponderance of the evidence applicable in nondischargeability action in the bankruptcy court.).

{1171} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602221 (Bankr. W.D. Tenn. Apr. 1, 2019) (Latta)** (Fraud counterclaim by former spouse in debtor's adversary proceeding to determine dischargeability of debts in divorce decree is dismissed as untimely filed six years after complaint deadline for § 523(c) actions. Court rejects equitable tolling argument based on claim that former spouse did not have notice that debtor would seek to discharge debts to former spouse.).

§ 159.3 Fraud and Defalcation: § 523(a)(4)

{1172} ***Kessler-Maue v. Maue (In re Maue)*, 611 B.R. 367 (Bankr. W.D. Wash. Dec. 23, 2019) (Barreca)** (Family members are entitled to judgment against Chapter 13 debtor for $686,496.60 that is nondischargeable under § 523(a)(4) based on more than two decades of self-dealing and other defalcations by the debtor as trustee for various family trusts.).

{1173} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2019 WL 6768712 (Bankr. D. Or. Dec. 11, 2019) (not for publication) (Brown)** (Section 523(a)(4) nondischargeability proceeding against Chapter 13 debtor fails for lack of proof of embezzlement or larceny. Debtor was employee of landscaping business while doing business with his employer.).

{1174} ***Contreras v. Arguelles (In re Arguelles)*, No. 5:18-ap-7046, 2019 WL 5075943 (Bankr. W.D. Ark. Oct. 9, 2019) (Barry)** (A convoluted, deconstruction of default judgment and jury determination of damages renders punitive damages portion of state court judgment nondischargeable for fraud under § 523(a)(2)(A) and other portion of judgment nondischargeable for embezzlement of a car under § 523(a)(4).).

{1175} ***Koressel v. Bowman (In re Bowman)*, 607 B.R. 614 (Bankr. W.D. Ky. Oct. 1, 2019) (Fulton)** (Chapter 13 debtor committed embezzlement for purposes of nondischargeability under § 523(a)(4) by misappropriation and theft of funds from a funeral home business.).

{1176} ***Vrana v. Thornhill (In re Thornhill)*, No. 19-2001, 2019 WL 4795601 (Bankr. E.D. Tex. Sept. 30, 2019) (Parker)** (State court judgment against Chapter 13 debtor for breach of Texas Construction Trust Fund Act established all elements of nondischargeability under § 523(a)(4).).

{1177} ***Weaver v. Hartman (In re Hartman)*, No. 18-ap-00054, 2019 WL 5616256 (Bankr. N.D. W. Va. Sept. 27, 2019) (Flatley)** (Complaint for fraud under § 523(a)(2) and (a)(4) fails because no claim is made that debtor misrepresented facts or committed fraud before creditor invested in debtor's gun business and failure to pay creditor a share of profits was breach of contract, perhaps, but not fraud.).

{1178} ***Azalea City Credit Union v. Cochran (In re Cochran)*, No. 18-14-JCO, 2019 WL 4072846 (Bankr. S.D. Ala. Aug. 28, 2019) (Oldshue)** (After conversion from Chapter 13 to Chapter 7, debt to credit union was dischargeable under § 523(a)(2) and (a)(4) because fraud on credit union was carried out by debtor's business partner without the debtor's knowledge or participation.).

{1179} ***Ideal Dev. Concepts, L.L.C. v. Gross (In re Gross)*, No. 18-05262, 2019 WL 2335912 (Bankr. N.D. Ga. May 31, 2019) (Hagenau)** (Summary judgment not appropriate in nondischargeability action under § 523(a)(2) and (a)(4) when Chapter 13 debtor's affidavit puts in dispute whether debtor forged plaintiff's endorsement stamp on insurance checks and whether debtor intended to defraud the creditor.).

{1180} ***Ebayyah v. Jaber (In re Jaber)*, No. 18-00052-TOM, 2019 WL 2066950 (Bankr. N.D. Ala. May 9, 2019) (Mitchell)** (Section 523(a)(4) cause of action fails because plaintiff did not allege or prove a fiduciary relationship between the Chapter 13 debtor and plaintiff.).

§ 159.4 Unscheduled Creditors: § 523(a)(3)

{1181} ***Walkama v. Nellams*, No. C19-1207-JCC, 2020 WL 995853, at *2–*4 (W.D. Wash. Mar. 2, 2020) (Coughenour)** (Plaintiff in discrimination lawsuit against Chapter 13 debtor is entitled to stay relief to liquidate claim against debtor based on findings that notice of bankruptcy was insufficient to bind plaintiff to confirmed plan and lack of notice renders plaintiff's claim nondischargeable in the Chapter 13 case. "Discharging a debt in a Chapter 13 bankruptcy proceeding requires that the plan specifically 'provide for' the debt. . . . Even if the Chapter 13 plan refers to the debt, the plan does not sufficiently provide for that debt unless the creditor to whom the debt is owed is timely notified of the bankruptcy proceeding. . . . Accordingly, if the notice to the creditor is deemed inadequate, then the debt is not dischargeable. . . . Appellee never received formal, statutorily required notice . . . . Appellee was not notified that his claim was subject to discharge under Appellants' proposed Chapter 13 plan. . . . Appellee had no opportunity to be heard or to contest the proposed plan before it was confirmed. . . . Appellee's claim was not subject to discharge in Appellants' proposed plan.").

{1182} ***In re Dedo*, No. 18-00657, 2020 WL 961311 (Bankr. D.D.C. Feb. 24, 2020) (Teel)** (Motion by creditor for leave to file complaint to determine dischargeability of debt under § 523(a)(3) is denied without prejudice to creditor's right to file a complaint objecting to dischargeability under § 523(a)(3). Stay relief is allowed to permit creditor to pursue its claims against debtor—including its § 523(a)(3) action—in state court. Leave of court is not required to file a complaint under § 523(a)(3) and a motion is not the proper route to that determination.).

