



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

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

DAY: TUESDAY
DATE: APRIL 9, 2024
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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.

If the deadline to sign up has passed, parties who wish to appear remotely 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.

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PRE-HEARING DISPOSITION INSTRUCTIONS

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.

1. [24-20101](#)-A-13 **IN RE: LINDA CATRON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-15-2024 [\[48\]](#)

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.

2. [24-20101](#)-A-13 **IN RE: LINDA CATRON**
[DPC-1](#)

MOTION TO DISMISS CASE
3-8-2024 [\[44\]](#)

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 26, 2024

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

Petition Filed: January 10, 2024

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case because: (1) the debtor's serial Chapter 13 filings evidence her inability to perform the plan; (2) the debtor has failed to provide required/requested documents to the trustee; (3) the debtor has failed to provide social security documentation as required; (4) the proposed plan is mathematically not feasible; (5) income is insufficient to perform the proposed plan; (6) the debtor has inaccurately or incompletely submitted required bankruptcy documents; and (7) the debtor has failed to file required motions to value and motion to avoid lien.

The trustee contends that each of these bases constitute unreasonable delay which is prejudicial to creditors under 11 U.S.C. § 1307(c) (1).

The court notes that no request has been made by either the Chapter 13 trustee, or the U.S. Trustee, to dismiss the case with a bar to refiling.

SERIAL CHAPTER 13 CASES

The debtor has previously filed the following unsuccessful Chapter 13 cases in the Eastern District of California:

Case Number	Petition Filed	Attorney	Plan Confirmed	Date Dismissed	Reason for Dismissal
2018-23232	May 23, 2018	Eric Escamilla	No	October 19, 2018	Plan Delinquency; Failure to Confirm Plan
2018-26923	November 1, 2018	Ryan Stubbe	No	November 30, 2018	Failure to Timely File Documents
2019-24436	July 16, 2019	Pro Se	No	August 13, 2019	Failure to Timely File Documents
2023-20616	February 28, 2023	Pro Se	No	July 28, 2023	Plan Delinquency; Failure to Confirm Plan
2023-22522	July 31, 2023	Pro Se	No	October 19, 2023	Failure to File Documents

The instant case was filed on January 10, 2024, as a skeleton. The clerk issued a Notice of Incomplete Filing informing the debtor that the following documents were missing: Chapter 13 Plan; Form 122C-1 Statement of Monthly Income; Schedule A/B - Real and Personal Property; Schedule C - Exempt Property; Schedule D - Secured Creditors; Schedule E/F - Unsecured Claims; Schedule G - Executory Contracts; Schedule H - Codebtors; Schedule I - Current Income; Schedule J - Current Expend.; Statement of Financial Affairs; Summary of Assets and Liabilities. Notice of Incomplete Filing, ECF No. 3.

The debtor requested a hearing as specified in the notice which was held on February 27, 2024. The debtor filed the required documents on February 26, 2024, ECF No. 31, 32, 33, 34, 35.

Continued Meeting of Creditors

As a result of the late filed documents the Chapter 13 trustee was unable to accomplish his review of the case at the scheduled meeting of creditors on February 22, 2024. This required the trustee to continue the meeting of creditors until April 11, 2024. The trustee contends that this delay is prejudicial to creditors.

Given the debtor's previous Chapter 13 filings the court agrees with the trustee. The failure to file documents has been a reoccurring

issue in the debtor's Chapter 13 cases since 2018. Three of the previously filed cases were dismissed because the debtor failed to timely file the required bankruptcy schedules and statements. Moreover, the debtor's most recently dismissed case, which the court notes was dismissed on October 19, 2023, was dismissed because the debtor failed to timely file required documents. Thus, the debtor was aware of the requirement to file complete bankruptcy schedules and statements when she filed the instant case on January 10, 2024. A period of 82 days passed between the time the prior case was dismissed and the instant case was filed. This is ample time for the debtor to have gathered the required information and file complete bankruptcy documents at the outset of the case.

As discussed below in this ruling the court notes that the trustee also contends the debtor has failed to provide financial documents which he has requested. Thus, it also appears that the continued meeting of creditors will not result in a fruitful evaluation of the debtor's proposed plan and her financial circumstances.

Incomplete/Inaccurate Bankruptcy Documents

On February 26, 2024, the debtor filed the balance of paperwork required in her bankruptcy case. The documents include: (1) Schedules A-J inclusive; (2) Statement of Financial Affairs; (3) Chapter 13 Plan; and (4) Forms 121C-1 and 122C-2.

The trustee contends that the following documents are either incomplete, inconsistent, or inaccurate.

A. Chapter 13 Plan

The debtor is not represented by counsel, but the proposed Chapter 13 Plan indicates that \$8,500.00 will be paid in attorney compensation. The plan fails to identify arrears owed, provide interest rates, or provide an arrearage dividend for Class 1 creditors. The proposed plan calls for payment of a "Settlement" in Class 4 but fails to provide information about the settlement. Executory contracts are identified in the plan for "HL Tech & SubsidiaryBL" and "MKMH", but additional information is not provided.

