

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

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

DAY: TUESDAY
DATE: MAY 3, 2022
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

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. 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. [18-26800](#)-A-13 **IN RE: MICHAEL/EMMA POST**
[DPC-2](#)

MOTION TO DISMISS CASE
4-5-2022 [\[55\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 25, 2022 - untimely

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,152.00 with a further payment of \$2,819.20 due April 25, 2022.

UNTIMELY OPPOSITION

Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B).

On April 25, 2022, the debtors filed an opposition to the motion to dismiss and exhibits, ECF Nos. 59-61. The opposition includes a declaration by the debtor(s)' attorney stating that the late filed opposition was due to a calendaring error in his office caused by reduced office staffing and an error by an attorney in calendaring. The court notes that on April 26, 2022, the debtors filed an application for extension of time to oppose the trustee's motion to dismiss, ECF Nos. 63-64. The court has granted that request.

Rule 9006(b)(1)

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) *on motion made after the expiration of the specified*

period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1) (emphasis added).

The court will allow the late opposition.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The opposition to the motion consists of an unsworn statement by counsel and an Exhibit showing payments tendered through TFS. The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration by the debtor is required to prove the contentions in the opposition and to provide additional relevant information. The Exhibit showing TFS payments tendered by the debtor is not authenticated without the declaration of the debtor.

The court gives no weight to an opposition which fails to provide sworn testimony by the debtor. Unsworn statements by counsel regarding payments are not evidence and will not be considered.

The debtor's 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.

Henceforth, the court will not consider opposition which is unsupported by evidence and will issue final rulings based upon the evidentiary record.

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.

2. [19-23405](#)-A-13 **IN RE: JENNIFER THOMPSON**
[DPC-1](#)

MOTION TO DISMISS CASE
3-31-2022 [\[26\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 19, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee

contends that the debtor is delinquent in the amount of \$719.00, with another payment of \$290.00 due April 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 30-31. The debtor's declaration states that the debtor will bring the plan payment current or file a motion to modify if required. See Declaration, ECF No. 31. The debtor explains that a motion to modify was not filed previously because the debtor has moved and did not receive notice of the motion to dismiss. The debtor is in the final months of her chapter 13 plan.

The debtor's 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.

3. [19-24407](#)-A-13 **IN RE: MARIA TERESA MERCADO**
[WW-4](#)

CONTINUED MOTION TO INCUR DEBT
4-6-2022 [\[44\]](#)

MARK WOLFF/ATTY. FOR DBT.

No Ruling

4. [17-24111](#)-A-13 **IN RE: DOUGLAS/DOLORES GIANNI**
[DEF-5](#)

MOTION FOR HARDSHIP DISCHARGE
3-11-2022 [\[79\]](#)

DAVID FOYIL/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Motion for Hardship Discharge

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

Disposition: Denied

Order: Civil minute order

Instant Petition Filed: June 21, 2017

Previous Case: 2013-31894, E.D. Cal. Bankr. (2013)

Previous Chapter: 7

Previous Petition Filed: September 10, 2013

Previous Discharge: December 23, 2013

The debtors seek a hardship discharge under 11 U.S.C. § 1328(b).
The chapter 13 trustee opposes the motion contending the debtors are
not eligible for discharge under 11 U.S.C. § 1328(f)(1).

OBJECTION TO DISCHARGE – 11 U.S.C. § 1328(f)

*Notwithstanding subsections (a) and (b), the court shall not
grant a discharge of all debts provided for in the plan or
disallowed under section 502, if the debtor has received a
discharge-*

- (1) in a case filed under chapter 7, 11, or 12 of this
title during the 4-year period preceding the date of
the order for relief under this chapter,*
- (2) in a case filed under chapter 13 of this title during
the 2-year period preceding the date of such order.*

11 U.S.C. § 1328(f)(1) (emphasis added).

The statute has only three elements for the discharge bar to trigger
under 1328(f)(1). First, the debtor must have received a prior
bankruptcy discharge.

Second, the prior case must have been filed under Chapters 7, 11, or 12.

Third, the case in which the discharge was received must have been filed during the 4-year period preceding the date of the order for relief under this [Chapter 13] chapter. The third element represents a significant change to the Bankruptcy Code, which previously imposed no time limitations for obtaining a discharge in a chapter 13 case filed after issuance of a discharge in a chapter 7 case.

