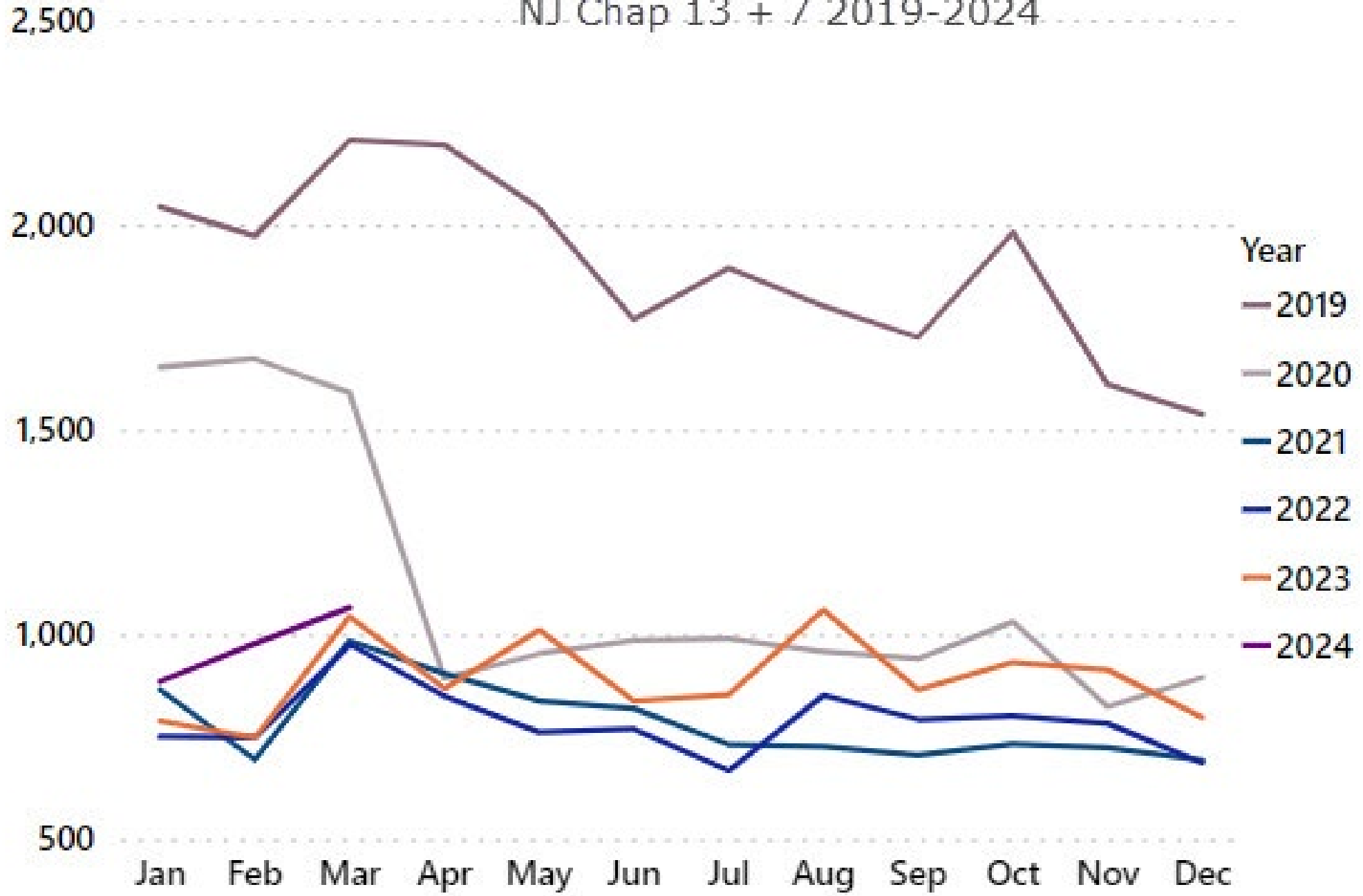
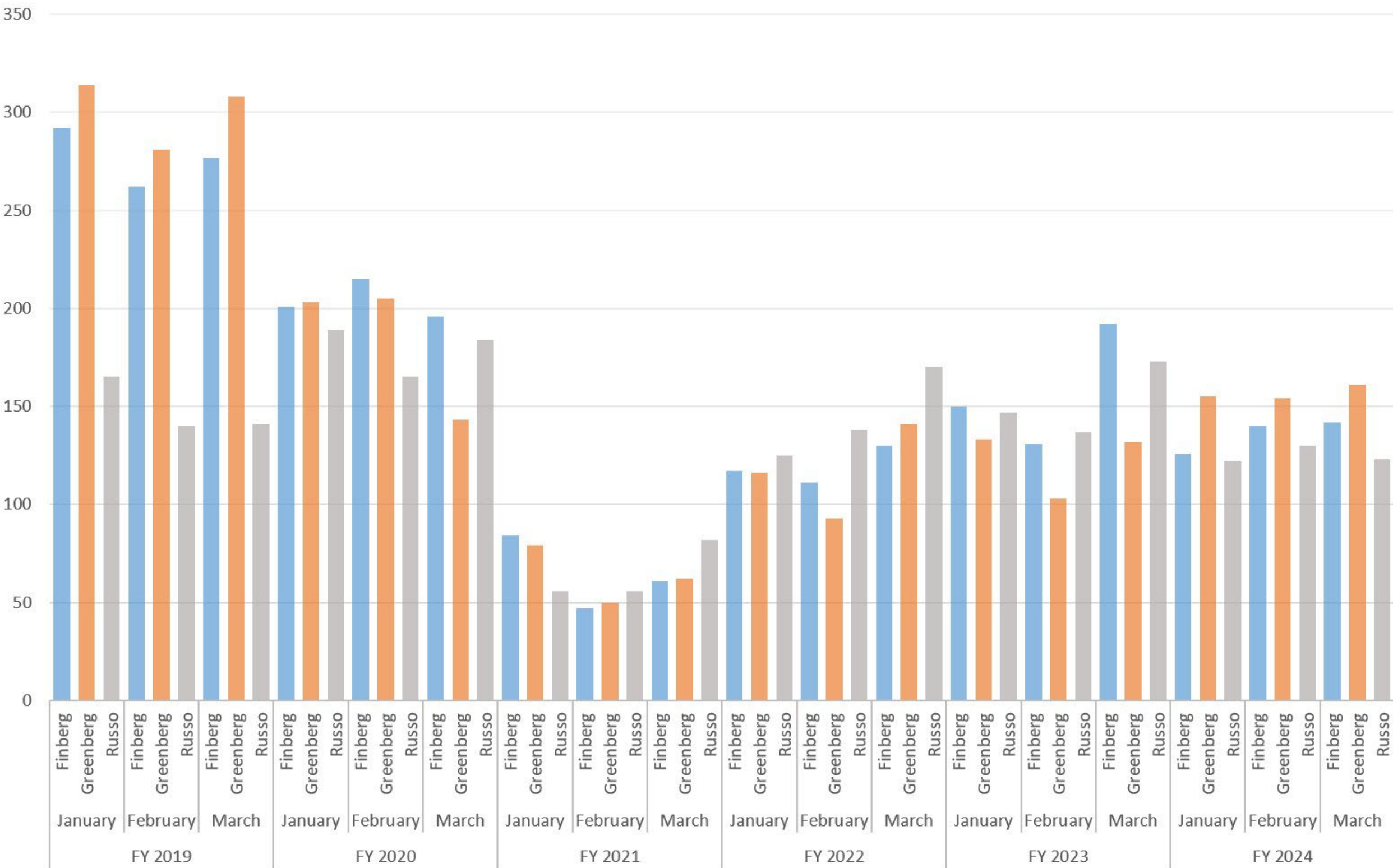