B. Petition

The debtor has only listed one prior bankruptcy filing in her petition, ECF No. 1. Thus, the petition inaccurately reflects the debtor's previous bankruptcies in the past 8 years. The petition also fails to list the debtor's middle name "Sue", which the trustee contends has been disclosed in previously filed cases.

C. Schedules

Schedule A/B contains incomplete answers to questions 18, 19, 23, 25, 29, 35 and 42.

The debtor failed to provide complete information in Schedule D including addresses, amounts of claims, value of collateral, and the unsecured portion for creditors: Nationstar, SLS Mortgage, HSBC, Wells Fargo, and Settlement. The debtor also failed to list the secured creditors provided for in the Chapter 13 Plan identified as IRS, California Tax, Public Storage, Storage, ATT, Spectrum, Truckee, Liberty, and Southwest gas in Schedule D.

The debtor failed to provide complete information, including addresses and/or claim amounts for the following creditors listed on Schedule E/F: (1) Franchise Tax Board; (2) Internal Revenue Service; (3) Settlement - Secure; (4) Public Strg; (5) Pedro Strge; and 6) ATT.

Debtor failed to provide addresses for any of the entities in Schedule G where there is a contract or lease or the essential lease terms.

The debtor's failure to provide complete and accurate statements and schedules will prevent the court, the trustee and interested creditors from evaluating the debtor's proposed plan. The court finds this constitutes unreasonable delay which is prejudicial to creditors.

FAILURE TO PROVIDE REQUIRED OR NECESSARY 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 list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Fed. R. Bankr. P. 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least 7 days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. Section 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this

title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation).

Failure To Provide Financial/Business Documents

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

The trustee requested that the debtor provide him with documents which are required under § 521 of the Bankruptcy Code and with additional documents which the trustee required to properly prepare for the 341 meeting of creditors.

The debtor's Schedule I state she is self-employed. Schedule I, ECF No. 35. The trustee requested and has not yet received the following documents: (1) completed Business Questionnaire; (2) two years of the most recently filed tax returns; (3) six individual months (from the petition date) of profit and loss statements; (4) six months (from the petition date) of individual financial statements to include bank statements, credit union statements, investment statements, etc.; (5) any documentation proving the debtor's business income.

The failure to provide income information makes it impossible for the chapter 13 trustee to accurately assess the debtors' ability to perform the proposed plan.

Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is has had ample time to respond to the trustee's inquiries and requests for documentation.

Social Security Documentation

(b) Individual debtor's duty to provide documentation

(1) Personal identification

Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

Fed. R. Bankr. P. 4002 (emphasis added).

The debtor(s) failed to provide the required social security information at the meeting of creditors held on February 22, 2024. The court finds that this constitutes unreasonable delay under 11 U.S.C. § 1307(c)(1). The debtor has filed multiple Chapter 13 cases and should be aware of the requirement to provide this information to the trustee as required.

MATHEMATICAL FEASIBILITY

The trustee contends the plan is not mathematically feasible.

The proposed Chapter 13 Plan calls for payments of \$10.00 per month for months 1-6, \$3800 for months 7-60, "plus bulk payment". The plan does not identify the source or state a specific amount of the bulk payment. Chapter 13 Plan, §§ 2.01, 2.02, ECF No. 31. The proposed plan also provides for monthly payments to Class 1 creditors in the amount of \$3,000.00. *Id.*, § 3.07. The plan is defective on its face as the proposed monthly payment of \$10 for the first six months will not pay the Class 1 obligations.

An amended plan will be required in this case. The court finds that the debtor's failure to file a plan which contains conflicting terms constitutes unreasonable delay which is prejudicial to creditors.

MOTIONS TO VALUE; AVOID LIEN

LBR 3015-1(i) provides that "[t]he hearing on a valuation motion or motion to avoid lien 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 the Class 2 secured claims of AT&T and Spectrum based on the value of the collateral securing such claim. But the debtor has not yet obtained any favorable orders on motions to determine the value of such collateral. Accordingly, the court must deny confirmation of the plan.

In this case, the feasibility of the plan also relies upon the debtor's successful avoidance of the lien of creditors: Truckee; Liberty; and Southwest Gas. But the debtor has not yet obtained a favorable order on any motion to avoid the creditors' liens. Accordingly, the court must deny confirmation of the plan.

The court notes that the docket does not indicate that any motions have been filed to value collateral or to avoid liens. The court finds that this constitutes unreasonable delay which is prejudicial to creditors.