{1183} ***Matthews v. Gamboa (In re Gamboa)*, No. 17-1006-JDL, 2020 WL 118591, at *6–*8 (Bankr. W.D. Okla. Jan. 9, 2020) (Loyd)** (Disputed facts with respect to whether debtor knew of debt at time schedules and list were filed precludes summary judgment in action by unscheduled and unlisted creditor to determine dischargeability under § 523(a)(3). Unscheduled creditor's objection to discharge under § 727(a)(4) demonstrates a "profound misunderstanding" of the Bankruptcy Code given that § 727 does not apply in Chapter 13 cases. "The undisputed facts show that Gamboa did not list or schedule a debt owed to Matthews prior to the claims bar date, and that Matthews did not have notice or actual knowledge of the case until . . . long after the . . . time established to file a timely Proof of Claim . . . . Thus, all the elements under § 523(a)(3)(A) for Matthews to establish, as a matter of law, an exception to Gamboa's discharge appear to have been met. That, however, does not end the dispute. . . . Section 523(a)(3) makes non-dischargeable debts which a debtor neither listed nor scheduled '*if known to the debtor*.' . . . Simply put, § 523(a)(3)(A) does not apply when the debtor has no knowledge of the claim in time to include it in the schedules before the bar date has run. . . . [T]he issue of Gamboa's knowledge of Matthews' claim at the time of the filing of the bankruptcy is disputed . . . .").

{1184} ***In re Fryman*, No. 18-20660, 2019 WL 2612763, at *1–*3 (Bankr. E.D. Ky. July 24, 2019) (Wise)** (Bankruptcy Rule 3002(c)(6) as amended in 2017 is not available to extend time for filing proof of claim by unscheduled creditor when debtor filed a list of creditors for Rule 1007(a) purposes but omitted the unscheduled creditor. Unscheduled creditor's due process argument fails because nondischargeability under § 523(a)(3) protects unscheduled creditor when Bankruptcy Rule 3002(c)(6) is not available. "Debtor omitted the creditor not only from her schedules, but also from her mailing list required by Rule 1007(a). . . . The deadline for filing proofs of claim was July 25, 2018. Creditor did not receive notice of the bankruptcy case prior to this deadline. . . . Creditor filed its untimely proof of claim on January 14, 2019, . . . secured by a tax lien on Debtor's real property. . . . The Chapter 13 Trustee objected . . . . Creditor moved for an extension of time to file its claim pursuant to Rule 3002(c)(6)(A). . . . At issue here is the interpretation of the clause 'because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a).' . . . [T]he failure to include an unscheduled creditor in the Mailing List does not expressly or implicitly violate Rule 1007(a). The omission of an unscheduled creditor from the Mailing List does not constitute a failure to timely file the list of creditors for the purposes of Rule 3002(c)(6)(A). . . . Rule 3002(c)(6)(A) does not permit an extension of the claim-filing deadline when a debtor timely files a Mailing List of creditors identified in the schedules. . . . But creditors who do not receive sufficient notice of a bankruptcy case have a remedy in § 523(a)(3), applicable to chapter 13 cases through § 1328(a). Creditor does not explain why its right to due process is not sufficiently protected through the Code . . . .").

§ 159.5 Domestic Support Obligations: § 523(a)(5)

{1185} ***Quintanilla v. Crews (In re Crews)*, No. 19-4027 CN, 2020 WL 1518534 (Bankr. N.D. Cal. Mar. 30, 2020) (Novack)** ($108,000 "equalizing" payment in divorce settlement agreement was not actually in the nature of support when amount was out of proportion to ability of spouse to pay, award did not end on death or remarriage and payments were tax-free.).

{1186} ***Carpenter v. Amos (In re Amos)*, No. 18-4031-659, 2020 WL 930094 (Bankr. E.D. Mo. Feb. 24, 2020) (Surratt-States)** (Attorney's fees awarded former spouse in litigation to defend and collect support are in nature of support and are nondischargeable in Chapter 13 case under § 523(a)(5); sanctions imposed on debtor for discovery abuse in contempt action to collect support are not in the nature of support and are dischargeable.).

{1187} ***In re Pittman*, No. 19-41057, 2020 WL 859435 (Bankr. D. Kan. Feb. 20, 2020) (Somers)** (Chapter 13 filing two days after settlement agreement in state court divorce was not filed in bad faith notwithstanding that settlement agreement recites inaccurately that "even-up" provision will be nondischargeable in bankruptcy and Chapter 13 plan recites inconsistently that even-up provision will be discharged at completion of payments. At time settlement agreement was filed, both debtor and former spouse believed that even-up provision would be nondischargeable. They were both wrong but no bad-faith motive could be ascribed to debtor.).

{1188} ***In re Cochran*, No. 16-00760, 2020 WL 535998 (Bankr. N.D. Iowa Jan. 31, 2020) (Collins)** (Confirmation of plan that surrendered four co-owned properties to former spouse in full satisfaction of her claim did not discharge former spouse's claim in pending adversary proceeding; judgment of nondischargeability in adversary proceedings is binding and balance of debt to former spouse, now unsecured, is nondischargeable.).

{1189} ***Potts v. Potts (In re Potts)*, No. 18-01052, 2020 WL 476592 (Bankr. N.D. Miss. Jan. 29, 2020) (Maddox)** (Former spouse's claim and lien securing that claim are not entitled to priority and nondischargeability because domestic support obligation factors slightly favor debtor—payments do not cease at remarriage; relative incomes were not considered by state court; and award was intended to compensate for loss of interest in homestead.).

{1190} ***In re Redfearn*, 608 B.R. 556 (Bankr. D.N.M. Nov. 15, 2019) (Thuma)** ($500 per month "equalization payments" were intended to support former spouse, were entitled to priority and were nondischargeable in Chapter 13 case. Former spouse was working at a grocery store, not making enough money to pay utilities and rent at time of state court decree.).

{1191} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602209 (Bankr. W.D. Tenn. June 27, 2019) (Latta)** (After months of discovery abuse by Chapter 13 debtor and debtor's counsel, bankruptcy court imposes sanctions under Bankruptcy Rule 7037 exceeding $12,000 and declares debts owed to former spouse nondischargeable based on finding that former spouse cannot have a fair trial of § 523(a)(5) issues because of debtor's failure to cooperate in discovery.).

{1192} ***Hurst v. Hurst (In re Hurst)*, No. 2:18-ap-00282-DPC, 2019 WL 2251828 (Bankr. D. Ariz. May 24, 2019) (Collins)** (State court judgment for attorney's fees in divorce proceeding was a nondischargeable domestic support obligation based on disparity of income and unreasonable litigation conduct by the debtor.).