NJ Chap 13 + 7 2019-2024



SUM OF CASES BY YEAR



Marie-Ann Greenberg
Newark

CASES FILED	JANUARY	FEBRUARY	MARCH
FY 2019	314	281	308
FY 2020	203	205	143
FY 2021	79	50	62
FY 2022	116	93	141
FY 2023	133	103	132
FY 2024	155	154	161

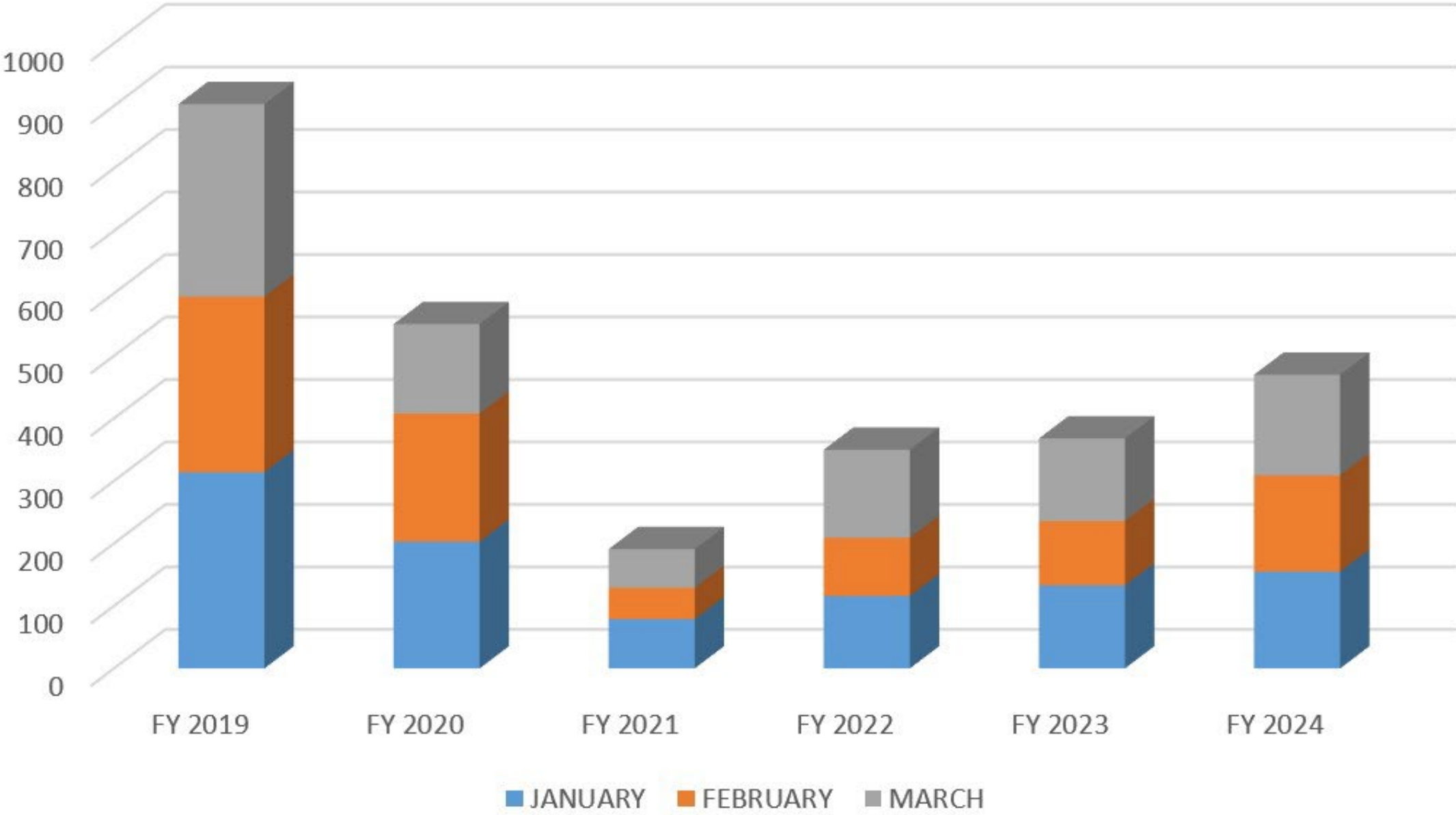
Albert Russo
Trenton

CASES FILED	JANUARY	FEBRUARY	MARCH
FY 2019	165	140	141
FY 2020	189	165	184
FY 2021	56	56	82
FY 2022	125	138	170
FY 2023	147	137	173
FY 2024	122	130	123