DEBTOR OPPOSITION

Opposition to this motion was required on March 26, 2024. The debtor filed opposition on March 28, 2024, two days late. Opposition, ECF No. 53. The debtor states that she did not receive the trustee's motion until March 27, 2024, and requests the court

allow the late opposition. The court will allow the late filed opposition.

The opposition states that the debtor will comply with the trustee's requests, will file documents, and intends to remedy the deficiencies complained of in the trustee's motion prior to the hearing on the motion.

The opposition does not sufficiently address the trustee's motion. A statement that the debtor intends to take future action does not resolve the issues raised in the motion.

Moreover, when viewed in the context of the debtor's multiple Chapter 13 bankruptcy filings the debtor's failure to file the require motions, provide social security information, provide documents to the trustee, file complete schedules, or to disclose all previous bankruptcy filings in her petition appears to be a deliberate attempt to delay the bankruptcy proceedings.

The court finds that the debtor's conduct in this case constitutes unreasonable delay under 11 U.S.C. § 1307(c). 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 considered the [motion/application/objection] together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

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

3. [21-22506](#)-A-13 **IN RE: KEVIN KENNEDY**
[DPC-4](#)

MOTION TO DISMISS CASE
3-11-2024 [[63](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

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 26, 2024, 2024

Opposition Filed: March 25, 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 \$ \$8,750.00, with one payment(s) of \$3,075 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. 67, 68. 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. 68.

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.

4. [24-20114](#)-A-13 **IN RE: DANIEL BRAJKOVICH**
[DPC-2](#)

MOTION TO DISMISS CASE
3-12-2024 [\[36\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to June 4, 2024, at 9:00 a.m.

Order: Civil minute order

Opposition Due: March 26, 2024

Opposition Filed: March 26, 2024 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to: (1) make all payments due under the plan; (2) file tax returns; (3) provide tax returns to the trustee; and (4) amend schedules.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 47, 48. The declaration states that the debtor's spouse has experienced serious medical issues, including hospitalization, which caused the plan delinquency, failure to provide documents, and failure to file tax returns. See Declaration, ECF No. 48.

Given the debtor's extraordinary circumstances the court will continue the hearing in this matter to allow the debtor to file tax returns and provide them to the trustee, and to propose an amended plan if required.

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 continued to June 4, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that if the debtor wishes to resolve the Chapter 13 trustee's motion by filing a modified plan, then no later than May 14, 2024, the debtor shall (1) file and serve a modified Chapter 13 plan; and (2) file and serve a motion to confirm the modified plan.

IT IS FURTHER ORDERED that 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 any opposition filed by the trustee in response to a motion to amend or modify the debtor's plan.

IT IS FURTHER ORDERED that the debtor may file a further reply not later than May 28, 2024.

5. [24-20414](#)-A-13 **IN RE: CLINTON MOUTON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-13-2024 [[12](#)]

JULIUS CHERRY/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 21, 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 21, 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 23, 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 23, 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 May 7, 2024. **The evidentiary record will close after May 7, 2024, and no further evidence may be filed after that date by either party without leave of court;** 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 23, 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.

6. [22-20718](#)-A-13 **IN RE: TIMOTHY/EVANGELINA HERNANDEZ**
[CRG-12](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW FOR
CARL R GUSTAFSON, DEBTORS ATTORNEY(S)
3-7-2024 [\[169\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Denied without prejudice

Order: Civil minute order

Petition Filed: March 25, 2022

Counsel for the debtors seeks an order approving interim compensation and reimbursement of expenses. The motion will be denied without prejudice as follows.

COMPENSATION AND EXPENSES

In this Chapter 13 case, Carl Gustafson of Lincoln Law has applied for an allowance of interim compensation and reimbursement of expenses.

Pre-Petition Compensation

The application appears to request that the court allow compensation in the amount of \$11,159.50 and reimbursement of expenses in the amount of \$126.06. However, the billing statements submitted as evidence in support of the motion include services which were incurred prior to the date the petition was filed. Exhibit A, ECF No. 171. The evidence presented is unclear.

Moreover, this case was dismissed on March 27, 2024, and seeks payment through the Chapter 13 plan. The trustee has opposed the motion on this basis, indicating that funds remaining after dismissal of the case will be returned to the debtors.

Additionally, counsel is required to file a motion allowing final compensation and reimbursement of expenses. The court will deny this motion without prejudice and allow counsel to bring a final motion for allowance of compensation while clarifying the evidence presented.

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.

Carl Gustafson of Lincoln Law's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having considered the motion/application together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

7. [23-24323](#)-A-13 **IN RE: CYNTHIA PEREZ**
[MRL-1](#)

MOTION TO CONFIRM PLAN
2-23-2024 [[36](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Chapter 13 Plan, filed February 23, 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 Chapter 13 Plan, ECF No. 37. The plan is supported by Schedules I and J filed, February 23, 2024, ECF No. 35. The Chapter 13 trustee has filed a non-opposition to the motion, 43.