§ 159.6 Student Loans: § 523(a)(8)

{1193} ***Juber v. Conklin (In re Conklin)*, No. 3:19-CV-00091-KDB, 2020 WL 1672786, at *7–*9 (W.D.N.C. Apr. 6, 2020) (Bell)** (Loan from almost in-laws to almost daughter-in-law that paid off student loans is a "refinancing" that can be nondischargeable under § 523(a)(8)(B) notwithstanding that loan was not itself an educational loan; only the loan that is refinanced must qualify as an educational loan for nondischargeability purposes. "[I]f a loan fits the definition of a 'qualified education loan' under [26 U.S.C. §] 221(d)(1), then it is also a[n] 'educational loan' under section 523(a)(8)(B). . . . [T]he proper question is not whether the Jubers' loan was educational in nature, but rather whether the Jubers' loan is a *refinance* of the Three Original Loans, which would in turn make it a qualified education loan . . . . [T]he Jubers provided Ms. Conklin the loan for the purpose of paying off the Three Original Loans, which are admittedly educational in nature. . . . So long as the loan being refinanced is a 'qualified education loan,' then the refinancing loan may still be considered nondischargeable debt under 11 U.S.C. § 523(a)(8)(B) whether or not it would itself be independently considered an 'educational loan.'"), *rev'g and remanding* 606 B.R. 664, 673–74 (Bankr. W.D.N.C. Aug. 26, 2019) (Beyer) (Loan from almost in-laws to pay off student loans was not itself a nondischargeable student loan under § 523(a)(8)(B). "[T]he Jubers were not extending credit, as an institutional lender would, to fund an education . . . . Instead, the Oral Loan was personal in nature. It was extended to the Debtor as a means of helping the Juber[s'] Son. . . . [T]he loan was made so that his son and future daughter-in-law could start their marriage on the right foot. . . . The Oral Loan was the Jubers' good-hearted, albeit misguided, attempt to get rid of debt their son could ultimately be responsible for upon marriage. It was not educational in nature.").

{1194} ***Educational Credit Mgmt. Corp v. Metz*, No. 18-1281-JWB, 2019 WL 1953119 (D. Kan. May 2, 2019) (Broomes)** (Partial discharge of student loan debt was appropriate in a Chapter 13 case under § 523(a)(8). Debtor could not repay entire loan and income-based plans would leave debtor with large tax problem at retirement age. Debtor could pay principal portion of loans. Interest portion was dischargeable as undue hardship.), *aff'g* 589 B.R. 750 (Bankr. D. Kan. Sept. 25, 2018) (Nugent) (Partial discharge of student loan debt is appropriate when 59-year-old Chapter 13 debtor completed plan that made some payments toward student loans but accruing interest will make complete repayment impossible and income-contingent repayment programs will create a "debt bomb" that will explode when debtor is 84 years old and living on Social Security. Original principal amount of student loans—$16,613.73—is nondischargeable; capitalized and accrued interest exceeding $50,000 is discharged.).

{1195} ***Lee v. U.S. Bank Nat'l Ass'n (In re Lee)*, No. 19-5061, 2019 WL 5849059 (Bankr. D. Kan. Nov. 7, 2019) (Nugent)** (Chapter 13 debtor's complaint fails to plead sufficient facts to support claim that student loans to daughter guaranteed by debtor were not qualified educational loans for purposes of § 523(a)(8)(B).).

{1196} ***In re Wright*, No. 17-30435 (AMN), 2019 WL 3315428, at *2 (Bankr. D. Conn. July 23, 2019) (Nevins)** (Chapter 13 plan cannot be confirmed over objection of Department of Education when plan would discharge accrual of interest on nondischargeable student loan during the years of payment under the plan. "The Court cannot confirm a Chapter 13 plan that effectively discharges part of a non-dischargeable debt without an adversary proceeding, and without making the findings and conclusions required by 11 U.S.C. § 523(a)(8).").

{1197} ***Pongco v. Devos (In re Pongco)*, No. 18-90002-GS, 2019 WL 7602220 (Bankr. D. Alaska May 15, 2019) (Spraker)** (Material disputed facts with respect to actual knowledge of plan and discharge preclude summary judgment in Chapter 13 debtor's action against Sallie Mae for contempt when plan confirmed in 2009 provided for discharge of student loans. Application of *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), depends on whether student lender had actual knowledge of discharge provision in plan.).

§ 159.7 Willful or Malicious Injury: § 1328(a)(4)

{1198} ***Michael v. Denson (In re Denson)*, No. 19-50014, 2020 WL 1547493, at *3–*4 (Bankr. S.D. Ind. Mar. 30, 2020) (Carr)** (Default judgment for sexual assault of an inmate was nondischargeable under § 1328(a)(4). District court entered default judgment for battery, assault, intentional infliction of emotional distress, and civil rights violations by the debtor while a correctional officer at Indiana's women's prison. "[U]nlike § 523(a)(6)'s more stringent conjunctive standard, § 1328(a)(4) requires a plaintiff to show that debtor's actions were willful *or* malicious. Only one need be proven, not both . . . . The term 'personal injury' is not specifically defined . . . . Debtor's actions caused personal injury . . . . Michael suffered both bodily injury from the non-consensual touching and non-physical injuries from emotional distress.").

{1199} ***Papillon v. Jones (In re Jones)*, No. A19-8027, 2020 WL 908445, at *2 (Bankr. D. Neb. Feb. 25, 2020) (Saladino)** (State court judgment for "willfully, maliciously, and recklessly" violating the privacy of the debtor's ex-spouse by making unauthorized recordings is for a personal injury that is nondischargeable in a Chapter 13 case under § 1328(a)(4). "Only a handful of reported cases have addressed the scope of . . . § 1328(a)(4), but those cases have concluded that non-physical injuries to an individual, caused by a debtor's willful or malicious conduct, are covered. . . . Mr. Jones' actions violated Ms. Papillon's reasonable expectations of privacy in her communications, . . . and for that he was ordered to pay damages . . . . [T]he state court judgment was for a personal injury suffered by Ms. Papillon.").

{1200} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2019 WL 6768712 (Bankr. D. Or. Dec. 11, 2019) (not for publication) (Brown)** (Without discussion of § 1328(a)(4), plaintiff failed to prove a nondischargeability claim for conversion or for intentional interference with economic relations for § 523(a)(6) purposes.).

{1201} ***Pool v. Winstead (In re Winstead)*, 605 B.R 432 (Bankr. S.D. Miss. Sept. 24, 2019) (Olack)** (Objection to dischargeability under § 523(a)(6) is dismissed because § 523(a)(6) does not apply at the completion of payments in a Chapter 13 case.).

{1202} ***Ebayyah v. Jaber (In re Jaber)*, No. 18-00052-TOM, 2019 WL 2066950 (Bankr. N.D. Ala. May 9, 2019) (Mitchell)** (Without discussion of § 1328(a)(4), debt is nondischargeable based on willful and malicious injury under § 523(a)(6) when Chapter 13 debtor took back business he sold to plaintiff without returning partial purchase price and without any contractual right to take back the business.).

