



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

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

**DAY: TUESDAY**  
**DATE: MARCH 26, 2024**  
**CALENDAR: 9:00 A.M. CHAPTER 13 CASES**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

22861remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

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

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

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

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

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

### ERRORS IN RULINGS

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

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1. [22-21100](#)-A-13    **IN RE: OTTIE HARRIS**  
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE  
12-21-2023    [\[27\]](#)

RICHARD JARE/ATTY. FOR DBT.

### **No Ruling**

2. [22-21100](#)-A-13    **IN RE: OTTIE HARRIS**  
[RJ-1](#)

MOTION TO MODIFY PLAN  
1-23-2024    [\[38\]](#)

RICHARD JARE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a)(6). Feasibility is a “factual determination” as to the plan’s “reasonable likelihood of success.” *First Nat’l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to “be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan.” *Id.* As one court summarized feasibility, “Thus, a plan is not feasible and is not confirmable if a debtor’s income will not support the plan’s proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) (“[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have been unable to actually pay the amount projected ... to the trustee.”); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001)

("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")" *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,220.00. The plan cannot be confirmed if the plan payments are not current.

#### **MATHEMATICAL FEASIBILITY**

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 72 months to fund as proposed.

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

#### **PLAN CONTRAVENES 1322(a)(2)**

The trustee contends that the proposed plan contravenes 11 U.S.C. § 1322(a)(2) as it does not provide payment in full of the priority claim of the Internal Revenue Service.

(a) The plan--

. . .

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

. . .

11 U.S.C. § 1322(a)(2).

The debtor's plan does not provide sufficient funding to pay the priority claim of the Internal Revenue Service. The proposed plan states:

Section 7.04 - Additional Provisions for Section 2.13. Class 5, As to Internal Revenue Service, the present Priority claim is in the amount of \$9952.52. This plan specifies that Internal Revenue Service, which holds a claim entitled to priority under 11 U.S.C. §507(a)(8)

(B) will not necessarily be paid in full through the plan. The plan shall complete regardless of whether or not this §507(a)(8) obligations is paid in full. As Debtor's plan is a PRO TANTO with respect to this class 5 claim, the plan shall complete at the 60th month, whether or not this Class 5 obligations (sic) is paid in full. The plan STIPULATES, that to the extent that the Chapter 13 trustee does not pay any portion of this priority claim, that unpaid portion plus interest at the statutory rate for unpaid federal personal income taxes shall survive the eventual discharge in bankruptcy in this case.

First Modified Chapter 13 Plan, Section 7.04, ECF No. 40.

There is no evidence in support of the motion which indicates that the Internal Revenue Service has agreed to the treatment proposed under the plan. Absent such evidence the plan contravenes the requirement that the priority claim be paid in full as provided in 11 U.S.C. § 1322(a)(2).

#### Debtor Reply

On March 19, 2024, the debtor filed a reply. The debtor argues that the failure of the Internal Revenue Service to object to the plan constitutes its agreement to the proposed plan treatment, within the meaning of § 1322(a)(2).

The debtor cites no authority for this proposition. If the IRS consents to such treatment, it should be a simple matter for the debtor to obtain its express written agreement.

The court will deny confirmation of the debtor's plan and need not consider the remaining issues raised in the trustee's opposition.

#### **CIVIL MINUTE ORDER**

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

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

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

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

3. [23-24601](#)-A-13     **IN RE: JASON/LAURIE BROCK**  
[NF-1](#)

MOTION TO CONFIRM PLAN  
2-8-2024    [\[19\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed January 29, 2024

**DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 18. The plan is supported by Schedules I and J filed, December 22, 2023, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, 23.

**CHAPTER 13 PLAN CONFIRMATION**

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

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

4. [20-20504](#)-A-13     **IN RE: VERONICA PLEITEZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-14-2024    [[40](#)]

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**\*[Since posting its original rulings, the court has changed its intended ruling on this matter].**

**Final Ruling**

This case was dismissed on March 25, 2024, Order, ECF No. 47. This motion is removed from the calendar as moot. No appearances are required.

5. [20-21905](#)-A-13     **IN RE: DIANE MORRIS**  
[DPC-3](#)

CONTINUED MOTION TO DISMISS CASE  
12-21-2023    [[128](#)]

THOMAS AMBERG/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case  
**Notice:** Continued from February 27, 2024  
**Disposition:** Denied  
**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan.

The debtor opposed the motion and filed a motion to modify the plan (TLA-5) which the court has granted. Accordingly, the court will deny the motion to dismiss.

**CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:  
Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the motion to dismiss is denied.



6. [20-21905](#)-A-13     **IN RE: DIANE MORRIS**  
[TLA-5](#)

CONTINUED MOTION TO MODIFY PLAN  
1-16-2024    [\[134\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan

**Notice:** Continued from February 27, 2024

**Disposition:** Granted

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

**Subject:** Second Modified Chapter 13 Plan, filed January 16, 2024

**DEFAULT OF RESPONDENT**

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

The debtor(s) seek approval of the proposed modified Chapter 13 Plan. The plan is supported by Schedules I and J filed on January 16, 2024, ECF No. 140.

The Chapter 13 trustee initially opposed the motion. The hearing on the motion was continued to allow the parties to resolve the opposition. The trustee filed a status report on March 7, 2024, which states that the trustee no longer opposes the motion. Accordingly, the court will grant the motion.

**CHAPTER 13 PLAN MODIFICATION**

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

Chapter 13 debtors seeking plan modification have the burden of proving that all requirements of § 1322(a) and (b) and § 1325(a) have been met. See 11 U.S.C. §§ 1322(a)-(b), 1325(a), 1329(b)(1); see also *In re Powers*, 202 B.R. at 622 ("[Section] 1329(b)(1) protects the parties from unwarranted modification motions by ensuring that the proposed modifications satisfy the same standards as required of the initial plan."); see also *In re Barnes*, 32 F.3d

405, 407 (9th Cir. 1994); *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

The court finds that the debtor has sustained this burden of proof. The court will grant the motion and approve the modification.

7. [22-21008](#)-A-13     **IN RE: CYNTHIA PAYSINGER**  
[DPC-3](#)

MOTION TO DISMISS CASE  
2-20-2024    [[117](#)]

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Modified Plan:** not filed - untimely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$6,700.00, with two payment(s) of \$2,680.00 due before the hearing on this motion.

**UNTIMELY OPPOSITION - MOTION TO MODIFY**

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition is late, the court gives it no weight.

The debtor has filed an opposition which is accompanied by the Declaration of the Debtor, ECF No. 121, 122. The opposition states that the debtor will file a modified plan and a motion to modify prior to the date of the hearing on this motion. See Declaration, ECF No. 122. No request to file a late opposition has been made in this case.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed February 20, 2024, giving the debtor 35 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses.

First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days' notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule.

Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including--

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

8. [22-21612](#)-A-13 **IN RE: BRITTON KUTZEN**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-20-2024 [[18](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,593.00 with two payment(s) of \$2,700 due prior to the hearing on this motion.

### **11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

9. [23-21113](#)-A-13     **IN RE: VERONICA DENIZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-16-2024    [\[29\]](#)

SETH HANSON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,810.00 with two payment(s) of \$525.00 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

## CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

10. [23-24215](#)-A-13     **IN RE: SANDRA LYMOND**  
[BRL-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY STEVEN P.  
DICK AND CHRISTINA S. DICK  
1-23-2024    [[20](#)]

MARC VOISENAT/ATTY. FOR DBT.  
BENJAMIN LEVINSON/ATTY. FOR MV.  
RESPONSIVE PLEADING

### Final Ruling

**Matter:** Creditors' Objection to Confirmation of Chapter 13 Plan

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

**Disposition:** Overruled as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

The court notes that on January 1, 2024, the debtor filed an Amended Plan, ECF No. 13. As such the debtor is required to file a motion to confirm the Amended Plan, LBR 3015-1(d)(1).

## CIVIL MINUTE ORDER

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

11. [23-24215](#)-A-13     **IN RE: SANDRA LYMOND**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-10-2024    [\[14\]](#)

MARC VOISENAT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

The court notes that on January 1, 2024, the debtor filed an Amended Plan, ECF No. 13. As such the debtor must bring a motion to confirm the Amended Plan, LBR 3015-1(d)(1).

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.



12. [22-20718](#)-A-13     **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**  
[DPC-2](#)

MOTION TO DISMISS CASE  
2-14-2024    [\[165\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$14,100.48 with two payment(s) of \$4,702.04 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

13. [23-21621](#)-A-13     **IN RE: ANGELO CHICO**  
[DPC-2](#)

CONTINUED MOTION TO DISMISS CASE  
1-26-2024    [\[44\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

**Notice:** Continued from February 27, 2024

**Disposition:** Denied

**Order:** Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan.

The debtor opposed the motion and filed a motion to confirm the plan (SMJ-3) which the court has granted. Accordingly, the court will deny the motion to dismiss.

**CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the motion to dismiss is denied.

14. [23-21621](#)-A-13     **IN RE: ANGELO CHICO**  
[SMJ-3](#)

MOTION TO CONFIRM PLAN  
2-14-2024    [\[53\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Third Amended Chapter 13 Plan, filed February 14, 2024

**DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the Third Amended Chapter 13 Plan, ECF No. 54. The Chapter 13 trustee has filed a non-opposition to the motion, 61.

**CHAPTER 13 PLAN CONFIRMATION**

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

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

15. [23-23323](#)-A-13     **IN RE: CASEY WOODBURY**  
[DPC-3](#)

MOTION TO DISMISS CASE  
2-26-2024    [\[69\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to May 21, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Motion to Modify Plan Filed:** March 12, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$26,010.27, with one payment(s) of \$12,893.67 due prior to the hearing date on this motion.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 21, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

**CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to May 21, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

16. [23-24323](#)-A-13     **IN RE: CYNTHIA PEREZ**  
[CAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST  
CREDIT COMPANY, LLC  
1-3-2024    [[15](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.  
CHERYL SKIGIN/ATTY. FOR MV.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from February 13, 2024

**Disposition:** Overruled as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

17. [23-24323](#)-A-13     **IN RE: CYNTHIA PEREZ**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-10-2024    [[19](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan

**Notice:** Continued from February 13, 2024

**Disposition:** Overruled as moot

**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

18. [23-24325](#)-A-13     **IN RE: SEKOU COLEMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-5-2024    [[25](#)]

GEORGE BURKE/ATTY. FOR DBT.  
3/6/2024 INSTALLMENT FEE PAID \$79

**Final Ruling**

As the installment fee has been paid, the order to show cause is discharged. The case will remain pending.

19. [23-22229](#)-A-13     **IN RE: UYEN TRAN**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-16-2024    [[32](#)]

THOMAS AMBERG/ATTY. FOR DBT.  
DEBTOR NON-OPPOSITION

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$15,444.00 with two payment(s) of \$5,249.00 due prior to the hearing on this motion.

As a courtesy to the court the debtor has filed a non-opposition to the motion. Non-Opposition, ECF No. 36.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case. The court hereby dismisses this case.

20. [23-24329](#)-A-13     **IN RE: ALEXANDER/VANERY HAYMORE**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-17-2024    [\[17\]](#)

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Sustained in part, overruled in part, and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

**CONFIRMATION**

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



### Attorney Compensation

The trustee objects to plan provisions which appear to contravene LBR 2016-1(c). Specifically, the trustee questions whether an application for compensation is required in this case.

The petition was filed on December 1, 2023, shortly after changes were made to LBR 2016-1(c), which became effective on November 1, 2023. Prior to the filing the debtor retained the attorney and agreed to pay \$4,000 for representation in the case and opt into payment of a flat fee, consistent with a previous iteration of LBR 2016-1. The compensation paid to the attorney is partially covered by legal insurance which paid the sum of \$2,500 to debtor's counsel prior to the case filing. The proposed plan calls for payment of attorney compensation as follows:

"Re: 3.05 and 3.06: The Haymores retained my services on 4/12/23 for their Chapter 13 for which I was charging them the standard (at that time) no look fee of \$4,000.00, which I am continuing to honor. Mr. Haymore was eligible through his employer to have \$2,500.00 of his fee paid by ARAG, which they sent me and I deposited in my trust account on 5/5/23. After I filed their case on 12/1/23 I wrote a check on the trust account for \$1,313.00 to deposit into my general account to pay myself \$1,000.00 and the \$313.00 Court fee, in compliance I believe with the current rules. There is a balance remaining of \$1,187.00. in my trust account. Upon confirmation of their plan, I would like to be able to pay myself the remaining \$1,187.00. Thereafter I would be entitled to a monthly dividend of \$41.66 to pay the \$1500.00 balance of my fee as an administrative expense in their 36-month plan."

Chapter 13 Plan, Section 7, ECF No. 8.

Because the circumstances of this case are *unique* the court will allow the attorney fee provision in the plan in this instance. This portion of the objection is overruled.

### Classification of Secured Claim

The trustee contends that the plan incorrectly classifies the claim of Capital One in Class 4 regarding a 2017 Honda Civic.

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

Chapter 13 Plan, Section 3.07, ECF No. 8.

Capital One has filed Claim No. 24. The secured claim indicates that payments were in default in the amount of \$1,010.18 at the time the petition was filed. *Id.* The parties agree that the obligation to Capital One matures *after* the completion of the proposed 36-month plan.

The debtor contends that a post-petition payment was tendered in the amount of \$1,010.00, on January 11, 2024. Exhibit 1, ECF No. 22. By making this payment the debtor argues that the vehicle is properly classified as a Class 4 claim. This is incorrect.

First, the Exhibit has not been authenticated and there is no admissible evidence that the payment was made. No declaration of the debtor accompanies the exhibit. Second, the claim has not been amended or withdrawn. Neither has the debtor filed an objection to the claim.

Because the obligation to Capital One matures after the plan term, and because the claim shows that the loan was in default when the petition was filed the claim should properly be listed in Class 1 of the plan.

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

**CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

21. [23-24429](#)-A-13     **IN RE: AMELIA ALLEN**  
[RAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK  
NATIONAL TRUST COMPANY  
1-18-2024    [\[13\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
FANNY WAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on Deutsche Bank National Trust Company's objection to confirmation was continued to allow the parties to augment the evidentiary record.

**CONFIRMATION**

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

Facts

Deutsche Bank objects to the plan contending that Section 1322(b) (5) requires that all chapter 13 plans must provide for the "curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or claim on which the last payment is due after the date on which the final payment under the plan is due." Objection, 2:21-24, 3:1-2, ECF No. 13.

The proposed plan contains the following relevant provisions: (1) payments are \$3,500 per month from month 1 through 12, and \$4,500 per month beginning month 13; and (2) arrearage monthly dividend of \$1,458.33 begins in month 13. Chapter 13 Plan, §§ 3.07, 7, ECF No. 3. The plan term is 60 months.

The creditor filed Claim No. 2 which indicates pre-petition arrears in the amount of \$71,750.51. The plan provides for \$70,000 in arrears.

The debtor has filed no declaration in support of her opposition to the creditor's objection.

## **PLAN FEASIBILITY**

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

The court finds that the debtor has failed to prove the feasibility of the proposed plan as follows.

The court has reviewed the debtor's Schedules I and J, ECF No. 1. The debtor is retired and nets monthly income of \$4,125.00. Of this amount \$1,000 per month is roommate income. Schedule I, *id.* The Statement of Financial Affairs does not identify that the debtor has received any roommate income at any time prior to the filing of the case. Statement of Financial Affairs, Part 2, ECF No. 1. Schedule J shows expenses which appear meager and unrealistic as follows: (1) \$230.00 for food and household supplies; (2) \$0 for transportation; (3) \$25 for home maintenance and repairs; and (4) \$0 for insurance of any kind. Absent any additional evidence from the debtor the court finds that the debtor's income from a roommate is speculative and that the expenses identified above are meager and unrealistic. The court finds that the proposed plan payment of \$3,500 is unrealistic under the current circumstances.

Moreover, the debtor has failed to explain how she will increase the plan payment by \$1,000 per month beginning in month 13 of the proposed plan. The court notes that the petition was filed December 11, 2023, and that the plan payment will increase in only 9 months.

The court finds that the plan is not feasible under 11 U.S.C. § 1325(a)(6). The court sustains the objection and denies confirmation of the plan.

## **CIVIL MINUTE ORDER**

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

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

Deutsche Bank National Trust Company's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

22. [23-23130](#)-A-13     **IN RE: PAUL-MATTHEW FERNANDES**  
[TLA-1](#)

MOTION TO MODIFY PLAN  
2-13-2024    [\[48\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Modify Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

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

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

### **PLAN FEASIBILITY**

The proposed plan must be feasible. 11 U.S.C. § 1325(a) (6). Feasibility is a "factual determination" as to the plan's "reasonable likelihood of success." *First Nat'l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). The bankruptcy court needs to "be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan." *Id.* As one court summarized feasibility, "Thus, a plan is not feasible and is not confirmable if a debtor's income will not support the plan's proposed payments. *In re Barnes*, 275 B.R. 889, 894 (Bankr. E.D. Cal.2002) ("[T]he debtors showed no disposable income with which to fund a plan.... [T]he debtors have

been unable to actually pay the amount projected ... to the trustee."); *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001) ("While the feasibility requirement is not rigorous ... the plan proponent must, at minimum, demonstrate that the Debtor's income exceeds expenses by an amount sufficient to make the payments proposed by the plan."); *In re Wilkinson*, 99 B.R. 366, 369 (Bankr. N.D. Ohio 1989) ("[D]ebtors will not be able to comply with the plan and make all payments thereunder.")" *In re Buccolo*, 397 B.R. 527, 530 (Bankr. D.N.J. 2008), *aff'd*, 2009 WL 2132435 (D.N.J. July 13, 2009).

#### Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$5,000. The plan cannot be confirmed if the plan payments are not current.

#### Mortgage Arrears

The previously confirmed plan and the modified plan provide for treatment of Nationstar Mortgage, LLC in Class 1. The trustee contends that the debtor's failure to make plan payments timely under the terms of the previously confirmed plan, resulted in post-petition mortgage arrears.

The trustee lacked sufficient funds to pay the post-petition contract installments to Nationstar Mortgage, LLC in the amount of \$4,847.96 for the months of October 2023 and January 2024.

While the modified plan attempts to cure the postpetition arrearage, the plan incorrectly indicates the months where a cure is required as November 2023 through February 2024. The trustee's records show the post-petition delinquency is rather for the months of October 2023 and January 2024 for a total post-petition delinquency of \$4,847.96.

Correction of this discrepancy requires an amended plan and notice to the affected creditor. Accordingly, the court will deny the motion.

#### Debtor Reply

On March 19, 2024, the debtor filed a reply, ECF No. 65. The reply is not accompanied by any admissible evidence. The reply acknowledges the plan delinquency and requests that the motion be granted, if at the hearing the plan payments are current and if the order confirming the plan provides for correction of the post-petition arrears in conformance with the trustee's opposition.

The court has stated earlier in this ruling that notice of the proposed change to the secured creditor regarding post-petition mortgage arrears must be accomplished through an amended plan. The proposed change seeks to reduce the amount of post-petition mortgage arrears owed to this creditor. The court will not confirm the plan absent notice of this provision to the impacted creditor.

## CIVIL MINUTE ORDER

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

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

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

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

23. [23-24130](#)-A-13     **IN RE: MARY MURPHY**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-20-2024    [[18](#)]

DAVID RITZINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$3,122.53, with two payment(s) of \$3,106.78 due before the hearing on this motion.

The debtor has filed a timely opposition which consists of a Declaration of the Debtor, ECF No. 22. The debtor acknowledges the plan delinquency and states that she has applied for Social Security benefits which will be available by the date of the hearing on this matter in an amount sufficient to bring the plan payments current.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future

date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.



24. [23-24334](#)-A-13     **IN RE: WHITNEY BRAKE**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-10-2024    [\[13\]](#)

MARK BRIDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Overruled

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

**CONFIRMATION**

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

The Chapter 3 trustee objected to confirmation contending that the provisions regarding payment of attorney compensation contravened LBR 2016-1(c). The trustee argues that payment on the balance due on attorney compensation must be paid in "equal monthly installments over the term", of the plan. The trustee calculates that the payment should be \$66.67 per month over a 60-month period.

Additional issues were raised in the trustee's objection which the trustee agrees have been resolved.

The debtor filed an opposition to the trustee's objection. In the opposition the debtor agreed that attorney compensation would be paid in the amount of \$66.67 per month. Opposition, ECF No. 26.

On March 12, 2024, the trustee filed a Status Report, ECF No. 28. In his report the trustee indicates that he no longer opposes confirmation of the plan if the order confirming the plan provides for the payment of attorney compensation in the amount of \$66.67 per month. Accordingly, the court will confirm the plan with this provision in the order confirming the plan.

**CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled. The debtor shall submit an order confirming the plan which is consistent with this court's ruling, and which has been approved by the Chapter 13 trustee.

25. [20-22035](#)-A-13     **IN RE: KRISTEN/LYNA DAVIS**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-15-2024    [[25](#)]

PAULDEEP BAINS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,625.00, with two payment(s) of \$1,325.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF No. 29, 30, 31. The debtor's declaration states that the debtors have tendered payments to the trustee which will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 31.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

26. [23-22835](#)-A-13     **IN RE: KUAJI HILL**  
[DPC-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
2-28-2024    [[69](#)]

GORDON BONES/ATTY. FOR DBT.  
DAVID CUSICK/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/10/24

**Final Ruling**

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

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

**Disposition:** Continued to May 7, 2024, at 9:00 a.m.

**Order:** Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in

the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

27. [23-22835](#)-A-13     **IN RE: KUAJI HILL**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
2-29-2024    [\[73\]](#)

GORDON BONES/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DEBTOR DISCHARGED: 01/10/24

### **Final Ruling**

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

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

**Disposition:** Continued to May 7, 2024, at 9:00 a.m.

**Order:** Civil minute order

Creditor, U.S. Bank, National Association, objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the creditor's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagrees with the creditor's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, and **include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

28. [24-20935](#)-A-13     **IN RE: SIANG PETERS**  
[MS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
3-8-2024    [\[8\]](#)

MARK SHMORGON/ATTY. FOR DBT.

**No Ruling**

29. [24-20037](#)-A-13     **IN RE: WILLIAM/LYNDA ANRIG**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
2-28-2024    [[28](#)]

MICHAEL HAYS/ATTY. FOR DBT.

**Final Ruling**

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

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

**Disposition:** Continued to May 7, 2024, at 9:00 a.m.

**Order:** Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and **include admissible evidence in support**

**of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

30. [23-20040](#)-A-13     **IN RE: YAROSLAV TKACHUK**  
[YK-4](#)

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 1  
2-27-2024    [\[72\]](#)

RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Objection to Claim

**Notice:** LBR 3007-1(b)(1); written opposition required

**Disposition:** Overruled without prejudice

**Order:** Civil minute order

The debtor objects to the claim of Merrick Bank, Claim No. 1. For the following reasons the motion will be overruled without prejudice.

#### **SERVICE**

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

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

#### Matrix

Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary



proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders.

LBR 7005-1(a).

The debtor is pro se and therefore his use of Form 7-005 is not mandatory. However, the debtor has chosen to use Form 7-005 in memorializing service in this matter. In doing so the debtor has failed to provide any attachment to the certificate of service which lists the parties served with the objection to claim. Certificate of Service, ECF No. 75. Accordingly, the court is unable to determine which parties were served with the objection or the address at which they were served. Service of the objection therefore does not comply with Fed. R. Bankr. P. 3007.

#### **NOTICE**

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

Objections to proofs of claims in the Eastern District are governed by LBR 3007-1.

#### LBR 3007-1(b)

In the Eastern District of California notice of an objection to proof of claim must comply with the requirements of LBR 3007-1(b)(1), (2). The rule allows a choice of two different notice periods. LBR 3007-1(b)(1) requires 44 days' notice of the objection and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 3007-1(b)(2) requires only 30 days' notice of the objection and does not require the opposing party to file and serve written opposition prior to the hearing. See, LBR 3007-1(b)(1), (2).

The notice filed and served in this matter states that written opposition is required, and that the objection is noticed under LBR 9014-1(f)(1). Notice, 2:6-14, ECF No. 73. LBR 9014-1 is inapplicable in an objection to claim.

Moreover, an insufficient period of notice has been given. The debtor has indicated that written opposition is required by the claimant or any other party. As such, 44 days' notice is required. Only 28 days' notice has been provided in this case.

The court will not presume the conclusion an opposing party might reach about whether written opposition is required, or otherwise how

to oppose the objection. The notice given in this matter does not satisfy the requirements of LBR 3007-1.

The court will overrule the objection to claim without prejudice.

#### **CIVIL MINUTE ORDER**

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

The debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

31. [23-24343](#)-A-13     **IN RE: JAMES/DENISE HEINEMANN**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-10-2024    [[15](#)]

STEVEN ALPERT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Overruled

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

#### **CONFIRMATION**

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

#### **REDUCTION OF COLLATERAL VALUE WITHOUT A MOTION**

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

In this case, the plan proposes to reduce Medallion Bank/Systems & Services Technologies, Inc.'s Class 2 secured claim based on the value of the collateral securing such claim.

The court has granted the debtor's motion to value the collateral (PLG-2). As this was the sole basis for the trustee's objection to plan confirmation the court will overrule the objection.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled.

32. [23-24343](#)-A-13     **IN RE: JAMES/DENISE HEINEMANN**  
[PLG-2](#)

MOTION TO VALUE COLLATERAL OF MEDALLION BANK/SYSTEMS &  
SERVICES TECHNOLOGIES, INC.  
2-27-2024    [\[38\]](#)

STEVEN ALPERT/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

#### **Final Ruling**

**Motion:** Value Collateral [Personal Property; Motor Vehicle]

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

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2020 Keystone RV Springdale 300 FWBH

**Value:** \$21,800

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

The debtors seek an order valuing the collateral of Medallion Bank/Systems & Services Technologies, Inc.