The debtor and creditor Bridgecrest Acceptance have stipulated to an interest rate of 9.5% on the creditor's secured claim. Stipulation, ECF No. 42. The court notes that the Chapter 13 trustee was not a party to the stipulation.

In this case the Chapter 13 trustee has indicated his acquiescence to the interest rate change and agrees to adding this provision in the order confirming the plan. In the future the parties shall include the Chapter 13 trustee as a party to the stipulation.

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 with the interest rate of 9.5% paid on the secured claim of Bridgecrest Acceptance. This provision shall be included in the order confirming the plan.

8. [24-20130](#)-A-13 **IN RE: KENNETH SHERMAN AND KATHY OLIVER**
SHERMAN
[SMJ-1](#)

MOTION TO CONFIRM PLAN
2-22-2024 [\[13\]](#)

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); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed February 22, 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. 15. The plan is supported by Schedules I and J filed at the inception of the case on January 12, 2024. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 20.

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.

9. [11-31931](#)-A-13 **IN RE: JAMES CHEUNG**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF \$
10,598.74 WITH JAMES CHEUNG
2-28-2024 [[51](#)]o

GARY FRALEY/ATTY. FOR DBT.
CASE CLOSED: 11/13/14

No Ruling

10. [23-23232](#)-A-13 **IN RE: MAI TRANG LE AND NHAT TRAN**
[DPC-2](#)

MOTION TO DISMISS CASE
3-5-2024 [[51](#)]

PETER MACALUSO/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: March 26, 2024

Opposition Filed: March 26, 2024 - timely

Motion to Modify Plan Filed: March 26, 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 May 7, 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 7, 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.

11. [24-20432](#)-A-13 **IN RE: SCOTT LEATHERS**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-15-2024 [\[15\]](#)

JULIUS CHERRY/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 21, 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 21, 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 23, 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 23, 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 May 7, 2024. **The evidentiary record will close after May 7, 2024, and no further evidence may be filed after that date by either party without leave of court;** 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 23, 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.

12. [23-22835](#)-A-13 **IN RE: KUAJI HILL**

MOTION TO DISMISS CASE
3-13-2024 [\[79\]](#)

GORDON BONES/ATTY. FOR DBT.
DEBTOR DISCHARGED: 01/10/24
TRUSTEE NON-OPPOSITION

Final Ruling

Objection: Debtor's Motion to Dismiss

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks an order dismissing this case which has previously been converted from Chapter 7.

SERVICE OF MOTION

(e) Service and Proof of Service.

- 1) Service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court.
- 2) A *proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.*
- 3) The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served.

LR 9014-1(e) (emphasis added).

A certificate of service has not been filed as required by LBR 9014-1. Thus, the court cannot determine if the proper parties have been served under Fed. R. Bankr. P. 9014.

Because service was insufficient, the motion will be denied 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 dismiss has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

13. [24-20436](#)-A-13 **IN RE: JAMES/JEANETTE STURGEON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-15-2024 [[14](#)]

MATTHEW GILBERT/ATTY. FOR DBT.

Final Ruling

This case was dismissed on March 25, 2024. Accordingly, this objection will be removed from the calendar as moot. No appearances are required.

14. [23-24537](#)-A-13 **IN RE: GEORGINA TAMPLIN**
[DPC-2](#)

MOTION TO DISMISS CASE
3-8-2024 [[40](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

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

Order: Civil minute order

Opposition Due: March 26, 2024

Opposition Filed: March 26, 2024 - timely

Motion to Modify Plan Filed: March 26, 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 May 7, 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 7, 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.

15. [24-20244](#)-A-13 **IN RE: SINA SOLTANI AND ASHLEY KEARNEY**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-29-2024 [\[18\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
ALLY BANK VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f) (1); non-opposition filed by trustee

Disposition: Granted

Order: Civil minute order

Subject: 2022 Ford F350 Super Duty Crew Cab Lariat Pickup 4D 8 ft

Cause: delinquent post-petition installment payments 1
month/\$1,506.64

Chapter 13 Plan: Not confirmed.

Plan Treatment of subject property: Surrender, Class 3

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

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).

Ally Bank seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

RELIEF FROM STAY

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on the loan as 1 post-petition payments is past due. The total post-petition delinquency is approximately \$1,506.64.

Moreover, because the plan which has not been confirmed provides for the surrender of the subject property that secures the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. Chapter 13 Plan, Section 3.09, ECF No. 3. And the moving party has shown that there is no equity in the property. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Alley Bank's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as a 2022 Ford F350 Super Duty Crew Cab Lariat Pickup 4D 8 ft, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

16. [22-22845](#)-A-13 **IN RE: CHRISTOPHER LEE**
[TLA-2](#)

MOTION TO MODIFY PLAN
2-24-2024 [\[39\]](#)

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, February 24, 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, ECF No. 43. The plan is supported by Schedules I and J filed on February 24, 2024, ECF No. 46. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 49.