{1203} ***Ameri Best, LLC v. Holmes (In re Holmes)*, 599 B.R. 357 (Bankr. D. Kan. Apr. 25, 2019) (Berger)** (Payday lender's § 523(a)(6) complaint against Chapter 13 debtors fails because § 523(a)(6) is not applicable at full-payment discharge in a Chapter 13 case.).

{1204} ***Pacific Office Automation, Inc. v. Duran (In re Duran)*, No. 4:17-ap-00523-BMW, 2019 WL 1801593 (Bankr. D. Ariz. Apr. 23, 2019) (Whinery)** (Jury verdict for breach of contract and tortious interference with contractual relationships is not sufficient to preclude litigation of § 523(a)(2)(A) or § 523(a)(6) actions against Chapter 13 debtor because state court actions did not require findings of intent or willfulness. Without discussion whether § 523(a)(6) applies in Chapter 13 cases, § 523(a)(6) cause of action remains for trial in the bankruptcy court. Debtor not entitled to preclusion with respect to state court dismissal of fraud and punitive damages claims because clear and convincing evidence standard applied under state law, not preponderance of the evidence applicable in nondischargeability action in the bankruptcy court.).

{1205} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602221 (Bankr. W.D. Tenn. Apr. 1, 2019) (Latta)** (Former spouse's counterclaim under § 523(a)(6) in debtor's adversary proceeding with respect to discharge of debts in divorce judgment is dismissed

because § 523(a)(6) does not apply at full-payment discharge in a Chapter 13 case and financial injuries are not actionable under § 1328(a)(4).).

§ 159.8 Boating or Flying while Intoxicated: § 523(a)(9)
§ 159.9 Chapter 7 Trustee Compensation: § 1326(d)
D. HARDSHIP DISCHARGE: DISCHARGE BEFORE COMPLETION OF ALL PAYMENTS
§ 160.1 In General
§ 160.2 Timing, Filing and Procedural Considerations
§ 160.3 Circumstances for Which the Debtor Should Not Justly Be Held Accountable

{1206} ***In re Quintyne*, 610 B.R. 462 (Bankr. S.D.N.Y. Jan. 16, 2020) (Lane)** (Hardship discharge denied under § 1328(b) after 53 months of 60-month plan because explanation by debtor—that 2006 auto needed to be replaced—was foreseeable, and real reason for default under plan appeared to be increased expenses unrelated to the failed car that were not explained by the debtor. Motion fails even if court applies less stringent standard than "catastrophic" events required by some courts. Debtor also failed to address why modification of plan was not practicable.).

§ 160.4 Best-Interests-of-Creditors Test
§ 160.5 Modification Is Not Practicable

{1207} ***In re Quintyne*, 610 B.R. 462 (Bankr. S.D.N.Y. Jan. 16, 2020) (Lane)** (Hardship discharge denied under § 1328(b) after 53 months of 60-month plan because explanation by debtor—that 2006 auto needed to be replaced—was foreseeable, and real reason for default under plan appeared to be increased expenses unrelated to the failed car that were not explained by the debtor. Motion fails even if court applies less stringent standard than "catastrophic" events required by some courts. Debtor also failed to address why modification of plan was not practicable.).

§ 160.6 Exceptions to Hardship Discharge before BAPCPA
§ 160.7 Exceptions to Hardship Discharge Added or Changed by BAPCPA
E. WAIVER AND REVOCATION OF DISCHARGE
§ 161.1 Waiver of Discharge
§ 161.2 Revocation of Discharge and Relief from Discharge Order
F. EFFECTS OF DISCHARGE
§ 162.1 In General, Including Discharge Hearing and Discharge Injunction

{1208} **Henry v. Educational Fin. Serv. (In re Henry), 941 F.3d 147 (5th Cir. Oct. 17, 2019), *withdrawn and superseded*, 944 F.3d 587 (5th Cir. Dec. 16, 2019) (King, Higginson, Duncan)** (Bankruptcy court has discretion to refuse to enforce arbitration clause in action by Chapter 13 debtor to enforce discharge injunction against a student loan creditor. This result is not changed by *Epic Systems Corp. v. Lewis*, __ U.S. __, 138 S. Ct. 1612, 200 L. Ed. 2d 889 (May 21, 2018).).

{1209} ***In re Moon*, No. 13-12466-MKN, 2019 WL 5783253 (Bankr. D. Nev. Sept. 7, 2019) (Nakagawa)** (Rushmore Loan Management Service's motion to continue hearing on Chapter 13 debtor's motion for sanctions for violations of the discharge injunction is denied because Rushmore had plenty of time to prepare for the hearing and the substitution of counsel is not a ground for continuance when new counsel had plenty of time to get ready.).

{1210} ***In re Begoun*, No. 13 B 27604, 2019 WL 3763935, at *2–*4 (Bankr. N.D. Ill. Aug. 6, 2019) (Goldgar)** (Distributions inexplicably refused by an unsecured creditor and returned to the trustee are part of the "pot" and are payable to other unsecured creditors, not returned to the debtor. "The Trustee disbursed Begoun's monthly payments to creditors according to her plan without incident from confirmation until April 2016. That month, for reasons that remain unclear, Chase Bank stopped accepting payments on its claim, payments it had been accepting for more than a year, and began returning them to the Trustee. Chase Bank never amended or withdrew its claim; it simply sent the payments back. Although the Trustee repeatedly contacted Chase Bank to find out where to send payments, he never received an answer. . . . Chase returned to the Trustee a total of $16,436.49. Begoun completed her plan payments in September 2018 . . . and received her discharge . . . . The Trustee deposited the funds Chase Bank had returned with the clerk of the bankruptcy court . . . . Begoun moved to withdraw those funds under 28 U.S.C. § 2042. . . . Because she had made all the payments her plan required and her creditors had received more than the minimum dividend, Begoun contended that the funds Chase Bank had returned belonged to her. . . . Begoun's motion will be denied. . . . The funds Chase Bank rejected belong first to Chase Bank and then to Begoun's unsecured creditors. . . . Begoun's plan was a pot plan. . . . The funds the Trustee sent to Chase Bank belonged to the pot from which Begoun was paying her creditors. When Chase Bank refused the funds and returned them to the Trustee, they were still part of the pot. Therefore, they are available for the Trustee to distribute to Begoun's remaining unsecured creditors. . . . Once those creditors are paid, Begoun will be entitled to the balance, not before. Any other result would change the terms of her confirmed plan by lowering the pot.").