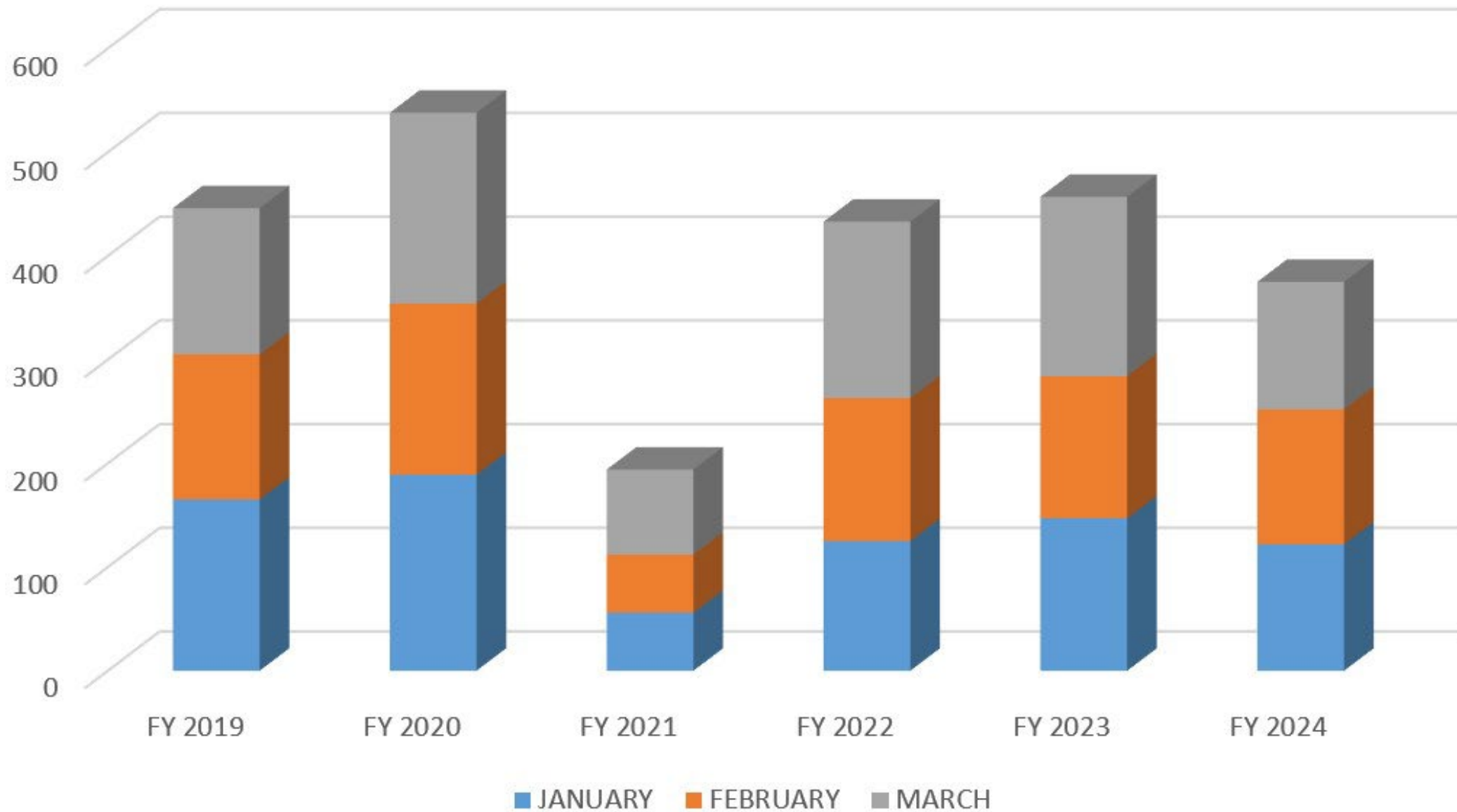
Andrew Finberg
Camden

CASES FILED	JANUARY	FEBRUARY	MARCH
FY 2019	292	262	277
FY 2020	201	215	196
FY 2021	84	47	61
FY 2022	117	111	130
FY 2023	150	131	192
FY 2024	126	140	142