#### **VALUATION OF COLLATERAL**

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of a motor vehicle described as a 2020 Keystone RV Springdale 300 FWBH. The debt owed to the respondent is secured by a purchase money security interest. See 11 U.S.C. § 1325(a) (hanging paragraph). The court values the vehicle at \$21,800.

#### **CIVIL MINUTE ORDER**

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

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

The debtor's motion to value collateral consisting of a motor vehicle has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a 2020 Keystone RV Springdale 300 FWBH has a value of \$21,800. No senior liens on the collateral have been identified. The respondent has a secured claim in the amount of \$21,800 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim.

33. [22-22845](#)-A-13     **IN RE: CHRISTOPHER LEE**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-16-2024    [\[35\]](#)

THOMAS AMBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to April 9, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** February 24, 2024 - timely

**Motion to Modify Plan Filed:** February 24, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is April 9, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

### **CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to April 9, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

34. [23-22345](#)-A-13     **IN RE: URIEL PIZANO**  
[PGM-2](#)

MOTION TO CONFIRM PLAN  
2-13-2024    [\[61\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** Second Amended Chapter 13 Plan, filed February 13, 2024

**DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the Second Amended Chapter 13 Plan, ECF No. 63. The plan is supported by Schedules I and J filed, February 13, 2024, ECF No. 66. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 69.

**CHAPTER 13 PLAN CONFIRMATION**

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

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

35. [24-20647](#)-A-13     **IN RE: STEVEN SINGH**  
[SS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
3-6-2024    [\[12\]](#)

STEVEN SINGH/ATTY. FOR MV.

**Final Ruling**

This case was heard on an Order Shortening Time, ECF No. 23, SS-2, and the motion was denied on the merits on March 12, 2024. This motion is removed from the calendar as moot. No appearances are required.

36. [24-20648](#)-A-13     **IN RE: ALEJANDRO RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-6-2024    [\[12\]](#)

DEBTOR DISMISSED: 03/11/24

**Final Ruling**

This case was dismissed on March 11, 2024, the order to show cause is discharged as moot.

37. [22-22749](#)-A-13     **IN RE: MICHAEL WYCLIFFE AND REBECCA WEAVER**  
[PGM-2](#)

CONTINUED MOTION TO MODIFY PLAN  
1-18-2024    [\[41\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Modify Chapter 13 Plan  
**Notice:** Continued from February 27, 2024  
**Disposition:** Granted  
**Order:** Civil minute order

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

**PLAN MODIFICATION**

Chapter 13 plan modification is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5)

and 3015(g) and Local Bankruptcy Rule 3015-1. “[T]he only limits on modification are those set forth in the language of the Code itself, coupled with the bankruptcy judge’s discretion and good judgment in reviewing the motion to modify.” *In re Powers*, 202 B.R. 618, 622 (B.A.P. 9th Cir. 1996).

The hearing on the debtors’ motion to modify was continued to allow the trustee to review the documents filed by the debtors and to augment the evidentiary record.

#### Trustee Opposition

The trustee opposed the modified plan on multiple bases including the overextension of the plan term. The trustee calculated that the proposed plan would take 67 months to complete and that a monthly payment of \$976.92 was required for the duration of the plan. Opposition, 2:7-15, ECF No. 49.

#### Debtor Reply

The debtor filed additional documents including Supplemental Schedules I and J in response to the trustee’s opposition. In the reply the debtors agreed to increase the plan payment to \$906.50 and the Supplemental Schedules I and J show the debtors have \$906.50 in net income to fund the plan. Reply, 1:25-27, ECF No. 52. Schedules I and J, ECF No. 55.

#### Trustee Status Report

On March 8, 2024, the Chapter 13 trustee filed a status report, ECF No. 58. The only issue the status report addresses is the plan overextension, so the court presumes that the remaining issues have been resolved to the trustee’s satisfaction. The trustee reiterates his calculation that requires the monthly plan payment be increased to \$976.92.

The plan as proposed will not complete in 60 months as required. Moreover, the debtors’ Schedules I and J do not evidence that the debtors are able to increase the plan payment.

#### Debtor Reply and Amended Schedules

On March 18, 2024, the debtors filed a further reply and an amended Schedule J. The debtors concede that the plan payment should be \$997.00. Reply, ECF No. 60. While this amount is approximately \$20 more per month than the trustee has indicated is necessary, the court will grant the motion with the provision that the plan payment shall be increased to \$997.00 per month. The debtors also filed a Supplemental Schedule J wherein they have adjusted their expenses to allow for the additional payment into the plan. Schedule J, ECF No. 61.

#### **CIVIL MINUTE ORDER**

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



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

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

IT IS ORDERED that the motion is granted. The debtors shall submit an order confirming the modified plan which increases the plan payment to \$997.00 per month, which is consistent with the court's ruling, and which has been approved by the Chapter 13 trustee.

38. [23-24349](#)-A-13     **IN RE: GREGORY BIGLIONE AND DOUGLAS KIGHT**  
[CAS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF  
NORTH AMERICA  
1-10-2024    [\[18\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
CHERYL SKIGIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on BMW Bank of North America's objection to confirmation was continued to allow the parties to augment the evidentiary record.

### **CONFIRMATION**

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

The objecting creditor objected to the interest rate it was to be paid on its secured claim in the proposed plan. On February 22, 2024, the debtors filed a non-opposition to the objection. Non-Opposition, ECF No. 32. The request to resolve the matter and provide for the changes to the interest rate in the order confirming

the plan is denied as the court has also sustained the Chapter 13 trustee's objection to confirmation (DPC-1).

The court will sustain the objection.

#### **CIVIL MINUTE ORDER**

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

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

BMW Bank of North America's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

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

39. [23-24349](#)-A-13     **IN RE: GREGORY BIGLIONE AND DOUGLAS KIGHT**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-11-2024    [\[22\]](#)

NIKKI FARRIS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 7 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record.

#### **CONFIRMATION**

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

The Chapter 13 trustee objected to confirmation stating that the proposed 100% plan discriminated against certain unsecured creditors

but that in his estimation the discrimination was not an unfair discrimination under 11 U.S.C. § 1322(b)(1).

The plan proposes to pay five creditors outside the plan. Each of these creditors are located in Hong Kong. The court agrees with the trustee. If all unsecured creditors are to be paid 100%, then the payment of the foreign creditors outside the plan does not represent an unfair discrimination. Moreover, to require payment through the plan would pose an undue burden on the trustee as payments would need to be converted to a different currency each month during the pendency of the plan. In this instance the court will approve this provision.

However, the trustee also states in his objection that it does not appear that the creditors located in Hong Kong have received proper notice of the bankruptcy filing or the plan.

The trustee notes that the addresses for the Hong Kong creditors appear incomplete as there is no designation of country, province, or postal code.

#### Notice

"In order for a debt to be duly listed" under the bankruptcy rules, "the debtor must state the name and address of the creditor." *In re Fauchier*, 71 B.R. 212, 215 (B.A.P. 9th Cir. 1987) (citing Fed. R. Bankr. P. 1007). As the BAP held in *Fauchier*, this rule is grounded in basic principles of due process: In the absence of such notice, a creditor may well be deprived of her right to have her day in court. *Id.* To ensure that a creditor has the opportunity to vindicate her property rights, the Bankruptcy Code generally makes a debt nondischargeable if the debt is "neither listed nor scheduled under [11 U.S.C. § 521(a)(1)] ... in time to permit ... timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing." 11 U.S.C. § 523(a)(3)(A).

*In re Licup*, No. 23-60017, 2024 WL 1151662, at \*3 (9th Cir. Mar. 18, 2024).

The mailing matrix does not appear to contain complete addresses for the Hong Kong creditors. As such it unclear if notice of the bankruptcy was provided to the foreign creditors in this case.

The court will require the debtors to file an amended plan and motion to confirm the Chapter 13 plan. The court will further require the debtors to amend the creditors' matrix to include complete addresses for each of the creditors in Hong Kong after researching the correct designation for country, province, or other appropriate designation. Fed. R. Bankr. P. 1009(a).

Debtor Response

The debtor filed a response (in the form of a declaration by debtors' counsel) to the trustee's objection, ECF No. 34. However, the declaration only addresses the interest rate issue raised in the objection of BMW Bank (CAS-1). The declaration did not respond to the trustee's concern regarding notice to creditors.

Accordingly, the court will sustain the trustee's objection.

**CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

IT IS FURTHER ORDERED that no later than April 8, 2024, the debtors shall file an amended matrix containing complete addresses for all creditors located in a foreign country. A copy of the bankruptcy notice shall be served upon all foreign creditors at the new addresses.

IT IS FURTHER ORDERED that Debtors' counsel shall file a declaration concurrently with the amended matrix. The declaration shall describe the research undertaken to determine the proper mailing addresses for all foreign creditors in this case.

40. [23-23651](#)-A-13     **IN RE: LESLIE BAKER**  
[MEV-3](#)

MOTION TO CONFIRM PLAN  
2-1-2024    [\[52\]](#)

MARC VOISENAT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Denied

**Order:** Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

### **INSUFFICIENT SERVICE**

#### Plan Must Be Served With Motion

If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it.

LBR 3015-1(d)(1).

The Chapter 13 trustee contends that service of the plan was insufficient as follows.

The motion states that the debtor is attempting to confirm the first amended plan. However, the plan is not referenced by date or docket number. Motion to Confirm, 1:19-20, ECF No. 52. Thus, it is unclear if the debtor intends to confirm the previously proposed "1st amended plan" that was filed on December 14, 2023, ECF No. 37. The court denied confirmation of this plan, ECF No. 51.

No further amended Chapter 13 plan was filed with this motion. However, attached to the Notice of Motion in this matter is a Chapter 13 plan. Notice of Motion, ECF No. 53. The plan attached to the notice does not appear to have been filed anywhere on the court's docket, as it contains no filing stamp. No further plan appears on the court's docket.

The court will not presume the conclusion a responding party might reach regarding the location of the proposed plan on the docket. Moreover, as the court cannot locate the plan to which the motion refers the motion will be denied.

The debtor shall file a further amended plan on the court's docket and comply with LBR 3015-1 in bringing the amended plan to confirmation.

#### **DEBTOR WITHDRAWAL OF MOTION**

On March 16, 2024, the debtor filed a notice of withdrawal of the motion to confirm, ECF No. 59.

Federal Rule of Civil Procedure 41 governs the circumstances where a party may withdraw a motion or objection. Fed. R. Civ. P. 41, *incorporated by* Fed. R. Bankr. P. 7041, 9014(c) (applying rule dismissal of adversary proceedings to contested matters). A motion or objection may be withdrawn without a court order only if it has not been opposed or by stipulation "signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). In all other instances, a motion or objection may be withdrawn "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

In this case the trustee has already filed opposition to the motion. The court denies the debtor's withdrawal of the motion. The court will deny the motion as previously indicated in this ruling.

#### **CIVIL MINUTE ORDER**

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

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

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

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

41. [23-24154](#)-A-13     **IN RE: WANMUENG WADKHIAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-26-2024    [[65](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.

**Tentative Ruling**

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

42. [23-24154](#)-A-13     **IN RE: WANMUENG WADKHIAN**  
[ALG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FLOYD E.  
CARLSON, TRUSTEE OF THE CARLSON FAMILY TRUST DATED MARCH 27,  
2012  
1-11-2024    [[33](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.

43. [23-24154](#)-A-13     **IN RE: WANMUENG WADKHIAN**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID  
P. CUSICK  
1-10-2024    [[28](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.

**Final Ruling**

**Matter:** Objection to Confirmation of Chapter 13 Plan  
**Notice:** LBR 3015-1(c)(4); no written opposition required  
**Disposition:** Overruled as moot  
**Order:** Civil minute order

Chapter 13 debtors may modify the plan before confirmation. 11 U.S.C. § 1323(a). If the debtor files a modification of the plan under § 1323, the modified plan becomes the plan. 11 U.S.C. § 1323(b). Filing a modified plan renders moot any objection to confirmation of the prior plan. The debtor has filed a modified plan after this objection to confirmation was filed. The objection will be overruled as moot.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the objection to confirmation is overruled as moot.



44. [24-20154](#)-A-13     **IN RE: RICHARD/ANGELA PARRISH**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK  
2-27-2024   [\[39\]](#)

PETER MACALUSO/ATTY. FOR DBT.

**Final Ruling**

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

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

**Disposition:** Continued to May 7, 2024, at 9:00 a.m.

**Order:** Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record. The court notes that the debtors have already filed a reply to the trustee's objection, ECF No. 46. This reply makes numerous factual contentions yet is not accompanied by any admissible evidence. Accordingly, the court gives no weight to the reply. The debtors shall file a response to the trustee's objection in compliance with the court's order.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

45. [23-20059](#)-A-13     **IN RE: WILLIS MARSH**  
[DPC-3](#)

MOTION TO DISMISS CASE  
2-16-2024    [\[67\]](#)

MARK SHMORGON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 11, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,875.00, with two payment(s) of \$1,415.00 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 71, 72. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 72.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

46. [21-22861](#)-A-13     **IN RE: MEGAN EKOMAYE**  
[DPC-2](#)

MOTION TO DISMISS CASE  
2-15-2024    [\[60\]](#)

CHAD JOHNSON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Continued to April 23, 2024, at 9:00 a.m.

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Motion to Modify Plan Filed:** March 12, 2024 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is April 23, 2024, at 9:00 a.m. The court will continue the hearing on this motion to dismiss to coincide with the hearing on the plan modification. If the modification is disapproved, and the motion to dismiss has not been withdrawn or otherwise resolved, the court may dismiss the case at the continued hearing.

**CIVIL MINUTE ORDER**

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to April 23, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the trustee elects to oppose the debtor's motion to modify, then not later than 14 days prior to the continued hearing date the trustee shall file a status report updating this motion to dismiss. The status report shall provide a concise list explaining the remaining issues in the motion to dismiss and indicate the amount of any plan delinquency. The status report shall be succinct and shall not consist of a cut and paste of the opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

47. [23-22264](#)-A-13     **IN RE: CHARLISA/ARTHUR HUDSON**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-15-2024    [68]

RYAN WOOD/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency, failure to file amended plan

**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$3,393.00 with two payment(s) of \$3,394.00 due prior to the hearing on this motion.

The trustee also seeks dismissal because the debtors have failed to file an amended plan after the court denied confirmation of the previously proposed plan.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case, and the debtors' failure to file an amended plan. The court hereby dismisses this case.

48. [24-20164](#)-A-13     **IN RE: RICHARD MAREK**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-26-2024    [\[15\]](#)

CHERYL SOMMERS/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Failure to File plan; Failure to provide documents; Failure to appear at meeting of creditors

**Best Interests of Creditors/Estate:** Dismiss

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

## **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c) (1) because: (1) the debtor failed to file a Chapter 13 Plan; (2) the debtor failed to attend the meeting of creditors; and (3) the debtor failed to provide documents as required under 11 U.S.C. § 521.

### Failure to File Plan

The petition was filed January 16, 2024, and the debtor has never filed a Chapter 13 Plan. The contravenes 11 U.S.C. § 1321 which requires that the debtor file a plan, and LBR 3015-1(c) (1) which requires the debtor to file a Chapter 3 Plan within 14 days of the filing of the petition.

### Failure to Attend Meeting of Creditors

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting on February 22, 2024. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion.

### Failure to Provide Documents

Section 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. *See In re Robertson*, 2010 WL 5462500 (Bankr. S.C. 2010); *In re Nichols*, 2009 WL 2406172 (Bankr. E.D. N.C. 2009).

The trustee contends that the debtor failed to provide copies of federal income tax returns as required by 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3).

The court finds that each of the bases argued by the trustee constitutes unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c) (1). Accordingly, the court will grant the motion.

## **11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may

convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including-

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby dismisses this case.

49. [24-20567](#)-A-13     **IN RE: JENNIFER FRDERICK-LAT HEM**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-28-2024    [[14](#)]

DEBTOR DISMISSED: 03/13/24

**Final Ruling**

This case was dismissed March 13, 2024. Accordingly, the order to show cause is discharged as moot.



50. [23-23769](#)-A-13     **IN RE: JENNIFER KATZ**  
[DPC-3](#)

MOTION TO DISMISS CASE  
2-26-2024    [\[42\]](#)

CATHERINE KING/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(1) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$26,462.98 with one payment(s) of \$6,834.15 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the chapter 13 plan in this case. The court hereby dismisses this case.

51. [24-20169](#)-A-13     **IN RE: JOSE ALBERTO**  
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK  
2-28-2024    [[18](#)]

COLBY LAVELLE/ATTY. FOR DBT.