Before BAPCPA, chapter 20 debtors could obtain a chapter 13 discharge after having received a discharge in chapter 7 without restriction. The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") enacted in 2005 imposed a restriction by adding § 1328(f), which states that a court cannot grant debtors a discharge in a chapter 13 case filed within four years of the filing of a case wherein a discharge was granted in chapter 7. §1328(f)(1).

Boukatch v. MidFirst Bank (In re Boukatch), 533 B.R. 292, 297 (9th Cir. BAP 2015).

Regarding the circumstances wherein a debtor receives a chapter 7 discharge and then files a subsequent chapter 13 petition the statute is clear, and the court shall not grant a discharge in these circumstances.

Relatively unambiguously, new §1328(f)(1) states mandatorily that the court "shall not" grant a discharge if the debtor received a discharge in a Chapter 7, 11 or 12 case "filed...during the 4-year period preceding the date of the order for relief under this chapter." The counting rule here is clear: the 'order for relief under this chapter' would be the date of filing the current Chapter 13 petition; the four-year period would run from the date of filing of the prior case in which the debtor received a discharge. In other words, the four-year bar to successive discharges runs from the *filing* of a prior Chapter 7 (11 or 12) case to the *filing* of the current Chapter case."

Keith M. Lunden, *Lunden On Chapter 13*, §152.2 at ¶ 3 (2021).

The debtors are not eligible for a discharge under 11 U.S.C. § 1328(f).

STIPULATION AND ORDER RE DISCHARGE

On October 20, 2017, the debtors signed a stipulation with the chapter 13 trustee wherein they agreed that they were not eligible for discharge in this case. See ECF No. 51.

On October 23, 2017, the court ordered that the debtors shall not receive a discharge in this case. See ECF No. 52.

The court will deny the motion.

CIVIL MINUTE ORDER

The court finds that the debtors are not eligible for a discharge in this case. The court shall issue a civil minute order that conforms substantially to the following form:

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

The debtors' Motion for Hardship Discharge 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 denied; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case.

5. [17-24111](#)-A-13 **IN RE: DOUGLAS/DOLORES GIANNI**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-1-2022 [\[73\]](#)

DAVID FOYIL/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Case

Notice: Continued from March 29, 2022

Disposition: Granted

Order: Civil minute order

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that plan payments are delinquent in the amount of \$3,112.00, with another payment of \$1,810.00 due March 25, 2022.

The debtors filed a motion for hardship discharge under 11 U.S.C. 1328(b), (DEF-5) as opposition to the motion to dismiss. The motion for hardship discharge has been denied. The court presumes the plan payments are still delinquent but given the unique circumstances of this case has left this motion on calendar for oral argument as appropriate.

Unless the trustee confirms that plan payments are current the court will grant the motion and dismiss the case. 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.

6. [21-23812](#)-A-13 **IN RE: MAI TRANG LE**
[PGM-1](#)

CONTINUED OBJECTION TO CLAIM OF MEB LOAN TRUST IV, U.S. BANK
NATIONAL ASSOCIATION, CLAIM NUMBER 2
2-8-2022 [\[36\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

7. [21-22514](#)-A-13 **IN RE: PATRICK FIELDS**
[DBL-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-30-2022 [\[38\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
PATRICK FIELDS VS.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief - to proceed with dissolution of marriage

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

Disposition: Granted

Order: Civil minute order

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

The debtor seeks an order for relief from the automatic stay allowing him to proceed with a dissolution of marriage proceeding in state court. The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 45.

BACKGROUND

The debtor filed a previous chapter 7 bankruptcy on February 25, 2021. See Case No. 2021-20649, E.D. Cal. Bankr. (2021). A discharge was entered in the chapter 7 case on June 22, 2021.

The instant chapter 13 case was filed on July 8, 2021. The chapter 13 plan was confirmed on August 23, 2021, ECF No. 29. Pursuant to the confirmed plan, property of the estate reverts in the debtor upon confirmation. See Plan, ECF No. 8, Section 6.01.

The chapter 13 trustee objected to discharge in the instant case. The court sustained the objection under 11 U.S.C. § 1328(f)(1). The order sustaining the trustee's objection and denying discharge in this case was entered September 16, 2021, ECF No. 33.

RELIEF FROM STAY

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

. . .

(2) under subsection (a)--
(A) of the commencement or continuation of a civil action or proceeding--

(i) for the establishment of paternity;
(ii) for the establishment or modification of an order for domestic support obligations;
(iii) concerning child custody or visitation;
(iv) for the dissolution of a marriage, *except to the extent that such proceeding seeks to determine the division of property that is property of the estate;*

11 U.S.C. § 362(b) (2) (A) (iv) (emphasis added).

Because the Section 362(b) (2) (A) (iv) prohibits the division of estate property during a bankruptcy proceeding the debtor must seek relief from stay to proceed.