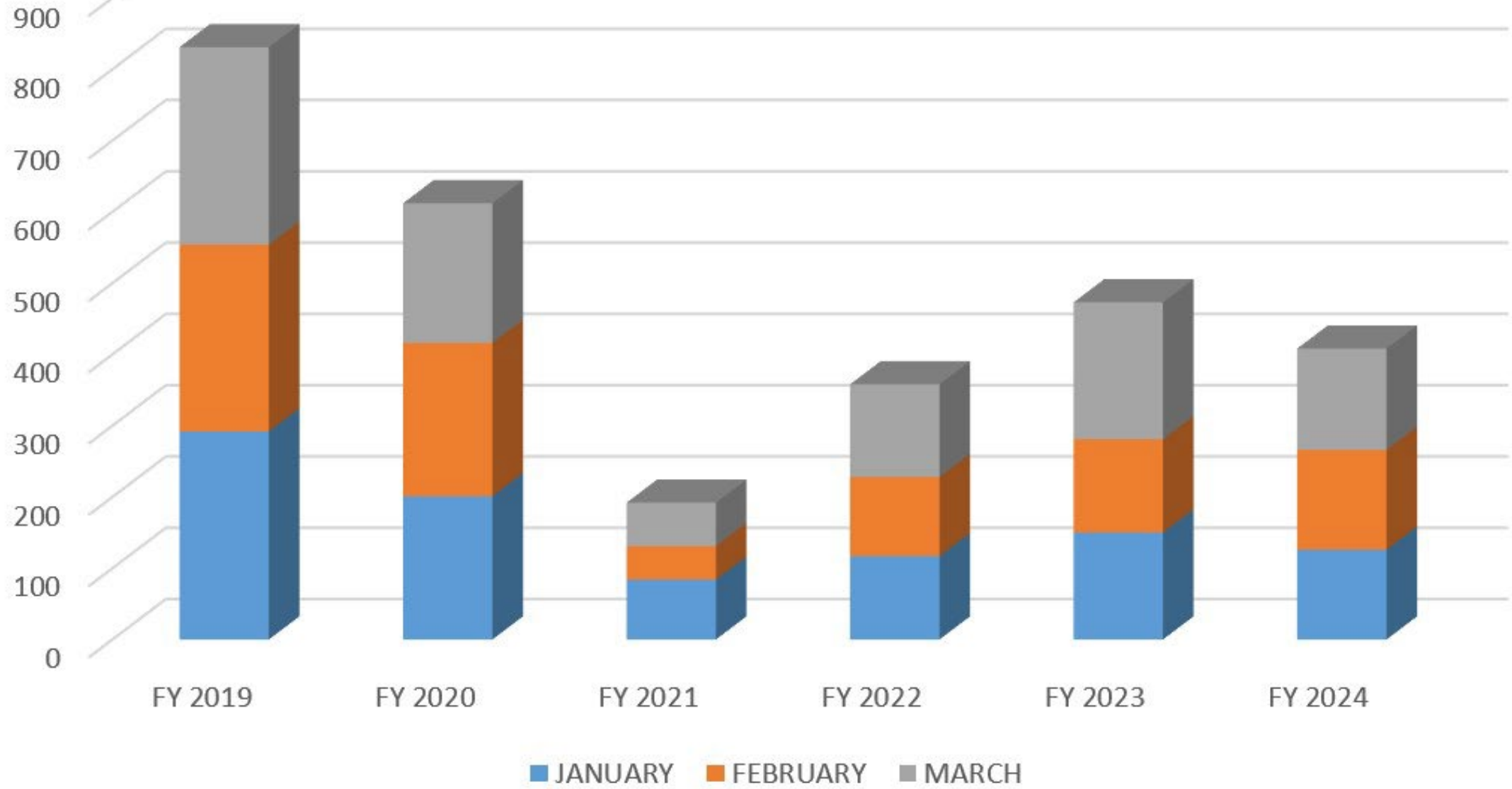
Marie-Ann Greenberg



Albert Russo



Andrew Finberg



CHECKLIST FOR SERVICE OF PROCESS IN CHAPTER 13 BANKRUPTCY CASES IN THE DISTRICT OF NJ

Federal Bankruptcy Rules of Procedure and the District of New Jersey Local Rules of Procedure dictate the time and manner for service and the forms with which a party must be served with notice in a Chapter 13 Bankruptcy Proceeding

CHECKLIST

REQUIRED SPECIAL SERVICE:

Does the Chapter 13 Plan and Motions (Part 7) contain a motion to avoid, modify or reclassify a lien in whole or in part?

If YES, Special Service is required on all affected creditors, at least 28 days prior to the scheduled hearing of the Plan. D.N.J. LBR 3015-1 (c).

1. File Local Form, Certificate of Service with the Bankruptcy Court. (Revised 8/1/2016). D.N.J. LBR 3015-1 (c). <http://www.njb.uscourts.gov/forms/certification-service>
2. File Notice of Transmittal letter served on the affected creditor together with Certificate of Service a copy of the Local Form, D.N.J. LBR 3015-1 (c). <http://www.njb.uscourts.gov/forms/notice-chapter-13-plan-transmittal-2017> (Revised 8/1/2017)

MANNER OF SERVICE:

Is the creditor affected by the Chapter 13 Plan and Motions a Federal, State or Commonwealth agency?

If YES, Special Service on the United States and its agencies must be made by First Class Mail in accordance with FRBP 7004(b)(4) and (5) by serving:

1. United States Attorney General

United States Attorney General
Attorney General
United States Department of Justice
Ben Franklin Station
P.O. Box 683
Washington, DC 20044

2. United States Attorney

United States Attorney
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, New Jersey 07102

3. The Federal Agency as directed in the proof of claim or Register of Governmental Units maintained on the United States Bankruptcy Court website. <http://www.njb.uscourts.gov/content/register-governmental-units>

On the State of New Jersey and its agencies in accordance with FRBP 7004 (b)(6) with service by First Class Mail upon:

1. Office of the Attorney General

New Jersey Attorney General Office
Division of Law
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625-0112