{1211} ***Philyaw v. Portfolio Recovery Assocs., LLC, (In re Philyaw)*, No. 18-05335-LRC, 2019 WL 1848563, at *3, *3 (Bankr. N.D. Ga. Apr. 24, 2019) (Craig)** (Complaint for contempt of discharge injunction, wrongful refusal of turnover and for sanctions—when Portfolio Recovery Associates refused to turn over car title after completion of plan payments—fails because debtor did not allege that PRA acted with improper purpose of collecting the discharged debt. The plan and the confirmation order did not "place[ ] Defendant on notice of any affirmative obligation to release its lien and return the Title to Plaintiff." Confirmed plan provided for payment of car loan in full with interest. Debtor completed payments under the plan and received a discharge. PRA refused debtor's demand for return of the car title. "[PRA] argues that it was not required by state law, the confirmed plan, or the confirmation order to release its lien and return the Title to Plaintiff. The Court concludes that, even if it was, the Complaint contains no factual allegations to support the conclusion that Defendant's failure to do so upon demand by Plaintiff was motivated by the improper purpose of collecting the discharged debt from Plaintiff. . . . [N]either the Plan nor the Confirmation Order placed Defendant on notice of any affirmative obligation to release its lien and return the Title to Plaintiff.").

§ 162.2 Discharge Injunction and § 524(i) after BAPCPA

{1212} ***Roth v. Nationstar Mortg., LLC (In re Roth)*, 935 F.3d 1270, 1276–78 (11th Cir. Aug. 28, 2019) (Wilson, Branch, Anderson)** (Postdischarge "informational statement" from mortgage holder with disclaimers was not a violation of the discharge injunction because "objective effect" of the statement was not to pressure payment of discharged debt but to inform Chapter 13 debtor of option to voluntarily continue making payments. Court of appeals declines to impose "least sophisticated consumer" standard from FDCPA in discharge injunction case and would find contempt not appropriate under *Taggart v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), in any case. "Roth has not met her burden of showing that the Informational Statement was an unlawful debt collection in violation of § 524 . . . 'the objective effect' of the Informational Statement was not 'to pressure [Roth] to repay a discharged debt.' . . . The fact that the statement includes an 'amount due,' 'due date,' and statements about the negative escrow balance does not diminish the effect of the prominent, clear, and broadly worded disclaimer. . . . This Court has never incorporated the 'least sophisticated consumer' test into our § 524 analysis. . . . [T]o find that sanctions are appropriate here, we would have to hold that 'there is no objectively reasonable basis for concluding that [Nationstar's] conduct might be lawful.' . . . With more than a 'fair ground of doubt,' . . . as to whether the discharge order barred Nationstar's conduct, sanctions would be inappropriate.").

{1213} ***Freeman v. Nationstar Mortg. LLC (In re Freeman)*, No. CC-18-1261-TaFS, 2019 WL 5584884, at *5–*6, *4–*5 (B.A.P. 9th Cir. Oct. 29, 2019) (not for publication) (Taylor, Faris, Spraker)** (After payment in full of agreed-upon value of mortgagee's claim secured by nonresidential real property, underlying lien was discharged by operation of California law and § 506(d). Mortgagee violated discharge injunction by proceeding with foreclosure after discharge of its secured claim and lien. However, because the Supreme Court rejected the Ninth Circuit's standard for determining whether a creditor is in contempt for violating the discharge injunction in *Taggert v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), remand is necessary for bankruptcy court to reconsider its decision that postdischarge foreclosure did not constitute contempt when creditor thought, erroneously, that its lien survived payment of its agreed-upon secured claim. "Payment in full of a secured claim has import under the controlling California law. In California, a lien does not exist independently of the underlying debt; satisfaction of the underlying debt satisfies the lien. . . . Put differently, § 506(d) voids liens when a creditor's claim is not allowed in the bankruptcy. . . . [F]ull payment of an allowed secured claim voids (i.e., extinguishes) the lien securing that claim by operation of state law and the Bankruptcy Code." With respect to *Taggert*: "[T]he Ninth Circuit's *Taggart* standard was forgiving to creditors: it allowed a creditor to proceed with otherwise objectively unreasonable acts so long as it held a subjective good faith belief that it was in the right. . . . The Supreme Court rejected the Ninth Circuit's 'good faith belief' standard . . . .").

{1214} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 1328640, at *2–*6 (S.D. Ind. Jan. 30, 2020) (Pryor)** (In Chapter 13 debtor's postdischarge action against Ocwen under RESPA, FDCPA, FCRA and other consumer protection statutes, discovery dispute is resolved by United States Magistrate judge in favor of debtor with respect to "risk convergence reports" and other records relevant to Ocwen's knowledge that its REALServicing platform was broken and could not accurately account for payments in a Chapter 13 case. "Defendant Ocwen used a software-based servicing system, called REALServicing, that was subject to various failings. . . . Ocwen maintained spreadsheets, called 'Risk Convergence Reports,' that tracked regulatory violations and potential areas for risk with the REALServicing platform. . . . Plaintiff sought these Risk Convergence Reports ('RCR'), and any email correspondence . . . , . . . establishing Ocwen's knowledge, willful indifference, or deliberate violation of federal law. . . . Plaintiff has explained . . . that, if provided, the RCRs will be used to show that Ocwen was aware of the widespread problems related to the REALServicing platform, had been aware for a significant period of time, and had not engaged in the appropriate corrective behavior. Accordingly, the Court finds that the Plaintiff's request for the RCRs is relevant. . . . The RCRs, while potentially a result of the nationwide consent decrees, do not necessarily hinge on the terms of those decrees, nor do they reveal any confidential information from the settlement negotiation process. Instead, the RCRs appear to be spreadsheets created in the normal course of Ocwen's business, in an attempt to track potential points of liability and forestall future regulatory action.").