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.

17. [24-20345](#)-A-13 **IN RE: JIANGHONG LI**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-8-2024 [[14](#)]

PETER MACALUSO/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.

18. [22-23150](#)-A-13 **IN RE: MARCUS FRENCH**
[DPC-1](#)

MOTION TO DISMISS CASE
3-11-2024 [[26](#)]

MOHAMMAD MOKARRAM/ATTY. FOR DBT.

Final Ruling

This case was converted to Chapter 7 on March 26, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

19. [23-22451](#)-A-13 **IN RE: MANUEL NIPPS**
[CRG-1](#)

OBJECTION TO CLAIM OF MERRICK BANK, CLAIM NUMBER 3
2-22-2024 [[26](#)]

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Objection: Claim
Disposition: Overruled without prejudice
Order: Civil minute order

The debtor objects to the claim of Merrick Bank, Claim No. 1. The objection will be overruled without prejudice as service of the motion did not comply with Fed. R. Bankr. P. 3007, 7004(h).

SERVICE

A claim objection is a contested matter. See Fed. R. Bankr. P. 3007 advisory committee's note. As a contested matter, the objection must be served in the manner provided by Rule 7004. See Fed. R. Bankr. P. 9014(b). Service on FDIC-insured institutions must be made "by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

The motion was not sent by certified mail. See Certificate of Service, Page 3, Item A, ECF No. 29. Moreover, nothing indicates that the exceptions in Rule 7004(h) are applicable.

CIVIL MINUTE ORDER

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

The debtor's objection to claim 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.

20. [23-22451](#)-A-13 **IN RE: MANUEL NIPPS**
[CRG-2](#)

OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS LLC, CLAIM
NUMBER 8
2-22-2024 [\[30\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

Final Ruling

Objection: Claim

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

Order: Civil minute order

The debtor objects to the claim of Jefferson Capital Systems, LLC, Claim No. 8. The hearing on the objection will be continued to May 21, 2024, at 9:00 a.m.

SERVICE AND NOTICE

Special Notice Creditors

The objection will be continued to allow the debtor to serve the objection on creditors which have filed a request for special notice.

The following parties filed a request for special notice: Rocket Mortgage, LLC. See ECF No. 9.

The certificate of service does not indicate that special notice parties were served with the objection. See Certificate of Service, p. 2, No. 5, ECF No. 33. Moreover, there is no attachment which indicates the special notice creditor was served.

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)).

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the

time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules; or
- (b) *the entities the court directs if these rules do not require service or specify the entities to be served.*

Fed. R. Bankr. P. 9013 (emphasis added).

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, *the entities to whom*, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Fed. R. Bankr. P. 9007 (emphasis added).

Rules 9013 and 9007 allow the court to designate additional parties which must receive notice of a motion and opportunity to be heard.

LBR 9014-1(d)(3)(B)(iv)

When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. *However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.*

LBR 9014-1(d)(3)(B)(iv) (emphasis added).

In the Eastern District the court has ordered that parties which have filed requests for special notice must receive notice of motions. LBR 9014-1(d)(3)(B)(iv) includes creditors which have filed requests for special notice as parties who must be served with all motions and supporting papers.

LBR 9014-1(d)(3)(B)(iv) does not limit the notice required to special notice creditors. Thus, the moving party is required to serve its motion on creditors who have filed requests for special notice.

Dismissal of Action for Failure to Comply with Local Rules

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) (emphasis added).

CIVIL MINUTE ORDER

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

The debtor's Objection to Claim has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the hearing on the objection is continued to May 21, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than April 16, 2024, the debtor shall file and serve a notice of continued hearing and objection on all parties which have filed a request for special notice.

21. [23-24154](#)-A-13 **IN RE: WANMUENG WADKHIAN**
[MJD-2](#)

MOTION TO CONFIRM PLAN
2-22-2024 [\[57\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

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

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

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 has filed a non-opposition to the motion. Creditor Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012, opposes the plan, objecting to confirmation.

On April 2, 2024, the debtor filed an ex-parte motion to continue this hearing until May 7, 2024. The request for a continued hearing date is also signed by counsel for the Chapter 13 trustee and the opposing creditor.

Accordingly, the court will continue the hearing as requested.

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 debtor's motion to confirm plan is continued to May 7, 2024, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than 14 days prior to the continued hearing date the parties shall file a joint status report informing the court of the status of this motion to confirm. Counsel for the debtor shall take the lead in coordinating the status report.

22. [22-22557](#)-A-13 **IN RE: MOUNICA YERRANAGULA**
[DPC-1](#)

MOTION TO DISMISS CASE
3-8-2024 [\[21\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

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 trustee contends that the plan payments are delinquent in the amount of \$1,200.00, with one payment(s) of \$600.00 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. 25, 26, 27. The debtor's declaration states that the debtor has tendered payments via TFs in the amount of \$1,800.00 on March 19, 2024. See Declaration, ECF No. 27.