2. The State agency as specified on the proof of claim or Register of Governmental Units maintained on the United States Bankruptcy Court website. <http://www.njb.uscourts.gov/content/register-governmental-units>

Similar service requirements would apply if serving a State, Commonwealth or agencies other than New Jersey.

Is the creditor affected by the Chapter 13 Plan and Motions a Federal Insured Depository Institution (i.e. a bank insured by the FDIC)?

If YES, Special Service must be made in accordance with FRBP 7004(h)

1. Special Service on a Federal Depository Institution shall be made by CERTIFIED MAIL
2. Addressed to an officer of the institution at:
 - a. The address listed for "Notice" on the Proof of Claim;
 - b. The address provided in Notice of Appearance and Request for Service of Notices and Pleadings;
 - c. The address of the Federal Depository Institution. Search at the FDIC <https://research.fdic.gov/bankfind/> See also, National Information Center website: <https://www.ffiec.gov/npw/>

Is the creditor affected by the Chapter 13 Plan and Motions a domestic corporation?

If YES, Special Service must be made in accordance with FRBP 7004 (b)(3) by First Class Mail addressed to an OFFICER, MANAGING OR GENERAL AGENT or any other agent authorized by appointment or law to accept service of process at:

1. The address provided in Notice of Appearance and Request for Service of Notices and Pleadings; or
2. The address listed for "Notice" on the Proof of Claim
3. If no Notice of Appearance and/or no Proof of Claim have been filed, must serve at the corporation headquarters address.

Does the Chapter 13 Plan and Motions (Part 4 (d)) contain a request to cram-down, strip off or adjust interest rate?

If YES

1. Disclose the creditor(s) under Part 7 (Motions) of the Chapter 13 Plan and Motions.
2. Serve as set forth above for service of Chapter 13 Plan and Motions on the affected creditors.
3. Serve a Notice of Chapter 13 Plan Transmittal letter together with the Chapter 13 Plan and Motions.

Is the creditor represented by counsel who has filed a Notice of Appearance and Request for Service of Notices and Pleadings in the case?

If YES, service should also be made upon the attorney at the address listed in the Request for Service of Notices and Pleadings.