Given the facts in this case the court finds cause to grant relief from the automatic stay under 11 U.S.C. § 362(d) (1).

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 for relief from the automatic stay has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The automatic stay is vacated to allow the debtor to proceed with litigation in state court regarding the dissolution of his marriage and division of property.

8. [21-24115](#)-A-13 **IN RE: KATHIE GODBEHERE**
[DPC-1](#)

MOTION TO DISMISS CASE
3-23-2022 [\[48\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
DEBTOR DISMISSED: 3/25/2022

Final Ruling

As this case was dismissed on March 25, 2022, this matter will be removed from the calendar as moot. No appearances are required.

9. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[DPC-2](#)

CONTINUE MOTION TO DISMISS CASE
3-1-2022 [\[111\]](#)

MARK BRIDEN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from March 29, 2022

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) and (6) as the debtor has failed to make all payments due under the plan.

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.

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.

10. [17-26116](#)-A-13 **IN RE: AARON/PHELICIA MCGEE**
[MWB-6](#)

MOTION TO MODIFY PLAN
3-14-2022 [\[117\]](#)

MARK BRIDEN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to June 9, 2022, at 9:00 a.m.

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 126.

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).

SUPPORTING EVIDENCE

The debtors filed amended Schedules I and J, ECF No. 121, in support of their proposed plan.

The schedules were filed without the required amendment cover sheet, EDC 2-015 and are thus unsigned by the debtors. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

LBR 9004-1(c)

(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c) (emphasis added).

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court and may not be considered.

Amendment Cover Sheet

On March 14, 2022, the debtors signed and filed a separate Amendment Cover Sheet, ECF No. 132. No schedules were attached to the amendment cover sheet. This appears to be an attempt to remedy the deficiency of the previously filed Schedules I and J.

The Amendment Cover Sheet contains clear instructions regarding its use. The Instructions provide that a party is to "[a]ttach each amended document to this form." See Form EDC 2-015, Rev. 12/1/20.

The separate filing of the Amendment Cover Sheet from the amended documents is not sufficient. First, filing amended documents separately from the cover sheet authenticating/verifying them does not serve the effective use of the court's electronic docket. Reference to the documents as a whole is difficult and easily leads to errors in reviewing documents by the court and other parties to the current or subsequent litigation. Second, parties in interest who are served with the documents piecemeal will not be able to easily determine to which Schedules I and J the latterly served separate cover sheet refers.

The court will continue the hearing on this motion to allow the debtors to correct the evidentiary record by properly filing and serving verified Amended or Supplemental Schedules I and J.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the hearing on the motion is continued to June 9, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 17, 2022, the debtors shall file and serve Amended or Supplemental Schedules I and J in conformance with this ruling. Should the debtors fail to timely file and serve the schedules as ordered the court will deny the motion without further notice or hearing.

11. [21-22316](#)-A-13 **IN RE: GEVORG DZHUGARYAN AND RUZANA
SIRUNANIAN
[PGM-3](#)**

MOTION TO CONFIRM PLAN
3-24-2022 [[104](#)]

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed March 24, 2022

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 debtors seek confirmation of their Second Amended Chapter 13 Plan, ECF No. 108. On March 24, 2022, the debtors have filed Supplemental Schedules I and J, ECF No. 110. The chapter 13 trustee has filed a non-opposition to the plan, ECF No. 111.

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 and grant the motion.

12. [19-24217](#)-A-13 **IN RE: BRETT BAILEY**
[DPC-2](#)

MOTION TO DISMISS CASE
3-31-2022 [\[66\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 19, 2022 - timely

Motion to Modify Plan Filed: April 19, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$2,550.00, with another payment of \$1,275.00 due April 25, 2022.

A modified plan has been timely filed in opposition to this motion. The scheduled hearing on the modification is May 24, 2022, 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 24, 2022, 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.

13. [19-22526](#)-A-13 **IN RE: KENNETH/ANN VALLIER**
[DPC-3](#)

MOTION TO DISMISS CASE
4-5-2022 [\[123\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 19, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$7,480.51, with another payment of \$3,774.03 due April 25, 2022.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The debtor has filed a timely opposition which consists of an unsworn statement by the debtor's attorney. There is no declaration of the debtor attesting to the facts averred. The opposition states:

Debtor's (sic) and counsel have discussed the delinquency and debtor will be current on the plan payments by the hearing date of May 3rd, 2022. If for any reason the debtor is unable to come current, a modified plan will be filed prior to the May 3rd, 2022 hearing date.