**Final Ruling**

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

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

**Disposition:** Continued to May 7, 2024, at 9:00 a.m.

**Order:** Civil minute order

The Chapter 13 trustee objects to confirmation of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the parties to augment the evidentiary record.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than April 9, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than April 9, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

52. [24-20169](#)-A-13     **IN RE: JOSE ALBERTO**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN  
SERVICING LLC  
2-13-2024    [13]

COLBY LAVELLE/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

**Final Ruling**

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

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

**Disposition:** Continued to May 7, 2024, at 9:00 a.m.

**Order:** Civil minute order

Creditor, Specialized Loan Servicing, LLC, objects to confirmation  
of the debtor(s) plan.

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

The court will continue the hearing on this objection to allow the  
parties to augment the evidentiary record.

**CIVIL MINUTE ORDER**

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

IT IS ORDERED that the hearing on this objection will be continued  
to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the  
following:

(A) File a Statement of No Opposition. If the debtor(s) agree  
that the creditor's objection is well taken, the debtor(s) shall  
concede the merits and file a statement of non-opposition no later  
than April 9, 2024. L.R. 230(c) ("A responding party who has no  
opposition to the granting of the motion shall serve and file a  
statement to that effect...); LBR 1001-1(c)-(d) (omitting the  
applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s)  
disagrees with the creditor's objection, the debtor(s) shall file  
and serve a written response to the objection not later than April  
9, 2024; the response shall specifically address each issue raised

in the creditor's objection to confirmation, state whether the issue is disputed or undisputed, **and include admissible evidence in support of the debtor's position.** If the debtor(s) file a response under paragraph 3(B) of this order, then the creditor shall file and serve a reply, if any, no later than April 23, 2024. The evidentiary record will close after April 23, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the creditor's objection by filing a modified plan, not later than April 9, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the objection will be sustained on the grounds stated in the objection without further notice or hearing.

53. [22-21270](#)-A-13     **IN RE: ADAM/KRISTIN STERIO**  
[DPC-2](#)

MOTION TO DISMISS CASE  
2-20-2024    [\[47\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

#### **CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent

in the amount of \$3,875.00 with two payment(s) of \$1,625.00 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

54. [23-24270](#)-A-13     **IN RE: DAVID SIMMONS**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-10-2024   [\[29\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Final Ruling**

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

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

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued to allow the parties to augment the evidentiary record. The court sustains the trustee's objection as follows.

### **CONFIRMATION**

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

### **PLAN FEASIBILITY**

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

Incomplete Schedule I

As required the trustee has attempted to review the debtor's income and expenses to determine his ability to fund the plan. The trustee argues that he cannot determine if the debtor's non filing spouse is employed, and if so where she is employed. Debtor filed an amended Schedule I which indicates that his spouse is employed, yet the schedule also lists no employer or any income. Amended Schedule I, ECF No. 43.

**FAILURE TO PROVIDE COMPLETE INFORMATION**

Unclear Schedule A/B

The debtor lists the following financial interest in the Amended Statement of Financial Affairs.

Nonna ADU abd (sic) Solar, Inc. 50/50 Ray Guanill and Debtor builds ADU greater sacto (sic) valley, 9298 Madison Ave, (sic) Sac, CA 95662 (Office for all businesses) 26 contracts, 10% down (\$20k) used for Professionals; Archetic (sic) \$10k, Engineer \$5k, Designeder (sic) \$1500, salesperson \$1500 and Gov. Fees, @\$200k total sales, 70% cost each and projected 30% Net before taxes of \$1,500 split 50%. No other fees are earned until after fully operationsl (sic) 18 months. Corp uses PNC Bank; \$32K on deposit, PNC Bank; \$1,770.93

Amended Schedule A/B, Item 35, ECF No. 45.

The trustee states that he is unable to determine the debtor's interest in various businesses which have been listed in the debtor's schedules or otherwise indicated in the Statement of Financial Affairs. The most recently amended Schedule A/B contains information which the court is unable to understand. *Id.* It appears the debtor has a 50% interest in Nonna ADU however, it is unclear from the information provided how the debtor determined the value of his interest in the business.

Moreover, the trustee also states that the debtor has failed to provide tax returns for Nonna ADU. Trustee Reply, 1:24-25, ECF No. 68. Without the tax return the trustee cannot complete his investigation.

The debtor's declaration in support of his position states "I also am the CEO for Nonna ADU and Solar Inc., though these have yet to be launched." Declaration, 1:22-24, ECF No. 39. This statement appears to be inconsistent with the information provided by the trustee who has received bank statements for Nonna ADU as follows:

Debtor has provided bank statements for an account for "NONNA ADU AND SOLAR INC", Account #7575 with PNC Bank for 12/1/2023 to 12/29/2023 showing \$125,910.30 of deposits and other additions for that month, and an



account for "NONNA ADU AND SOLAR INC", Account #7559 with PNC Bank for 12/1/2023 to 12/29/2023 showing \$106,900.00 of deposits and other additions for that month.

Trustee Reply, 2:9-13, ECF No. 68.

Given the monies on deposit in the Nonna ADU account it appears the business is operational.

The debtor has failed to meet his burden of proof for plan confirmation as he has failed to provide sufficient information such that the trustee may accurately determine the debtor's income, or the nature and value of the debtor's assets. The court will sustain the trustee's objection.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument, presented at the hearing,

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

55. [23-23071](#)-A-13     **IN RE: ROBIN IMFELD**  
[MOH-1](#)

MOTION TO CONFIRM PLAN  
1-2-2024    [[35](#)]

MICHAEL HAYS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**No Ruling**

56. [23-23071](#)-A-13     **IN RE: ROBIN IMFELD**  
[MOH-2](#)

MOTION TO APPROVE LOAN MODIFICATION  
3-12-2024   [\[52\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

### **Tentative Ruling**

**Motion:** Approval of Mortgage Loan Modification

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

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks approval of a mortgage loan modification with Roundpoint Mortgage Servicing, LLC. The loan is secured by the debtor's residence. The modification will defer existing arrears in the amount of \$99,679.79. Exhibit 1, ECF No. 54.

### **LOAN MODIFICATION**

The court construes the present motion as requesting two forms of relief. First, the motion requests approval of a loan modification agreement. While the ordinary chapter 13 debtor has some of the rights and powers of a trustee under § 363, such a debtor does not have the trustee's right to obtain credit or incur debt under § 364. See 11 U.S.C. § 1303. *But cf.* 11 U.S.C. § 1304 (providing that a chapter 13 debtor engaged in business has the rights and powers of a trustee under § 364). The court's local rules address this situation and require court authorization before a chapter 13 debtor obtains credit or incurs new debt. LBR 3015-1(h)(1)(E).

Second, the motion impliedly requests relief under § 362(d)(1) to insulate the secured lender from any claim of liability for "any act to collect, assess, or recover a claim against the debtor." See 11 U.S.C. § 362(a)(6), (d)(1).

The court will grant the motion in part to authorize the debtor and the secured lender to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court will also grant relief from the stay of § 326(a) to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1).

By granting this motion, the court is not approving the terms or conditions of the loan modification agreement. The motion will be denied in part to the extent that the motion requests approval of

the terms and conditions of the loan modification agreement or other declaratory relief.

**CIVIL MINUTE ORDER**

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

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

The court has reviewed the present motion for approval of a mortgage loan modification agreement between the debtor and the secured creditor named in the motion. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied in part. The court authorizes the debtor and the secured creditor to enter into the loan modification agreement subject to the parties' right to reinstatement of the original terms of the loan documents in the event conditions precedent to the loan modification agreement are not satisfied. The court denies the motion to the extent it requests approval of the terms and conditions of the loan modification or any other declaratory relief. To the extent the modification is inconsistent with the confirmed chapter 13 plan, the debtor shall continue to perform the plan as confirmed until it is modified.

IT IS FURTHER ORDERED that the court grants relief from the automatic stay to allow the secured lender to negotiate and enter into the loan modification agreement with the debtor. 11 U.S.C. § 362(d)(1). The automatic stay remains in effect for all acts not described in this order.

57. [20-24874](#)-A-7     **IN RE: TANYA MURREY**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-20-2024    [[19](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.  
CASE CONVERTED: 03/07/24

**Final Ruling**

This case was converted to Chapter 7 on March 7, 2024. Accordingly, the motion to dismiss is removed from the calendar as moot. No appearances are required.

58. [19-27880](#)-A-13     **IN RE: JONATHAN GARCIA**  
[DPC-5](#)

MOTION TO DISMISS CASE  
2-20-2024    [[149](#)]

RICHARD JARE/ATTY. FOR DBT.  
NEIL ENMARK/ATTY. FOR MV.

**Final Ruling**

**Motion:** Dismiss Case  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Opposition Due:** March 12, 2024  
**Opposition Filed:** Unopposed  
**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency  
**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,880.00 with two payment(s) of \$960.00 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

## CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

59. [23-20382](#)-A-13     **IN RE: STACY TUCKER**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-20-2024    [[29](#)]

MARY TERRANELLA/ATTY. FOR DBT.