PRACTICE POINTER:

Remember to review docket for Notice of Transfer of Servicer

SERVICE OF MODIFIED PLAN AFTER CONFIRMATION:

A Modified Plan filed after confirmation requires service of process on ANY creditor which may be adversely affected by any provision in the Modified Plan. That is to say, any provisions that adversely alters the treatment of a creditor provided for under the previously confirmed plan.

Please note, D.N.J. LBR 3015-2. Modified Chapter 13 Plan and Motions states:

2015 Comment

If a modified chapter 13 plan includes a motion, the debtor must serve, in accordance with Local Rule 3015-1, each affected lienholder with Local Forms *Chapter 13 Plan and Motions* and *Notice of Chapter 13 Plan Transmittal*.

Hot Topics – 2024 Bankruptcy Bench Bar Conference

ERMA/HAF FUNDS

- The funds are finite. Applications that are pending should be attended to in short order. Once the funds are exhausted, we are done.
- Will require a Motion to Approve. For the most part, these are new liens being placed onto a debtor's realty. If the debtor sells, refinances or ceases to reside there, the loan becomes due.
- If none of that occurs, then the loan is forgiven.
- There are usually no monthly payments during the 3 year term.
- Motion should include:
 - Exact amount of the loan and copy of the loan agreement.
 - Clarification as to how the loan impacts the plan, budget and any confirmation order.
 - Does trustee cease paying the mortgage arrears? If so, this must be in the order and certification.
 - Is an amended proof of claim required to be filed? If so, this must be in the order and certification.
 - Requirement to file a modified plan by a date certain.
 - If the award covers post-petition arrears, which were accounted for on Sch. J, what happened to that money? Will there be a recoupment into the plan for the benefit of other creditors?
- Make sure the motion is properly served both on the mortgagee/servicer and on counsel representing the mortgagee/servicer as they are impacted.
- Suggested Language to include in Proposed Order as to Plan Payment under Confirmed Plan – Follows Form of Court's Standard Order on Motion to Authorize Loan Modification:
 - The ERMA Loan Funds must be sent to _____, Secured Creditor, within 14 days from the date of this Order. If not received, the secured creditor, within 14 days thereafter, must file with the Court and serve upon the debtor, debtor's attorney, and Standing Trustee, a Certification indicating that the funds were not received. A response by the debtor, if any, must be filed and served within 7 days of the filed date of the secured creditor's Certification; and
 - Upon the filing of the Certification required above, and absent a response from the debtor, the standing trustee may disburse to the secured creditor all funds held or reserved relating to its claim. Absent the filing of the Certification within the time frame set forth above, the standing trustee will disburse funds on hand to other creditors pursuant to the provisions of the confirmed Plan and the proof of claim filed in this case by Secured Creditor and the _____(Date) Order that added Post-Petition arrears are deemed modified as paid in full. The Trustee may adjust her records to indicate a paid to date amount;

341a MEETING OF CREDITOR UPDATES & REMINDERS

- It is a hearing in a federal case, dress and act accordingly. Please also share this with your client, creditor or debtor.
- Get your documents in early to ensure the hearing will be held on its first scheduled date. Once you file a case, you can start to upload documents within a day or two. Even if you do not have all of the documents, which you should, upload what you have through bkdocs. All 3 trustees use bkdocs.
- The NDC is working on a program which will allow easy access to the zoom meetings. It is still through Zoom but is more user friendly. We are hoping for approval and then a roll out.
- Debtor's counsel should practice with debtor on connecting to Zoom prior to the hearing date and if debtor is not tech savvy, then debtor should go to Attorney's Office to make sure there are no issues with debtor's appearance.
- Make sure you are muted when you come in from the waiting room to the exam room.
- Note just because you have a hearing at 1pm and a hearing at 11am it doesn't mean you the attorney can move either of these times to your benefit.
- We still need original signed petitions on the screen at the 341 just uploading is not enough.

2024 BENCH BAR

DEBTOR'S POWER TO SELL PROPERTY

Applicable Statutes

- **§1303:**

“Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under §363(b), 363 (d), 363 (e), 363 (f), and 363 (l) of this title”.

- **363(b):**

363(b) provides in part,

“(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate”

- **363(h):**

363(h), provides in part,

“Notwithstanding subsection (f) of this section, the trustee may sell both the estate’s interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if –

- (1) Partition in kind of such property among the estate and such co-owners is impracticable;
- (2) Sale of the estate’s undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
- (3) The benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
- (4) Such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.”

Court Analysis

- **Majority Rulings:**

The majority of Courts have held that since 363(h) is not specifically specified in §1303, the debtor does not have the power to sell property owned with a joint party.