Opposition, ECF No. 127, 2:1-3.

The court gives no weight to an opposition which fails to provide sworn testimony by the debtor(s). Unsworn statements by counsel are not evidence and will not be considered.

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration of the debtor(s) is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtor intends to bring the plan payments current or how he will do so.

Moreover, 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, or to file a modified plan is not equivalent to cure of the delinquency. The court is unable to deny the motion given the outstanding delinquency.

OPPOSITION - MOTION TO MODIFY

The opposition also indicates that the debtor will file a modified plan by the hearing date. The opposition does not resolve the motion to dismiss as the intent to file a modified plan in the future is not a resolution of the motion to dismiss.

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

The court is aware that the motion to dismiss was filed April 5, 2022, giving the debtor only 28 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

14. [16-28129](#)-A-13 **IN RE: JERRY/JOANNE BENNETT**
[MET-2](#)

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTORS
ATTORNEY(S)
3-21-2022 [[211](#)]

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

15. [19-22030](#)-A-13 **IN RE: MARIE CASTRO**
[DJC-1](#)

MOTION TO MODIFY PLAN
3-25-2022 [\[30\]](#)

DIANA CAVANAUGH/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by movant, approved by the trustee

Subject: First Modified Chapter 13 Plan, filed March 25, 2022

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 approval of her modified plan, ECF No. 24. In support of the plan the debtor has filed supplemental Schedules I and J on March 25, 2022, ECF No. 33. The chapter 13 trustee has filed a non-opposition to the proposed plan, ECF No. 36.

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.

16. [18-27131](#)-A-13 **IN RE: STEPHEN/SUSAN JOHNSON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-31-2022 [\[80\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 11, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$1,420.00, with another payment of \$1,330.00 due April 25, 2022.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor and Exhibits, ECF Nos. 84-86. The declaration states that the debtors have brought the delinquent plan payments current, that the March 2022 payment was made but not posted when the trustee filed his motion, and that the payment for April 25, 2022, has been scheduled through TFS. See Declaration, ECF No. 85.

The debtor's opposition does not fully resolve the grounds for dismissal. Unless the trustee confirms that the payments have all posted and the April 2022 payment received the case will be dismissed for plan 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.

17. [20-20032](#)-A-13 **IN RE: NEIL GARCIA**
[AP-2](#)

MOTION TO ENTER INTO VOLUNTARY PAYMENT DEFERRAL AGREEMENT
3-25-2022 [\[35\]](#)

MARC CARPENTER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Approve Voluntary Payment Deferral Agreement

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). 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).

Movant seeks an order approving a voluntary Covid-19 deferral agreement and for Movant to record such agreement with the appropriate county recorder's office with respect to the first deed

of trust on the real property located at 902 Freedom Drive, Suisun City, California. The Voluntary Payment Deferral Agreement provides for the deferral of five (5) monthly payments totaling \$8,162.86. The deferral period is from June 2021 through October 2021 and payments due during that period will be deferred until the maturity, sale, transfer, or refinance of the property.

The chapter 13 trustee has filed a non-opposition to the motion, ECF No. 39. The debtors have also filed a non-opposition to the motion, ECF Nos. 41-42.

CIVIL MINUTE ORDER

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

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

The court has reviewed the present motion for approval of a Covid-19 deferral agreement between the debtor and the secured creditor named in the motion. 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.

18. [19-22034](#)-A-13 **IN RE: ERNEST/SAIFON BOND**
[DPC-1](#)

CONTINUED MOTION TO DISMISS CASE
3-1-2022 [\[25\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

Notice: Continued from March 29, 2022

Disposition: Continued to June 9, 2022, at 9:00 a.m.

Order: Civil minute order

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

A modified plan has been timely filed as opposition to this motion. The plan was set for hearing. The scheduled hearing on the modification has been continued to June 9, 2022, 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 June 9, 2022, 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.

19. [19-22034](#)-A-13 **IN RE: ERNEST/SAIFON BOND**
[MET-1](#)

MOTION TO MODIFY PLAN
3-22-2022 [\[31\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Continued to June 9, 2022, at 9:00 a.m.

Order: Civil minute order

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee has filed a non-opposition to the motion, ECF No. 43.

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).