TRUSTEE REPLY - Fed. R. Civ. P. 41

The trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. Notice, ECF No. 29.

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).

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

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 withdrawn.

23. [23-23658](#)-A-13 **IN RE: NATHANIEL DIAS**
[GC-1](#)

MOTION TO CONFIRM PLAN
2-16-2024 [\[37\]](#)

JULIUS CHERRY/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed February 15, 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. 36. The plan is supported by Schedules I and J filed, February 15, 2024, ECF No. 33, 34, 35. The Chapter 13 trustee has filed a non-opposition to the motion, 42.

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.

24. [19-26862](#)-A-13 **IN RE: JO-ELLEN TAYLOR-SNOW AND JOHNNY SNOW**
[DPC-2](#)

MOTION TO DISMISS CASE
3-11-2024 [\[30\]](#)

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 26, 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 \$764.00 with one payment(s) of \$260.00 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.

25. [23-22264](#)-A-13 **IN RE: CHARLISA/ARTHUR HUDSON**
[RCW-99](#)

CONTINUED MOTION TO SUBSTITUTE ATTORNEY
2-1-2024 [[64](#)]

RYAN WOOD/ATTY. FOR DBT.

Final Ruling

This case was dismissed on March 28, 2024. Accordingly, this motion will be removed from the calendar as moot. No appearances are required.

26. [20-22267](#)-A-13 **IN RE: KEVIN NORMAN**
[DPC-8](#)

MOTION TO DISMISS CASE
3-11-2024 [[234](#)]

MARY TERRANELLA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Disposition: Denied without prejudice

Order: Civil minute order

The Chapter 13 trustee moves to dismiss the case under 11 U.S.C. § 1307(c). See Motion to Dismiss, 1:21-23, ECF No. 234. For the following reasons the court will deny the motion without prejudice.

MOTION FAILS TO SUFFICIENTLY CITE BASIS FOR RELIEF

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

. . .

Fed. R. Bankr. P. 9013.

Motion or Other Request for Relief. The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. *Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request* but does not include a discussion of those authorities or argument for their applicability.

LBR 9014-1(d) (3) (A) (emphasis added).

Both the Federal Rules of Bankruptcy Procedure and the court's Local Rules of Practice require that the moving party cite the applicable statute which serves as a basis for the relief requested.

(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--

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c).

Section 1307(c) lists *eleven* different subsections which may be a basis for the relief requested in the trustee's motion.

While the trustee has indicated in his motion that the debtor is in default pursuant to the terms of a confirmed plan, he has not cited the applicable subsection of 11 U.S.C. § 1307(c).

The trustee's motion is properly brought under 11 U.S.C. § 1307(c)(6), yet he has failed to provide this citation as required by Fed. R. Bankr. P. 9013, LBR 9014-1(d)(3)(A).

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

27. [23-24069](#)-A-13 **IN RE: LISA CHRISTENSEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-18-2024 [[20](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

As the installment fees have been paid in full, the order to show cause is discharged. The case will remain pending.

28. [23-24370](#)-A-13 **IN RE: SARA KLINKENBORG**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
1-24-2024 [[21](#)]

LUCAS GARCIA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan
Notice: Continued from February 27, 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 27, 2024, to allow the debtor(s) 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 TIMELY 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 28, 2024, the court ordered:

IT IS ORDERED that the hearing on this objection will be continued to April 9, 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 12, 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 12, 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 26, 2024. The evidentiary record will close after March 26, 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 12, 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. 30 (emphasis added).

The debtor failed to timely file: 1) any opposition to the trustee's objection; 2) an amended plan; or 3) a statement indicating that she does not intend to oppose the trustee's objection. **Debtor's failure to timely comply with the court's order further delays hearing on the trustee's objection, and has caused additional, unnecessary work for the court.**

The debtor filed a non-opposition to the trustee's objection on March 27, 2024, which was 15 days after the date ordered. Non-Opposition, ECF No. 33.

The court's ruling required the debtor to file a pleading in this matter by March 12, 2024. The debtor(s) failed to timely file any document which would apprise the court of her position regarding the trustee's objection to confirmation. Late filings require leave of court, Fed. R. Bankr. P. 9006(b). No such request was made by debtor's counsel in this case.

In this instance only the court will accept the late filed non-opposition. Failure to timely comply with the court's orders in the future may result in the imposition of sanctions. LBR 1001-1(g).

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 \$1,000.00 in compensation to debtor's counsel. The amount of compensation to be paid through the plan is \$4,000. 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 \$55.55 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.

29. [21-21678](#)-A-13 **IN RE: REGINALD/RAMONA BURTON**
[DPC-1](#)

MOTION TO DISMISS CASE
3-11-2024 [[39](#)]

CANDACE BROOKS/ATTY. FOR DBT.