{1215} ***Stone v. JPMorgan Chase Bank, N.A.*, 415 F. Supp. 3d 628, 632–34 (E.D. Pa. Nov. 27, 2019) (McHugh)** (Chapter 13 debtor's "disturbing" claims under FDCPA and Pennsylvania consumer protection statutes that Chase violated Bankruptcy Rule 3002.1 final cure order and discharge order are dismissed because Chase was not a debt collector and (ironically) debtor could not prove reliance when debtor knew that servicer was not accounting correctly but debtor continued to send payments anyway. Debtor's claims of violation

of discharge injunction must be presented as a motion for contempt to the bankruptcy court that issued the discharge. "Defendant correctly asserts that it is beyond the reach of the FDCPA because it does not qualify as a 'debt collector' under the statute. . . . Plaintiff cannot state a claim under Pennsylvania's UTPCPL because he cannot show justifiable reliance upon the Defendant's alleged wrongful behavior. . . . Plaintiff submitted what he believed to be his correct mortgage payment to Defendant on a monthly basis, consistently disputing Defendant's contention that he was behind on his mortgage and owed additional fees. . . . As a result, it cannot be said that Plaintiff has 'relied' upon the Defendant's purported misrepresentations or deceptive acts in any meaningful sense. In a somewhat ironic outcome, Plaintiff's knowledge of Defendant's allegedly wrongful behavior . . . bars him from bringing a claim against Defendant under the UTPCPL. . . .").

{1216} ***Holder v. Carrington Mortg. Servs., LLC*, No. 1:15-CV-04342-LMM-JCF, 2016 WL 11574764 (N.D. Ga. May 23, 2016) (Fuller)** (Magistrate judge recommends dismissal of Chapter 13 debtor's complaint against mortgage servicer for violation of discharge injunction because action must be by motion in the bankruptcy court, not as part of civil action in district court.).

{1217} ***Delane v. Carrington Mortg. Servs., LLC*, No. 1:15-cv-04409-CAP-CMS, 2016 WL 11581718 (N.D. Ga. May 18, 2016) (Salinas)** (Magistrate judge recommends dismissal of complaint for violation of discharge injunction because Carrington Mortgage did not report false information about discharge of mortgage claim and contempt for violation of discharge injunction should have been presented to bankruptcy court, not district court.).

{1218} ***Christie v. Fort Gibson State Bank (In re Christie)*, No. 19-8002-TRC, 2020 WL 739267, at *7 (Bankr. E.D. Okla. Feb. 13, 2020) (Cornish)** (Bank did not violate discharge injunction or § 524(i) when it demanded additional money from debtor after completion of payments in Chapter 13 case because discharge was actually entered after demand. However, bank did violate automatic stay. "The discharge order had not yet been entered at the time the Bank demanded additional monies in excess of the Plan payments before it would issue lien releases. . . . The Plaintiff offered no legal authority for its interpretation of § 524(i) that the actual entry of the discharge order is not a prerequisite for the Court to find a violation of the discharge injunction. The Court reads § 524(i) in conjunction with § 524(a). . . . Here, Fort Gibson State Bank attempted to collect debts before the entry of the discharge order, not after. Therefore, the Court finds that no violation of the discharge injunction occurred.").

{1219} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682, 687–94 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (After transfers of servicing during Chapter 13 case from CitiFinancial to Carrington (and later, to SN), complaint states plausible claims that all servicers in the chain violated § 524(i) by misapplying or failing to apply payments. "CitiFinancial assigned the deed of trust and the secured claim to Wilmington . . . . Wilmington's servicer [was] Carrington . . . . [T]he Trustee filed a Notice of Final Cure Mortgage Payment, to which Carrington responded . . . , concurring with the Trustee's assessment that Plaintiffs had cured the prepetition arrearage and were current on postpetition mortgage payments . . . . Designed to remedy instances in which creditors misapplied payments under a confirmed plan, § 524(i) is unique in that the provision is 'not limited to acts occurring after discharge.' . . . [Section] 524(i) is applicable to CitiFinancial despite the fact it had transferred its secured claim by the time Plaintiffs had obtained their discharges, because the operable offending conduct for purposes of § 524(i), the alleged misapplication of payments, occurred in part when CitiFinancial still possessed the claim . . . . [D]espite filing a response to the Trustee's Notice of Final Cure Payment that Plaintiffs were current on all postpetition payments, Carrington sent Plaintiffs a . . . mortgage statement incorrectly stating in bold-type that it had not received all mortgage payments due since the bankruptcy filing. . . . SN sent a third letter . . . , which notifies the Plaintiffs of fees assessed and charged to their account, including 'Forebearance Prin Assessment' in . . . an amount that matches the amount of the allowed prepetition arrearage in the Plaintiffs' chapter 13 case . . . . The Court draws the reasonable inference that Carrington sent Plaintiffs a letter showing an inflated balance based on records it received from CitiFinancial . . . . Evidence that could prove CitiFinancial's misapplication of plan payments is controlled by CitiFinancial and has not been turned over to Plaintiffs . . . . [A]llegations that Carrington misapplied payments, which are supported by the alleged communications Plaintiffs received from Carrington and SN that showed missing payments and an overstated balance, are sufficient for purposes of a motion to dismiss . . . . Despite Plaintiffs' successful plan completion, leading to their eventual discharges, the account balance of Plaintiffs' mortgage was in excess of the allowed amount of their secured claim by as much as $27,000 . . . . [T]he inclusion of boilerplate disclaimers is not a talisman, cleansing a creditor's ongoing misrepresentation of the total payoff balance owed on a discharged debtor's mortgage loan. . . . Plaintiffs' allegations that CitiFinancial and Carrington both transferred Plaintiffs' mortgage account with an inflated balance due to misapplied payments sufficient to constitute an act to collect for the purposes of withstanding a motion to dismiss . . . .").

{1220} ***In re Ferris*, 611 B.R. 701, 706–07 (Bankr. M.D. Fla. Dec. 6, 2019) (Funk)** (After transfers of servicing from Ocwen to Seterus to Mr. Cooper, Seterus violated § 524(i) by failing to properly account for payments during Chapter 13 case. Confirmed plan cured default and maintained payments on mortgage consistent with § 1322(b)(5). Debtor filed proof of claim for Ocwen for arrearage of $7,856.59. Ocwen did not object or amend. Debtor made all payments. Trustee filed notice of final cure to which mortgagee responded debtors were current. Chapter 13 case was closed. Seterus then sent multiple demand letters for varying default amounts and threatened foreclosure. Seterus failed to respond to protests from debtors and attorneys. Emotional distress damages awarded of 10,000, attorney's fees of approximately $20,000 and punitive damages of $25,000. "Mr. Cooper alleged that the entire chain of events . . . resulted from the Debtors listing an incorrect arrearage amount in their proof of claim. However, Homeward Residential, Inc., which owned the mortgage from the date of the filing of the case until July 7, 2014, neither filed an amended proof of claim nor objected to confirmation of the Debtors' plan. Ocwen Loan Servicing, LLC, which owned the mortgage from July 7, 2014 until October 6, 2015, also took no