SUPPORTING EVIDENCE

The debtors filed amended Schedules I and J, ECF No. 36-37, in support of their proposed plan.

The schedules were filed without the required amendment cover sheet, EDC 2-015 and are thus unsigned by the debtors. As such, the schedules are not properly filed under Fed. R. Bankr. P. 1008 which requires that "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." See Fed. R. Bankr. P. 1008.

LBR 9004-1(c)

(ci) *Signatures Generally.* All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

LBR-9004-1(c) (emphasis added).

Without the authentication and verification required by Rule 1008 and LBR 9004-1(c) the schedules are not properly before the court and may not be considered.

Amendment Cover Sheet

On March 29, 2022, the debtors signed and filed a separate Amendment Cover Sheet, ECF No. 40. No schedules were attached to the amendment cover sheet. This appears to be an attempt to remedy the deficient filing of the previously filed schedules.

The Amendment Cover Sheet contains clear instructions regarding its use. The Instructions provide that a party is to "[a]ttach each amended document to this form." See Form EDC 2-015, Rev. 12/1/20.

Thus, the separate filing of the Amendment Cover Sheet from the amended documents is not sufficient. First, filing the documents separately does not serve the effective use of the court's electronic docket. Reference to the documents as a whole is difficult and easily leads to errors in reviewing documents by the court and other parties to the current, as well as subsequent, litigation. Second, interested parties served with the documents piecemeal will not be able to easily determine to which Schedules I and J the latterly served separate cover sheet refers.

The court will continue the hearing on this motion to allow the debtors to correct the evidentiary record by properly filing and serving verified Amended or Supplemental Schedules I and J.

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the hearing on the motion is continued to June 9, 2022, at 9:00 a.m. The court denies modification of the chapter 13 plan.

IT IS FURTHER ORDERED that not later than May 17, 2022, the debtors shall file and serve on all interested parties Amended or Supplemental Schedules I and J in conformance with this ruling. Should the debtors fail to timely file and serve the schedules as ordered the court will deny the motion without further notice or hearing.

20. [22-20038](#)-A-13 **IN RE: CYNTHIA DURAN**
[DPC-2](#)

MOTION TO DISMISS CASE
3-24-2022 [\[20\]](#)

BRUCE DWIGGINS/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: April 19, 2022

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the debtor's chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$2,095.20 with a payment of \$2,095.20 due March 25, 2022, and a further payment of \$2,095.20 due April 25, 2022.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

21. [18-26044](#)-A-13 **IN RE: VICKI/DANIEL JACOBS**
[DPC-1](#)

MOTION TO DISMISS CASE
4-5-2022 [\[36\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 20, 2022 - untimely

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$8,000.00, with another payment of \$4,000.00 due April 25, 2022.

The debtors have filed a late response in opposition to the motion, ECF No. 40. The opposition is accompanied by the Declaration of Tina Perez, who is employed at the office of debtor's counsel, ECF No. 41. The declaration states that the opposition could not be timely filed because of unanticipated lack of internet connectivity at the office of debtors' counsel.

Rule 9006(b)(1)

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) *on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.*

Fed. R. Bankr. P. 9006(b)(1) (emphasis added).

The court construes the declaration of Tina Perez as a request under Rule 9006(b)(1) for enlargement of time to file an opposition to the motion and will allow the late opposition in this instance. In the future counsel should bring an appropriate ex parte motion

requesting enlargement of time to file opposition under Rule 9006(b) (1) .

Response

The response/opposition consists solely of an unsworn statement by debtors' counsel as follows.

Debtors were having issues with the mail and subsequently their checks were returned, causing them to fall behind. Debtors resolved the issue and sent payment of \$4,000 via mail on 04/04/2022 and another \$4,000 payment via mail on 04/11/2022. As of 04/19/2022, one of the payments has been received by the Trustee. The other payment of \$4,000 is expected to be received by the Trustee this week (week of 04/18/2022). This will bring Debtors current. They will be mailing April's payment on Friday 04/22/2022.

Response, ECF No. 40, 1:18-22.

LBR 9014-1(f) (1) (B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f) (1) (B) (emphasis added) .

The opposition does not comply with LBR 9014-1(f) (1) (B) . A declaration by the debtor(s) is required to prove the contentions in the opposition and to provide additional relevant information.

Moreover, 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.