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 26, 2024

Opposition Filed: March 25, 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 \$2,257.80, with one payment(s) of \$3,127.91 due before the hearing on this motion.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 43, 44. The debtor's declaration states that the debtors will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 44.

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.

30. [23-23778](#)-A-13 **IN RE: SYBILLE WASSNER**
[TAA-1](#)

MOTION TO CONFIRM PLAN
2-27-2024 [[35](#)]

KEVIN TANG/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).

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).

Unlisted Secured Creditor

An amended claim was filed on January 10, 2024, by secured creditor Langley Federal Credit Union, Claim No. 7. The claimed amount of \$34,938.31, is for payment of a 2016 Jeep Wrangler. *Id.* Payment to this secured creditor is not provided for in the proposed Chapter 13 plan. Chapter 13 Plan, ECF No. 33. Moreover, there is no expense identified as an automobile installment payment on Amended Schedule J. Amended Schedule J, ECF No. 29.

How, or if, a secured creditor is paid during the pendency of the plan directly impacts the feasibility of the plan. If the debtor plans to drive the Jeep Wrangler, then payment to the claimant must be provided for in the plan. If the debtor intends to surrender the Jeep Wrangler, then the debtor must explain how she will manage her transportation during the pendency of the plan.

Plan Fails to Provide Monthly Payment of Attorney Compensation

Section 3.05 of the Debtor's Plan indicates that \$3,500.00 in attorney compensation shall be paid through the Plan. Chapter 13 Plan, ECF No. 33. However, Section 3.06 of the Plan provides that \$0.00 will be paid each month in attorney compensation. Without a monthly amount proposed the trustee cannot calculate the feasibility of the plan.

The court finds that the plan is not feasible as proposed under 11 U.S.C. § 1325 (b) (6). The court will deny the motion to confirm 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 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.

31. [23-24379](#)-A-13 **IN RE: GRACE LEE**
[DPC-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P.
CUSICK
1-24-2024 [\[25\]](#)

JAMES KEENAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

Notice: Continued from February 27, 2024

Disposition: Sustained and confirmation denied

Order: Civil minute order

The hearing on the trustee's objection to confirmation was continued from February 27, 2024, to allow the parties to augment the evidentiary record.

On February 28, 2024, the court ordered in part:

(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 12, 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 26, 2024. The evidentiary record will close after March 26, 2024; or Order, ECF No. 30 (emphasis added).

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 Objection - Failure to File Tax Returns

Together 11 U.S.C. §§ 1308 and 1325(a)(9) prohibit confirmation of a chapter 13 plan if the debtor has not filed all tax returns due during the 4-year period prior to the filing of the petition.

The court may not confirm a plan unless "the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308." 11 U.S.C. § 1325(a)(9).

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1308(a).

The Chapter 13 trustee objects to confirmation because the debtor admitted at the continued meeting of creditors held on January 18, 2024, that she has not filed tax returns for tax years 2020, 2021 or 2022.

If the debtor has not filed the tax returns, and was required to do so, then the plan may not be confirmed as this contravenes the provisions of 11 U.S.C. §§ 1325(a)(9) and 1308.

Debtor Opposition

On March 12, 2024, the debtor filed an opposition to the trustee's objection, ECF No. 31. The opposition is not accompanied by any admissible evidence as ordered.

The opposition states:

Debtor filed tax returns, federal and state, for 2020, 2021, 2022 and 2023 on March 11, 2024. She is now current with all required tax filings.

Id., 1:19-21.

The court gives no weight to an opposition which does not provide any admissible evidence regarding the factual allegations contained therein. Moreover, there is no evidence that the trustee has received copies of the filed tax returns as required.

Trustee Reply

On March 15, 2024, the trustee filed a reply to the debtor's opposition. The trustee reports:

While the Debtor did not timely file the response, (where the Court ordered the response by 3/12/24, DN 30), and did not support the response with a declaration of the Debtor, and has not to date provided a copy of the tax returns to the Trustee, Debtor did appear at the continued meeting of creditors on 3/14/24 and testified that the subject tax returns were filed, and that Debtor had tax refunds expected of \$4600 from 2021, \$2500 from 2022, and \$3300 from 2023. Debtor testified she needed the refund money to repair her fence but admitted she has not received any estimates on the fence yet. The refunds have not been listed on Schedule A/B, (DN 17, Pahe (sic) 7, #28.) (sic)

Reply, 1:26-28, 2:1-5, ECF No. 34.

The trustee's reply is incorrect. The debtor's opposition was timely filed. It was, as noted previously in this ruling, filed without any admissible evidence. The trustee indicates that he has not been provided copies of the tax returns and the opposition filed by the debtor does not state when the tax returns were filed.