See for example, *In Re Dahlgren*, Dist. Court, D. New Jersey 2010, affirming U.S. Bankruptcy Court Case No. 09-18982 (RTL). The District Court rejected the debtor's position that the debtor has authority to sell a co-owners interest by citing, *In Re Wrublik*, 312 B.R. 284,285-86 (Bankr. D. Md 2004)-

“However, even if the Court were to accept this minority application of §363(h) to chapter 13 cases, and even if the application of §363 (h) to the Property did not implicate Rooker-Feldman, neither of which the Court believes appropriate, §363(h) still does not grant the Debtor the relief he seeks to force Palone to sell her co-ownership interest to him, because§363(h), if applicable, would allow the debtor to sell both his interest and Palone's interest in the Property; it would not allow the Debtor to force Palone to sell only her interest to him. “

See also,

In Re Schlicht, Bankr. Court, ED Michigan 2023; *In Re Kao*, Bankr. Court SD Texas 2015; *In Re Wright*, Bankr. Court, WD Arkansas 2009; *In Re Andrade*, 570 BR 121 – Bankr. Court D. Massachusetts 2017

- **Minority Rulings:**

A minority of Courts have held that a Chapter 13 debtor may even exercise the power in 11 U.S.C. 363(h) to sell property owned jointly, notwithstanding the absence of a reference to §363(h) in §1303.

See for example,

In Re Belyea, 253 B.R. 312, 314 (Bankr. D.N.H. 1999) (Chapter 13 debtor's power to use estate property under §§ 363 (b) and 1303 includes the power to use §363(h) to partition real property in which the debtor inherited an interest. “[A] Chapter 13 debtor may utilize section 363(h) because pursuant to section 1303 a Chapter 13 debtor has the power of the Chapter 13 trustee under section 363(b) and section 363(h) specifically incorporates section 363(b) by reference.”

2024 BENCH BAR

DEATH OR FINDING OF INCOMPETENCY OF A DEBTOR

- Revised Rule 2/5/24:
 - General Order Pending Amendment of D.N.J. LBR 1016-1 and Notice
- Sample pleadings:
 - Motion for continued Administration, Certification in Support, Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

NOTICE TO THE BAR AND PUBLIC
CONCERNING GENERAL ORDER PENDING AMENDMENT OF
D.N.J. LBR 1016-1. DEATH OR FINDING OF INCOMPETENCY OF A DEBTOR

The bar and public are advised that the provisions of the attached *General Order Pending Amendment of D.N.J. LBR 1016-1. Death or Finding of Incompetency of a Debtor* are effective February 5, 2024. The General Order is available on the court's website, www.njb.uscourts.gov.

Dated: February 5, 2024

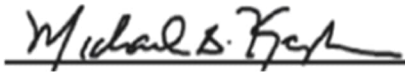
Jeanne A. Naughton, Clerk

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

**GENERAL ORDER PENDING AMENDMENT OF
D.N.J. LBR 1016-1. DEATH OR FINDING OF INCOMPETENCY OF A DEBTOR**

The Court having determined the need for a *General Order Pending Amendment of D.N.J. LBR 1016-1. Death or Finding of Incompetency of a Debtor* to account for the filing of a certificate of death or court order pertaining to incompetency or guardianship, it is hereby

ORDERED that, pending amendment during the Court's 2024 Local Rules Cycle, the proposed amendments to *D.N.J. LBR 1016-1. Death or Finding of Incompetency of a Debtor* are effective February 5, 2024.



Michael B. Kaplan, Chief Judge
U.S. Bankruptcy Court
District of New Jersey

D.N.J. LBR 1016-1. Death or Finding of Incompetency of a Debtor

Within 30 days of learning of (i) the death, or (ii) a finding of incompetency of a debtor through appropriate legal process, debtor's counsel must file Local Form *Notice of Death or Finding of Incompetency of a Debtor*. Debtor's counsel must also separately file the certificate of death or the court order pertaining to incompetency or guardianship. The certificate of death or court order pertaining to incompetency or guardianship will be immediately restricted from public viewing by the clerk's office without the necessity of a motion under these Rules. In the case of a self-represented debtor, any person who becomes aware of a debtor's death or incompetency may also file said Local Form and the certificate of death or court order pertaining to incompetency or guardianship. Any relief related to the death or incompetency of a debtor must be requested by separate motion.

2024 Comment

This Rule is amended to include the requirements for filing a certificate of death or court order pertaining to incompetency or guardianship.

2023 Comment

This Rule is new. It is meant to facilitate notice to the court upon the death or finding of incompetency of a debtor.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

In Re:

Case No.: _____

Chapter: _____

Judge: _____

**NOTICE OF DEATH OR
FINDING OF INCOMPETENCY OF A DEBTOR**

I, _____, am the

Executor (select if appointed by a will)

Administrator (select if no will and appointed by a probate court)

of the estate of _____ (name of debtor),

Other (identify relationship to debtor) _____,

and hereby certify as follows:

1. Debtor, _____ (name of debtor),

died on _____ (date).*

was declared legally incompetent on _____ (date) by _____
_____ (insert appropriate court).

*** IMPORTANT: PLEASE DO NOT INCLUDE CERTIFICATE OF DEATH OR COURT ORDER PERTAINING TO INCOMPETENCY OR GUARDIANSHIP WHEN E-FILING THIS FORM. ENTER THE CERTIFICATE OF DEATH OR COURT ORDER PERTAINING TO INCOMPETENCY OR GUARDIANSHIP SEPARATELY, AS INSTRUCTED IN CM/ECF.**

2. The debtor's legal representative is _____

_____ (if known, include title and contact information).

3. I do / do not have knowledge of the debtor's assets and liabilities, and financial aspects of the debtor's estate.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, then I am subject to punishment.

