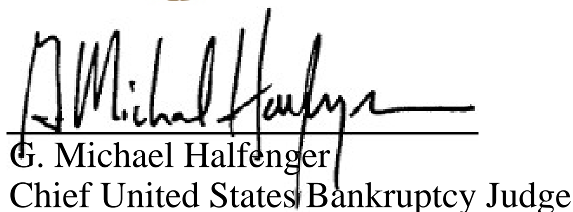
So Ordered.

Dated: April 10, 2024



G. Michael Halfenger
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Francis C. Weylock and Alia Weylock, Debtors.	Case No. 18-30208-gmh Chapter 13

ORDER ON DEBTORS' OBJECTION TO RESPONSE TO NOTICE OF FINAL CURE

Carrington Mortgage Services, LLC, has a claim secured by a security interest in the debtors' principal residence and for which the confirmed plan provides that the debtors will make contractual installment payments, pursuant to 11 U.S.C. §1322(b)(5). See Fed. R. Bankr. P. 3002.1(a). The claim was originally held by JPMorgan Chase Bank, National Association, and recently transferred to Carrington. See ECF No. 95.

On February 28, 2024, after the trustee filed a notice that the debtors have made all of the payments that the confirmed plan required them to make to the trustee, the trustee gave Carrington notice that the debtors have paid in full the amount required to cure the prepetition and postpetition defaults on its claim. ECF Nos. 100 & 101; see Fed. R. Bankr. P. 3002.1(f). Soon thereafter, the debtors filed Local Form 2831, certifying that

they have completed all payments to the trustee and to "one or more entities other than the trustee", i.e., to Chase and Carrington, that the confirmed plan required them to make. ECF No. 104, at 2.

On March 20 Chase (the original claim holder), not Carrington, filed a response to the trustee's notice of final cure payment, stating that $472.01 in postpetition fees, charges, expenses, escrow, and costs remain outstanding, but agreeing that the debtors have paid the full amount required to cure the prepetition default on its claim and indicating that the debtors are current on postpetition payments through April 2024. See ECF No. 105, at 1; see also Fed. R. Bankr. P. 3002.1(g).[1]

On April 9 the debtors filed an objection to Chase's response to the trustee's notice of final cure payment. ECF No. 106.2 The debtors contend that they paid Carrington enough to cover the outstanding fees, charges, and expenses listed in its response, but that Carrington incorrectly applied their payments to their April 2024

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1. Oddly, the response states both "that the debtor(s) are *not* current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs" and "that the debtor(s) are contractually obligated for the postpetition payment(s) that first became due on" May 1, 2024, a future date. ECF No. 105, at 1 (emphasis added). But the form then requires the creditor to "attach an itemized payment history disclosing . . . [specified] amounts from the date of the bankruptcy filing through the date of this response", including "all fees, costs, escrow, and expenses assessed to the mortgage", and the itemized payment history filed with Chase's response does not seem to include any of the postpetition fees, expenses, and charges set forth in the two notices filed by Chase during this case. ECF No. 105, at 2–11; see ECF Nos. 80 & 98; see also Fed. R. Bankr. P. 3002.1(c). And the note and mortgage attached to the proof of claim do not plainly specify when such fees, charges, and expenses become due, other than, perhaps, "upon notice from Lender to Borrower requesting payment." Claim No. 16-2, at 16. Accordingly, despite its apparent assertion to the contrary, the court construes Chase's response to the trustee's notice of final cure payment, read in its entirety, to concede that the debtors are current, through April 2024, on all postpetition payments for purposes of §1322(b)(5), Rule 3002.1(g), and the requirements for a discharge under 11 U.S.C. §1328(a). See *In re Bethe*, No. 11-25388, 2017 WL 3994813, at *2 (Bankr. E.D. Wis. Sept. 8, 2017) (concluding that, to be eligible for a discharge under §1328(a), a chapter 13 debtor must complete all payments required by the confirmed plan, including "direct-pay maintenance payments on long-term debt provided for in [the] . . . plan").

2. The filing states that the debtors "object to the Response to Notice of Final Cure Payment . . . filed by *Carrington Mortgage Services LLC* . . . on 3/20/2024". ECF No. 106, at 1 (citing ECF No. 105) (emphasis added). As noted above, however, the response was filed by Chase, which presumably lacks standing, not Carrington.

mortgage payment, "which was not due . . . [when] the Response was filed." *Id.* at 1.

Rule 3002.1 does not contemplate the filing of an objection to a creditor's response to a trustee's notice of final cure payment. Instead, Rule 3002.1(h) provides that the debtor or the trustee may, "within 21 days after service" of such a response, file a motion to "determine whether the debtor has cured the default and paid all required postpetition amounts." The debtors have not done this. [3]

Moreover, by filing an objection, rather than a motion, the debtors have created administrative difficulties. By local rule, the proper filing and service of a motion calls for the timely filing of any objections to the motion, and absent a timely filed objection, the moving party must promptly file a proposed order on the motion. See Local Rule 9014(a) (Bankr. E.D. Wis. Nov. 1, 2017). The timely filing of an objection to a motion <u>or</u> a proposed order triggers the court's review of the matter and, depending on the circumstances, the scheduling of a hearing, entry of an order granting or denying the requested relief in whole or in part, or other action by the court. The filing of an objection to a response to a trustee's notice of final cure payment requires nothing of the responding creditor, nor does such a filing suggest any obvious action that the court should take. The court could, for example, (1) schedule a hearing, even though the debtors have not filed anything that requires a response; (2) order the creditor to respond; or (3) do nothing, while perhaps remembering to check back to see if the creditor withdraws or amends its response. All of these options are unnecessarily burdensome, especially because Rule 3002.1 provides other (and better) means by which the debtors could have raised the issues described in their objection.

The court assumes that the debtors' concern is with the granting of a discharge,

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3. Alternatively, Rule 3002.1(e) allows any party in interest, "within one year after service of a notice" of postpetition fees, expenses, and charges, to move for a determination of "whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code." The debtors have not done this, either.

rather than the application of their payments to Carrington. See ECF No. 106, at 2 ("Debtors request their Discharge."). Chase's response to the trustee's notice of final cure payment clearly states that the debtors are current on postpetition payments through April 2024, and no one has asked the court to determine whether any of the claimed postpetition fees, charges, and expenses must be paid to satisfy §1322(b)(5). As a result, the court does not view Chase's response as an impediment to its granting the debtors a discharge.

For these reasons, IT IS ORDERED that:

- The court will review the case to determine whether the debtors should be granted a discharge.

- The court will not construe the debtors' objection to Chase's response to the trustee's notice of final cure payment as a motion under Rule 3002.1(h)—or any other kind of motion, including a motion under Rule 3002.1(e)—but the court will deem any such motion that the debtors file within **7 days after the date on which this order is entered** filed *nunc pro tunc* on April 9, 2024, for purposes of any applicable deadlines.

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