The court finds that the debtor has failed to sustain her burden of proof regarding plan confirmation. The debtor has failed to comply with the court's order and provide admissible evidence regarding the missing tax returns. As the court is unable to determine if or when the returns were filed the objection will be sustained.

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.

32. [24-20579](#)-A-13 **IN RE: ABDUL MUNIF**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-12-2024 [[24](#)]

3/20/24 FILING FEE PAID \$34

Final Ruling

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

33. [24-20380](#)-A-13 **IN RE: TIMOTHY/KRISTYN MARTIN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
3-13-2024 [[14](#)]

GABRIEL LIBERMAN/ATTY. FOR DBT.

Tentative 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

No responding party is required to file written opposition to the objection; opposition may be presented at the hearing. LBR 3015-1(c)(4), 9014-1(f)(2)(C). If opposition is presented at the hearing, the court may rule on the merits or set a briefing schedule. Absent such opposition, the court will adopt this tentative ruling.

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).

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,325.00 with another payment of \$2,325.00 due on March 25, 2024. The plan cannot be confirmed if the plan payments are not current.

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.

34. [23-24087](#)-A-13 **IN RE: KERRY LUCY**
[DPC-2](#)

MOTION TO DISMISS CASE
3-8-2024 [[25](#)]

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$1,200.00, with one payment(s) of \$400.00 due prior to the hearing on this motion.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF No. 29. 30. The declaration states that the debtor has tendered payments via TFS in the amount of \$500.00 and will tender a further payment of \$1,100.00 on March 24, 2024, to bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 30.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On April 2, 2024, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041. Reply, ECF No. 32.

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).

Here, the Chapter 13 trustee has signaled his abandonment of his motion to dismiss. Neither the debtor(s), nor any creditor, has expressed opposition to the withdrawal of the trustee's motion. No unfair prejudice will result from withdrawal of the motion and the court will accede to the trustee's request.

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 withdrawn.

35. [23-23896](#)-A-13 **IN RE: CERVANTES/SHERRI EDWARDS**
[PSB-2](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 5
2-14-2024 [[29](#)]

PAULDEEP BAINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: 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 LVNV Funding, LLC, Claim No. 5. For the following reasons the objection will be overruled without prejudice.

SERVICE AND NOTICE

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.

Rule 7004 Service

Service of the objection on the claimant is required in accordance with Rule 7004. While service is properly accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in this matter should indicate that service is made on the claimant pursuant to Rule 7004. Part 6 is incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as the special notice creditors, and the United States Trustee. See Certificate of Service, ECF No. 41.

LBR 9014-1(e)(2)

LBR 9014-1(e)(2) provides that "service of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court."

In this case the moving papers were filed on February 14, 2024. Conversely, the objection was served on February 17, 2024, yet the certificate of service was not filed until February 21, 2024. Certificate of Service, ECF No. 41. This contravenes LBR 9014-1(e).

DISMISSAL OF ACTION FOR FAILURE TO COMPLY WITH LOCAL RULES

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) (emphasis added).

Because the debtor has failed to comply with LBR 7005-1, 9014-1(e), the court will overrule the objection without prejudice.

CIVIL MINUTE ORDER

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

Debtor's objection to claim has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection overruled without prejudice.

36. [23-23896](#)-A-13 **IN RE: CERVANTES/SHERRI EDWARDS**
[PSB-3](#)

MOTION TO INCUR DEBT
2-14-2024 [\[35\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approve New Debt

Notice: LBR 9014-1(f)(1); non-opposition filed by trustee

Disposition: Granted

Order: Prepared by moving party

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 debtors seek to incur new debt to pay mortgage arrears owed on their property located at 8953 Emsdale Way, Sacramento, California. The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 39. The loan terms are as follows.

The lender is the Secretary of Housing and Urban Development. The amount borrowed is \$8,552.76. This amount was added on to the back of the debtors' existing loan. There is no impact/change to the monthly mortgage payment or interest rate of the existing loan. The balance of the note will come due after the plan term in 2051. There is no impact on the debtors' confirmed plan as the plan calls for payments to the lender in Class 4.

The court will grant the motion and approve the debtor's incurring of this new debt.

37. [24-20154](#)-A-13 **IN RE: RICHARD/ANGELA PARRISH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-21-2024 [\[48\]](#)

PETER MACALUSO/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.

38. [22-22845](#)-A-13 **IN RE: CHRISTOPHER LEE**
[DPC-1](#)

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

THOMAS AMBERG/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

Notice: Continued from March 26, 2024

Disposition: Denied

Order: Civil minute order

The hearing on this motion was continued from March 26, 2024, to allow for hearing on the debtor's motion to modify the chapter 13 plan. The motion to modify, (TLA-2) has been 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.

The trustee's motion to dismiss has been presented to the court. Having considered the motion, the opposition, responses, and good cause appearing,

IT IS ORDERED that the motion is denied.