action in the case. FNMA/Seterus, which acquired the mortgage on October 6, 2015, took no action in the case other than to file Notices of Mortgage Payment Change, which reflected post-petition increases in Debtors' escrow account . . . . [Section] 524(i) provides that a creditor's willful failure to credit payments received under a confirmed plan constitutes a violation of the injunction under § 524(a)(2) if the creditor's failure caused material injury to the debtor. . . . The Court finds that willfulness in the context of § 524(i) requires only that the creditor intended to credit payments improperly . . . . Seterus was put on notice by the Trustee's Motion for Determination of Final Cure that the Debtors had made their mortgage payments through June 2017 and in fact acknowledged such in its November 7, 2017 Response to the Trustee's Motion for Determination of Final Cure. . . . Despite this concession, however, Seterus (and later Mr. Cooper) failed to properly credit the March through June 2017 payments and, from April 2018 until May 2019, bombarded the Debtors with letters and notices demanding payment of the already paid amounts. Mr. Cooper failed to prove that Seterus' and Mr. Cooper's failure to properly credit the payments was in conflict with their normal procedures. The record before the Court clearly supports a finding that Seterus and Mr. Cooper willfully failed to credit the payments.").

{1221} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 613 B.R. 225 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (Section 524(i) claims of misapplication of payments during Chapter 13 case fail because lenders and servicers correctly applied 8% floor in loan documents; payment change notices during case were consistent with correct interpretation of loan documents.).

{1222} ***Christie v. Fort Gibson State Bank (In re Christie)*, No. 19-8002-TRC, 2019 WL 5075940 (Bankr. E.D. Okla. Oct. 9, 2019) (Cornish)** (Disputed facts preclude summary judgment with respect to violations of discharge injunction by creditor that accepted payments for postpetition advances on prepetition loans that were being paid through a Chapter 13 plan.).

{1223} ***Kriss v. United States (In re Kriss)*, No. 18-01064-BAH, 2019 WL 4745361 (Bankr. D.N.H. Oct. 1, 2019) (Harwood)** (Applying *Fahey v. Massachusetts Department of Revenue (In re Fahey)*, 779 F.3d 1 (1st Cir. Feb. 18, 2015) (Torruella, Thompson, Kayatta), and rejecting *Beard v. Commissioner*, 82 T.C. 766 (May 24, 1984), *aff'd*, 793 F.2d 139 (6th Cir. June 24, 1986) (Keith, Nelson, Edwards), late-filed returns are not "returns" for purposes of § 523(a)(1)(B) and hanging paragraph at the end of § 523(a); IRS did not violate discharge injunction with respect to postpetition interest and priority taxes that were not paid during the Chapter 13 case. Court leaves for another day the question whether the bankruptcy court has jurisdiction to award attorney's fees and actual damages for violation of the discharge injunction when debtor did not exhaust administrative remedies with respect to the IRS. Emotional distress damages are definitely not recoverable from the IRS under any circumstances.).

{1224} ***In re Widick*, No. BK10-40187, 2019 WL 4894543 (Bankr. D. Neb. Sept. 10, 2019) (Saladino)** (IRS did not violate discharge injunction by offsetting tax refund and Social Security payments to collect interest on nondischargeable taxes and penalties that were paid without interest through completed Chapter 13 plan.).

{1225} ***In re Brown*, No. 14-11080-JDW, 2019 WL 3934384 (Bankr. N.D. Miss. July 24, 2019) (Woodard)** (Creditor admitted violating discharge injunction by garnishing Chapter 13 debtor's wages to collect debt discharged in prior bankruptcy; damages awarded totaling $1,875 for lost wages, travel expenses, late charges and attorney's fees.).

{1226} ***Pongco v. Devos (In re Pongco)*, No. 18-90002-GS, 2019 WL 7602220 (Bankr. D. Alaska May 15, 2019) (Spraker)** (Material disputed facts with respect to actual knowledge of plan and discharge preclude summary judgment in Chapter 13 debtor's action against Sallie Mae for contempt when plan confirmed in 2009 provided for discharge of student loans. Application of *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), depends on whether student lender had actual knowledge of discharge provision in plan.).

§ 162.3 On Liens

{1227} ***Vargas Moya v. Administracion Sistemas de Retiro de los Empleados del Gobierno y la Judicatura (In re Vargas Moya)*, 601 B.R. 845, 857–63 (Bankr. D.P.R. May 16, 2019) (Lamoutte)** (Applying § 362(b)(19), claim of government retirement plan for loan used to acquire real estate is not a perfected security interest because it was not properly registered but the claim is a statutory lien on the debtor's postpetition contributions. The stay exception allowed the retirement plan to continue to receive contributions postpetition to which its statutory lien attached. Section 552(a) did not defeat the plan's statutory lien on after-acquired property and the plan's lien survived discharge notwithstanding that § 523(a)(18) does not apply. Debtor's personal liability was discharged. "Retiro's statutory lien specifically states that it attaches to future property, that is, all the contributions accrued or to be accrued in the System. . . . [S]ection 552(a) only refers to security interests and not to statutory liens. . . . Section 362(b)(19) states that the filing of a petition . . . does not operate as a stay . . . 'of withholding of income from a debtor's wages and collection of amounts withheld . . . .' . . . Retiro has affirmatively alleged their compliance with § 362(b)(19) . . . . Retiro's statutory lien attaches to contributions acquired post-petition by the Debtor. . . . [A]lthough the Debtors released the personal liability of Retiro' loan through the discharge, the Defendant's lien continues to attach to the post-petition contributions to the retirement system, as established by the statutory lien.").

§ 162.4 Effects of Discharge on Liens after BAPCPA

{1228} ***Freeman v. Nationstar Mortg. LLC (In re Freeman)*, BAP No. CC-18-1261-TaFS, 2019 WL 5584884, at *5–*6, *4–*5 (B.A.P. 9th Cir. Oct. 29, 2019) (not for publication) (Taylor, Faris, Spraker)** (After payment in full of agreed-upon value of mortgagee's claim secured by nonresidential real property, underlying lien was discharged by operation of California law and § 506(d). Mortgagee violated discharge injunction by proceeding with foreclosure after discharge of its secured claim and lien. However, because the Supreme Court rejected the Ninth Circuit's standard for determining whether a creditor is in contempt for violating the discharge injunction in *Taggert v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), remand is necessary for bankruptcy court to reconsider its decision that postdischarge foreclosure did not constitute contempt when creditor thought, erroneously, that its lien survived completion of payment of its secured claim. "Payment in full of a secured claim has import under the controlling California law. In California, a lien does not exist independently of the underlying debt; satisfaction of the underlying debt satisfies the lien. . . . Put differently, § 506(d) voids liens when a creditor's claim is not allowed in the bankruptcy. . . . [F]ull payment of an allowed secured claim voids (i.e., extinguishes) the lien securing that claim by operation of state law and the Bankruptcy Code." With respect to *Taggert*: "[T]he Ninth Circuit's *Taggart* standard was forgiving to creditors: it allowed a creditor to proceed with otherwise objectively unreasonable acts so long as it held a subjective good faith belief that it was in the right. . . . The Supreme Court rejected the Ninth Circuit's 'good faith belief' standard . . . .").