Dated: _____

Signature: _____

Print name: _____

Address: _____

Filed by: _____

Attorney/Other

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-1(b)
In Re:

Case No:
 Hearing Date:
 Judge

**NOTICE OF DEATH OF DEBTOR AND MOTION TO CONTINUE
 ADMINISTRATION OF CHAPTER 13 CASE**

TO: All parties on attached service list PLEASE TAKE NOTICE that on _____, at ___ a.m., or as soon thereafter as counsel may be heard, the undersigned will apply to the Honorable Judge presiding at such time, sitting at the United States Bankruptcy Court located at 402 East State Street, Trenton New Jersey for an Order Allowing The Continued Administration of the Bankruptcy Case to Proceed pursuant to F.R.B.P. 1016.

This motion shall be heard at the United States Bankruptcy Court, District of New Jersey 402 East State Street, Trenton, NJ 08608, Courtroom __, on _____ at 9:00 am or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the return date of this motion. If you mail your response to the Court for filing, you must mail it early enough so that the Court will receive it by the date stated above.

Also mail a copy of your request or response to the following:

- Attorney for Debtor
- Chapter 13 Trustee

Pursuant to D.N.J. LBR 4001-1 et seq the movant waives oral argument and the court may not hold a hearing unless opposition papers are timely filed. Pursuant to D.N.J. LBR 9013- 1(d) et seq., if you wish to contest the within motion, you must file with the Office of the Clerk of the Bankruptcy Court, responding papers stating with particularity the basis of your opposition to the within Motion. A copy of the proposed Order which is sought is enclosed with this Motion. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting relief requested in this Motion.

Dated: _____ By _____

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-1(b)
In Re:

Case No:
 Hearing Date:
 Judge:

**CERTIFICATION OF ESTATE REPRESENTATIVE (Executor/Administrator)
 FOR DEBTOR AS TO WHY THE BANKRUPTCY CASE
 SHOULD CONTINUE TO BE ADMINISTERED**

I, _____, am the Executor or Administrator (pick one depending upon circumstances)(executor is if there is Will appointing the person and Administrator is if no will and appointed by probate court) of the estate of (XYZ Debtor) herby certifies as follows:

1. Debtor, _____ passed away on _____. I am (state relationship to debtor- e.g. spouse, child, friend etc). State your familiarity with and knowledge of the debtor’s assets and financial status of the Estate.
2. As the representative of the debtor, pursuant to the authority (e.g. “as probate representative or other basis for authority to stand in for deceased), I am requesting this Court to allow continued administration of this bankruptcy case pursuant to F.R.B.P. 1016.
3. The Chapter 13 petition was filed on _____. The Chapter 13 Plan was filed on _____. The source of the debtor’s income to fund the plan, prior to death was _____.
4. The 341 meeting of creditors was conducted on _____. Debtor, _____ appeared and testified at that hearing.
5. The Chapter 13 plan was confirmed on _____ and provided for the following treatment of debtor’s creditors :(state treatment of secured, priority and unsecured creditors and plan terms including PTD and monthly payments. Also including any other info for nonexempt proceeds for an asset if applicable.
6. There is an adequate source of funding to allow a continuation of the payments pursuant to the confirmed plan, from(State source of funding e.g. insurance proceeds, other death benefits, income

from property or any combination of _____) OR ..all payments required by the confirmed plan have been completed.

7. Therefore, based on Fed. Bankr. R. 1016, this case should proceed in the same manner as when DEBTOR was alive because it is in the best interest of the creditors, and because the proper administration of this case can proceed effectively as if before the debtor passed away.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, then I am subject to punishment.

Date:

BY: _____

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

In Re:

Debtor(s)

Case No.:

Hearing:

Honorable

**ORDER ALLOWING CONTINUED ADMINISTRATION
OF THE CHAPTER 13 BANKRUPTCY CASE**

The relief set forth on the following pages, numbered two (2) through two is ORDERED.

THIS MATTER comes before the Court upon the Notice by (representative's name), the representative of the debtor, that the above referenced debtor, (deceased debtor's name), died on (date of death), and Motion requesting an Order of this Court allowing the continued administration of the bankruptcy case pursuant to F.R.B.P. 1016. The petition under Chapter 13 was filed on _____. The Chapter 13 plan was confirmed on _____. The Movant asserts that CHOOSE ONE: there is an adequate source of funding to allow a continuation of the payments pursuant to the confirmed plan, from (state source – e.g. insurance proceeds, death benefits of any sort, income from property, combination of ____). (OR) all payments required by the confirmed plan have been completed.

NOW, THEREFORE, upon good cause shown,

IT IS HEREBY ORDERED that the continued administration of the bankruptcy case is permitted, and the case will continue, pursuant to F.R.B.P. 1016.