### Final Ruling

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

### CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent

in the amount of \$9,716.01 with two payment(s) of \$2,445.00 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

60. [23-24382](#)-A-13     **IN RE: VICTOR/ELMY HOPPER**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-16-2024    [[17](#)]

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued from February 13, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

**DEBTORS FAILED TO RESPOND TIMELY AS ORDERED**

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On February 14, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to March 26, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than *March 5, 2024*. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than *March 5, 2024*; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, *then the trustee shall file and serve a reply, if any, no later than March 12, 2024*. The evidentiary record will close after March 12, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than *March 5, 2024*, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 25, (emphasis added).

The court's ruling required the debtors to file a pleading in this matter by March 5, 2024. The debtor(s) failed to file any document until March 12, 2024, one week later than ordered by the court. The debtor's late filing prevents the trustee's timely compliance to file a reply as ordered by the court.

The untimely response will not be considered in this matter. Because the debtors' response is one week late, the Chapter 13 trustee has not had an opportunity to review the debtors' pleading and respond accordingly. The debtors are required to seek leave of court to enlarge time to file a late response. Fed. R. Bank P. 9006(b). No such request to enlarge time to respond in this matter was made.

#### **CONFIRMATION**

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

#### **LIQUIDATION**

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



. . .

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

. . .

11 U.S.C. § 1325(a)(4).

The trustee contends that he has been provided insufficient evidence to determine whether the plan passes the liquidation test. The debtor claims an interest in a business called either Pit Stop, Inc., and/or Pitt Stop El Segundo Inc. The trustee has not been provided with sufficient information regarding the debtor's ownership interest of the businesses or the value of the businesses. Without this information the trustee cannot perform the required analysis for the liquidation test.

The court will sustain the trustee's objection as to the liquidation analysis and need not reach the remaining issues raised in the trustee's objection.

**CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

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

61. [23-24383](#)-A-13     **IN RE: THOMAS/DARLEEN ROSINA**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK  
1-17-2024    [\[17\]](#)

CATHERINE KING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Final Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Overruled

**Order:** Civil minute order

The hearing on the Chapter 13 trustee's objection to confirmation was continued from February 13, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

**DEBTORS FAILED TO RESPOND TIMELY AS ORDERED**

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On February 14, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to March 26, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than *March 5, 2024*. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than *March 5, 2024*; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than *March 12, 2024*. The evidentiary record will close after *March 12, 2024*; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than *March 5, 2024*, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 25 (emphasis added).

The court's ruling required the debtor to file a pleading in this matter by *March 5, 2024*. The debtor(s) failed to file any document until *March 12, 2024*, one week later than ordered by the court. In this instance only the court will accept the late response. Counsel is reminded that untimely responses are not generally considered unless a party has requested and received leave of court. Fed. R. Bank P. 9006(b). No such request to enlarge time to respond in this matter was made.

#### **CONFIRMATION**

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

#### **ATTORNEY COMPENSATION - MONTHLY DIVIDEND**

After confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received. *Debtor(s)' counsel is enjoined from front-load payment of fees and/or costs.*

LBR 2016-1(c)(4)(B) (emphasis added).

The proposed Chapter 13 Plan provides for monthly payments of \$250.00 in compensation to debtor's counsel. The amount of compensation to be paid through the plan is \$6,000. The trustee contends the amount of the monthly payment contravenes LBR 2016-1(c)(4)(B) which requires that compensation payments be paid in equal monthly installments, and amortized over the entire term of the plan. The trustee contends that the correct payment amortized over 60 months is \$100.00 per month.

The court agrees with the trustee, the proposed monthly payment of \$250 contravenes LBR 2016-1(c)(4)(B).

#### Debtor Reply

The debtor's reply states that counsel concedes the trustee's objection and will submit an order confirming the plan which resolves the trustee's objection regarding attorney compensation containing the following language: "the trustee shall pay \$100.00 per month for 60 months, paying a total of \$6,000 in attorney fees, in compliance with LBR 2016-1(c)".

The court will overrule the trustee's objection with this change regarding monthly compensation payments in the order confirming the plan.

#### **CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is overruled. The debtor shall submit an order confirming the plan which is consistent with the court's ruling in this matter, and which has been signed by the Chapter 13 trustee.

62. [23-24487](#)-A-13     **IN RE: JEFFREY/ANNETTE LIENEMANN**  
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.  
CUSICK  
1-17-2024   [\[15\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

**Tentative Ruling**

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

**Notice:** Continued from February 13, 2024

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

**Attorney Matthew Decaminada is ordered to appear in this matter at 9:00 a.m. on March 26, 2024, in Department A. Appearance may be made by telephone or Zoom.**

The hearing on the Chapter 13 trustee's objection to confirmation was continued from February 13, 2024, to allow the debtors to: 1) file a statement of non-opposition; 2) file opposition to the objection; or 3) file an amended Chapter 13 Plan.

**DEBTORS FAILED TO RESPOND AS ORDERED**

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g).

On February 14, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to March 26, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor(s) shall do one of the following:

(A) File a Statement of No Opposition. If the debtor(s) agree that the Chapter 13 trustee's objection is well taken, the debtor(s) shall concede the merits and file a statement of non-opposition no later than March 5, 2024. L.R. 230(c) ("A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect..."); LBR 1001-1(c)-(d) (omitting the

applicability of L.R. 230 unless the court orders otherwise);

(B) Respond in Writing to the Objection. If the debtor(s) disagree with the trustee's objection, the debtor(s) shall file and serve a written response to the objection not later than March 5, 2024; the response shall specifically address each issue raised in the trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence in support of the debtor's position. If the debtor(s) file a response under paragraph 3(B) of this order, then the trustee shall file and serve a reply, if any, no later than March 12, 2024. The evidentiary record will close after March 12, 2024; or

(C) File a Modified Plan. If the debtor(s) wish to resolve the Chapter 13 trustee's objection by filing a modified plan, not later than March 5, 2024, the debtor(s) shall: (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan; and

IT IS FURTHER ORDERED that if the debtor(s) fail to undertake any of the foregoing three options, the Chapter 13 trustee's objection will be sustained on the grounds stated in the objection without further notice or hearing.

Order, ECF No. 20.

The debtor failed to file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that they do not intend to oppose the trustee's objection. The failure to comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.

The court's ruling required the debtor to file a pleading in this matter by March 5, 2024. The debtor(s) has failed to file any document which would apprise the court of her position regarding the trustee's objection to confirmation.

Counsel for the debtor shall be prepared to address this issue at the hearing on this matter, and to inform the court whether the debtor(s) concedes the objection.

#### **CONFIRMATION**

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

**ATTORNEY COMPENSATION - MONTHLY DIVIDEND**

After confirmation of the debtor(s)' plan, the Chapter 13 trustee shall pay debtor(s)' counsel equal monthly installments over the term of the most recently confirmed Chapter 13 plan a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received. *Debtor(s)' counsel is enjoined from front-load payment of fees and/or costs.*

LBR 2016-1(c)(4)(B) (emphasis added).

The proposed Chapter 13 Plan provides for monthly payments of \$100.00 in compensation to debtor's counsel. The amount of compensation to be paid through the plan is \$3,000. The trustee contends the amount of the monthly payment contravenes LBR 2016-1(c)(4)(B) which requires that compensation payments be paid in equal monthly installments, and amortized over the entire term of the plan. The trustee contends that the correct payment amortized over 60 months is \$50.00 per month.

The court agrees with the trustee, the proposed monthly payment of \$100 contravenes LBR 2016-1(c)(4)(B). The court will sustain the trustee's objection. Accordingly, the court need not reach the remaining issues raised in the trustee's objection.

**CIVIL MINUTE ORDER**

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

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

The chapter 13 trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses, and replies, if any, and having heard oral argument presented at the hearing,

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

63. [22-21488](#)-A-13     **IN RE: CECILIA SMITH**  
[DPC-3](#)

MOTION TO DISMISS CASE  
2-20-2024    [[85](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,822.90, with two payment(s) of \$1,842.90 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 89, 90. The debtor's declaration states that the debtor tendered payments via a cashier's check on March 5, 2024, and that the plan payments are now current. See Declaration, ECF No. 90.

Unless the trustee confirms the payments have been received the motion will be granted. The court is unable to deny the motion given the outstanding delinquency.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.



## CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

64. [22-21690](#)-A-13     **IN RE: TRACI HAMILTON**  
[RJ-6](#)

CONTINUED MOTION TO CONFIRM PLAN  
11-8-2023    [[174](#)]

RICHARD JARE/ATTY. FOR DBT.