{1229} ***Wortman v. Rushmore Loan Mgmt. Servs. LLC*, No. 19 C 2860, 2019 WL 5208893 (N.D. Ill. Oct. 16, 2019) (Kendall)** (Chapter 13 debtors' post-discharge claims under FDCPA and state Consumer Protection Act fail because debtors did not give the pre-suit notice required by the mortgage. That debtors claimed discharge of the mortgage does not change this outcome because only personal liability was discharged in the completed Chapter 13 case. The mortgage lien survived and its terms require notice before initiating litigation.).

{1230} ***In re Gilmore*, No. 13-bk-1311, 2019 WL 4673429 (Bankr. N.D. W. Va. Sept. 24, 2019) (Flatley)** (Distinguishing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and embracing *Reuland v. IRS (In re Reuland)*, 591 B.R. 342 (Bankr. N.D. Ill. Oct. 26, 2018) (Baer), confirmed plan that cured mortgage arrearage and provided for ongoing installment that was less than stated on proof of claim is binding on mortgagee and debtor is current on mortgage at completion of payments but difference between monthly payments made through the Chapter 13 plan and amounts required by loan is nondischargeable. Discrepancy was discovered when trustee made final cure notice under Bankruptcy Rule 3002.1 and U.S. Bank responded that a substantial postconfirmation arrearage developed as a result of the difference between payments under the confirmed plan and the monthly installments stated on the bank's proof of claim. Court orders party to "reconcile payment figures" in light of holding that loan is current but the bank's nondischargeable claim includes discrepancy in monthly installment amount.).

{1231} ***In re Warenski*, No. 10-32582-MKN, 2019 WL 5777657 (Bankr. D. Nev. Aug. 2, 2019) (Nakagawa)** (Citizens Bank violated plan and discharge injunction by failing to release its unsecured lien after completion of payments and discharge in a Chapter 13 case. Pecuniary damages including emotional distress damages and attorney's fees are awarded.).

{1232} ***Philyaw v. Portfolio Recovery Assocs., LLC, (In re Philyaw)*, No. 18-05335-LRC, 2019 WL 1848563, at *3, *3 (Bankr. N.D. Ga. Apr. 24, 2019) (Craig)** (Complaint for contempt of discharge injunction, wrongful refusal of turnover and for sanctions—when Portfolio Recovery Associates refused to turn over car title after completion of plan payments—fails because debtor did not allege that PRA acted with improper purpose of collecting the discharged debt. The plan and the confirmation order did not "place[ ] Defendant on notice of any affirmative obligation to release its lien and return the Title to Plaintiff." Confirmed plan provided for payment of car loan in full with interest. Debtor completed payments under the plan and received a discharge. PRA refused debtor's demand for return of the car title. "[PRA] argues that it was not required by state law, the confirmed plan, or the confirmation order to release its lien and return the Title to Plaintiff. The Court concludes that, even if it was, the Complaint contains no factual allegations to support the conclusion that Defendant's failure to do so upon demand by Plaintiff was motivated by the improper purpose of collecting the discharged debt from Plaintiff. . . . [N]either the Plan nor the Confirmation Order placed Defendant on notice of any affirmative obligation to release its lien and return the Title to Plaintiff.").

§ 162.5 On Administrative Expenses
§ 162.6 Reopening Closed Cases

{1233} ***Mohorne v. Beal Bank (In re Mohorne)*, 772 F. App'x 846 (11th Cir. June 12, 2019) (Pryor, Rosenbaum, Grant)** (Bankruptcy court committed no error refusing to reopen a Chapter 13 case closed in 2013 when debtor seeks only to raise challenges to foreclosure that were decided against the debtor many years earlier.).

{1234} ***In re Stewart*, No. 18-00482, 2020 WL 597843, at *1 (Bankr. D.D.C. Feb. 4, 2020) (Teel)** (Motion to reopen dismissed, closed Chapter 13 case is denied because reopening more than a year after closing serves no purpose. The Chapter 13 case would still be dismissed and the debtor's offer of amended schedules would have no effect on the added creditors. "Even though the case is a dismissed case, it is a closed case for which a motion to reopen may be filed. . . . Upon reopening, the case would remain a dismissed case in which Stewart is not entitled to the protection of the automatic stay against future collection efforts by creditors . . . . [N]othing

would be gained by reopening the case to permit Stewart to add creditors to the schedules. . . . Stewart may mistakenly think that a reopening of the case would vacate the order dismissing the case. Reopening of a dismissed case is not the appropriate vehicle for setting aside an order dismissing the case. Instead, such relief must be sought via a motion under Fed. R. Bankr. P. 9023 or 9024. . . . Stewart's motion does not offer any grounds that, under those rules, would justify vacating the order dismissing the case, particularly in light of the case having been dismissed more than a year before Stewart filed her motion to reopen the case.").

{1235} ***In re Baldwin*, No. 14-23702, 2018 WL 8223412, at *1–*3 (Bankr. N.D. Ind. Aug. 31, 2018) (Ahler)** (Motion to reopen dismissed Chapter 13 case is denied because reopening under § 350 is not available when the case was dismissed. "The bankruptcy court has the power to reopen a closed case to 'administer assets, to accord relief to the debtor, or for other cause.' . . . However, § 350(b) does not allow a court to reopen a case that has been dismissed. . . . [T]he Re-Open Motion could alternatively be construed as a request for relief under Federal Rule of Civil Procedure 60(b). . . . Claimant filed its Re-Open Motion . . . more than two years after the . . . order that dismissed Debtor's case. . . . Claimant offers no justification for this delay and contends that the relief it seeks is in the interest of justice . . . . This explanation is insufficient to justify the delay in bringing a request for relief under Rule 60(b)(6). Moreover, this contention is inadequate to demonstrate the extraordinary circumstances required for Rule 60(b)(6) relief.").