### Final Ruling

**Motion:** Confirm Chapter 13 Plan  
**Notice:** Continued from March 12, 2024  
**Disposition:** Granted  
**Order:** Civil minute order

The hearing on the debtor's motion to confirm was continued to allow the debtor to file and serve an amended notice of hearing, and to allow the parties to augment the evidentiary record.

On January 22, 2024, the debtor filed and served the amended notice of hearing as ordered by the court, ECF No. 206, 207. The debtor was also ordered to file a reply no later than March 5, 2024.

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

### CONFIRMATION

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

Trustee Status Report

On January 3, 2024, the trustee filed a status report, ECF No. 198. In his report the trustee states that his objections have been resolved if the debtor agrees to provide the following language in the order confirming the plan: "\$7,411.41 shall be an extra bonus payment into the plan for the benefit of unsecured creditors."

Debtor Reply

On March 6, 2024, the debtor filed an untimely reply. Reply, ECF No. 209. In this instance, and as debtor's counsel was ill, the court will allow the late reply.

In her reply the debtor agrees to include the language requested by the trustee. *Id.*, 2:4-10.

The court will grant the motion. The debtor shall submit an order confirming the plan, containing the additional language requested by the trustee, and which has been signed by the Chapter 13 trustee.

**CIVIL MINUTE ORDER**

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

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

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

IT IS ORDERED that the motion is granted. The debtor shall submit an order confirming the plan consistent with this court's ruling and which has been signed by the Chapter 13 trustee.

65. [23-23390](#)-A-13     **IN RE: AARON/REBECCA ULDALL**  
[KLG-2](#)

MOTION TO CONFIRM PLAN  
2-13-2024    [\[45\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.  
TRUSTEE NON-OPPOSITION

**Final Ruling**

**Motion:** Confirm Chapter 13 Plan

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

**Disposition:** Granted

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

**Subject:** First Amended Chapter 13 Plan, filed December 8, 2023

**DEFAULT OF RESPONDENT**

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

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 30. The plan is supported by Schedules I and J filed, at the inception of the case, ECF No. 1. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 49.

**CHAPTER 13 PLAN CONFIRMATION**

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

The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

66. [23-24291](#)-A-13     **IN RE: ISRAEL GABRIEL AND LAUREN**  
EVANSON-GABRIEL  
[SKI-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ  
FINANCIAL SERVICES USA LLC  
1-4-2024    [[13](#)]

MARY TERRANELLA/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Objection:** Creditor's Objection to Confirmation of Plan  
**Notice:** Continued from February 13, 2024  
**Disposition:** Sustained and confirmation denied  
**Order:** Civil minute order

The hearing on Mercedes Benz Financial Services USA, LLC's objection to confirmation was continued to allow the parties to augment the evidentiary record and present further legal argument.

### **CONFIRMATION**

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

Secured creditor Mercedes Benz objects to confirmation contending that the plan's interest rate on its secured claim should be evaluated under the principles established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The court in *Till* held that the "prime-plus or formula rate best comports with the purposes of the Bankruptcy Code." *Till*, 541 U.S. at 480.

Mercedes Benz contends that the prime interest rate is 8.5% and argues that the proper interest rate in this case is at least 10.5%.

Conversely, the Chapter 13 Plan proposes to pay interest at the rate of 2.99% on the objecting creditor's Class 2 claim. Chapter 13 Plan, Section 3.08, ECF No. 3.

The debtors argue that a *Till* approach to determine the interest rate on the claim is inappropriate in this case as follows:

The instant case must be differentiated from the "normal" case in which a debtor provide in a Chapter 13 plan a crammed down value of collateral and a crammed down interest on the loan secured by the collateral. The debtors here have provided for Secured Creditor's claim as a Class 2 creditor because the loan of Secured Creditor matures before the end of the

Chapter 13 plan term, requiring it to be paid through the plan. Debtors would otherwise have continued to make payments directly to Secured Creditor. The Debtors have not filed a Motion to Value Collateral; the collateral is worth at least as much as the remaining balance on the loan. The Debtors have not crammed down the interest rate. They have proposed the contract interest rate of 2.99%. The Debtors have not crammed down the monthly payment to Secured Creditor; the plan provides for the contractual payments of \$799.00 per month.

Opposition, 2:21-28, 3:1-4, ECF No. 23.

### **INTEREST**

The *Till* Court found that “[i]t is sufficient for our purposes to note that, under 11 U.S.C. § 1325(a)(6), a court may not approve a plan unless, after considering all creditors’ objections and receiving the advice of the trustee, the judge is persuaded that ‘the debtor will be able to make all payments under the plan and to comply with the plan.’ Together with the cramdown provision, this requirement obligates the court to select a rate high enough to compensate the creditor for its risk but not so high as to doom the plan. If the court determines that the likelihood of default is so high as to necessitate an ‘eye-popping’ interest rate, the plan probably should not be confirmed.” *Id.* (citations omitted).

“The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan.” *Id.* at 479. Without deciding the issue of the proper scale of the risk adjustment, the plurality opinion noted that other courts have generally approved upward adjustments of 1% to 3% to the interest rate. *See id.* at 480.

### Prior Negotiations With Debtor Are Irrelevant

[T]he formula approach entails a straightforward, familiar, and objective inquiry, and minimizes the need for potentially costly additional evidentiary proceedings. *Moreover, the resulting “prime-plus” rate of interest depends only on the state of financial markets, the circumstances of the bankruptcy estate, and the characteristics of the loan, not on the creditor’s circumstances or its prior interactions with the debtor.* For these reasons, the prime-plus or formula rate best comports with the purposes of the Bankruptcy Code.

*Id.*, 479-80 (emphasis added).

The prior negotiations with the debtor and the contractual interest rate are not relevant and are not appropriately considered in determining interest rate to be paid on the objecting creditor’s claim.

The appropriate interest rate should be about 1% to 2% above the current prime rate. So, the plan's proposed interest rate does not comply with *Till* and § 1325(a)(5)'s present value requirement.

Should the parties desire an evidentiary hearing regarding the risk factors identified in *Till* the court will schedule a hearing.

#### **CIVIL MINUTE ORDER**

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

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

Mercedes Benz Financial Services, USA, LLC's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

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

67. [22-21396](#)-A-13     **IN RE: JOSE/MARGARITA VALADEZ**  
[DPC-1](#)

MOTION TO DISMISS CASE  
2-20-2024    [\[76\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

#### **Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Conditionally Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,220.00, with two payment(s) of \$3,460.00 due before the hearing on this motion.

The debtor has filed a timely opposition, ECF No. 80. The opposition acknowledges the default in plan payments and states that the

debtors intend to convert this case to Chapter 7 prior to the hearing on the motion to dismiss.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to convert the case on or before a future date is not equivalent to cure of the delinquency.

The court will grant the motion unless the debtors have obtained an order converting the case to Chapter 7 by 4:00 p.m. on March 29, 2024.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is conditionally granted. Unless the debtors have obtained an order converting the case to Chapter 7 by 4:00 p.m. on March 29, 2024, the case will be dismissed. The debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6).

68. [21-21297](#)-A-13     **IN RE: RONALD/TERRY BERT**  
[DPC-2](#)

MOTION TO DISMISS CASE  
2-16-2024    [\[70\]](#)

MICHAEL HAYS/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** Unopposed

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

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

**CASE DISMISSAL**

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$5,284.56 with two payment(s) of \$2,642.28 due prior to the hearing on this motion.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7.



## CIVIL MINUTE ORDER

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

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

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the confirmed chapter 13 plan in this case. The court hereby dismisses this case.

69. [22-21299](#)-A-13     **IN RE: DAMON TURNER**  
[DPC-3](#)

MOTION TO DISMISS CASE  
2-16-2024    [[93](#)]

MATTHEW DECAMINADA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Dismiss Case

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

**Disposition:** Granted

**Order:** Civil minute order

**Opposition Due:** March 12, 2024

**Opposition Filed:** March 12, 2024 - timely

**Cause:** 11 U.S.C. § 1307(c)(6) - Plan Delinquency

**Best Interests of Creditors/Estate:** Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,336.25, with two payment(s) of \$4,336.25 due before the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 97, 98. The debtor's declaration states that the trustee received a payment of \$4,336.25 on February 22, 2024, with two additional payments totaling \$8,672.50 scheduled to be paid via TFS. The debtor contends that the scheduled payments will bring the plan current by the date of the hearing on this motion. See Declaration, ECF No. 98.

The opposition does not fully resolve the grounds for dismissal. A delinquency still exists as of the date of the opposition. A statement of intent to pay the delinquency on or before a future date is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

**11 U.S.C. § 1307(c)**

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. The court will dismiss the case.

**CIVIL MINUTE ORDER**

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

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

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and oral argument at the hearing, if any, and good cause appearing,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.