The court gives no weight to an opposition which fails to provide sworn testimony by the debtors opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

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 debtors have failed to make all payments due under the confirmed chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

22. [19-21346](#)-A-13 **IN RE: CHARLES KOCH**
[DPC-3](#)

MOTION TO DISMISS CASE
4-5-2022 [\[95\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 18, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$790.00, with another payment of \$395.00 due April 25, 2022.

The debtor has filed a timely opposition, ECF No. 99. The opposition consists of an unsworn statement by debtor's counsel which indicates that the debtor mailed a personal check to the trustee, which was returned, that the debtor will bring money orders totaling \$790.00 to the attorney's office by April 22, 2022, and that the April 25, 2022, payment will be timely made thereafter.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.* Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The opposition does not comply with LBR 9014-1(f)(1)(B). A declaration by the debtor(s) is required to prove the contentions in the opposition and to provide additional relevant information. For

example, there is no evidence indicating that the debtor intends to deliver payments as promised, neither is there evidence that the debtor will make the additional plan payment due April 25, 2022.

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 gives no weight to an opposition which fails to provide sworn testimony by the debtor(s). Unsworn statements by counsel are not evidence and will not be considered. 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.

23. [19-20747](#)-A-13 **IN RE: DANIEL/TERESA STALTER**
[CK-4](#)

MOTION TO VACATE DISMISSAL OF CASE
4-6-2022 [\[104\]](#)

CATHERINE KING/ATTY. FOR DBT.
DEBTORS DISMISSED: 03/30/2022

TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Vacate Dismissal of Case
Disposition: Denied without prejudice
Order: Civil minute order

The debtors seek an order vacating the order dismissing their chapter 13 case.

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)).

LBR 9014-1(f)

In the Eastern District of California notice of a motion must comply with the requirements of LBR 9014-1(f)(1), (2). The rule allows a choice of two different notice periods. LBR 9014-1(f)(1) requires 28 days' notice of the motion and written opposition to be filed with the court and served on the moving party not later than 14 days prior to the hearing on the motion. Conversely, LBR 9014-1(f)(2) requires only 14 days' notice of the motion and does not require the opposing party to file and serve written opposition prior to the hearing on the motion. See, LBR 9014-1(f)(1), (2).

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

The notice of hearing shall advise potential respondents *whether and when written opposition must be filed*, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

. . .

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

The notice filed and served in this matter provides as follows.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy Rule 9014-1(f)(1), no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion.

Notice, ECF No. 105, 2:1-5.

The notice contains conflicting provisions as LBR 9014-1(f)(1) requires written opposition, yet the notice states that no party shall be required to file written opposition.

The court cannot determine whether the motion is brought under LBR 9014-1(f)(1) or (f)(2). Nor will the court presume the conclusion an opposing party might reach about whether written opposition is necessary.

Neither does the notice given in this matter satisfy the requirements of LBR 9014(d)(3)(B)(ii), (iii), or (iv).

Creditors and parties in interest have not received "notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Further, LBR 9014-1(d)(3) requires that the notice of hearing advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with the opposition. Because creditors do not have adequate notice of when and how to present their objections, due process has not been satisfied.

Fed. R. Civ. P. 60(b)

Motion

The court notes additional irregularities in the motion. Should the debtors opt to refile the motion to vacate dismissal, the debtors are cautioned that the motion must cite all appropriate legal authority as a basis for the granting of the motion, including but not limited to Fed. R. Civ. P. 60(b). The current motion cites 11 U.S.C § 153.4, a section which does not exist in the Bankruptcy Code.

Trustee Response

The court notes that the chapter 13 trustee filed a non-opposition to the motion to vacate, ECF No. 110. The non-opposition fails to provide information to the court which would aid in its analysis under Rule 60(b). The trustee's response provides no legal analysis.

In addition to analyzing and responding to the sufficiency of the opposing party's motion the trustee's response should provide, at a minimum, the following factual information: 1) dates and amounts of

plan payments received as applicable to the motion to dismiss; 2) the delivery method(s) for each applicable payment received; 3) dates each of the applicable payments posted to the trustee's computer system; 4) an explanation of the differences, if any, between the payments as shown in any TIF exhibits and concurrently dated trustee records; 5) the projected amount of money required to bring plan payments current as of the scheduled hearing date; 6) the current balance on hand for the case in the trustee's account; 7) any other relevant information.

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 debtors' motion to vacate case dismissal 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.

24. [21-23647](#)-A-13 **IN RE: ROBERT KOEHLER**
[DNL-1](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER
7
12-20-2021 [[22](#)]

ERIC SCHWAB/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISMISSED: 4/11/2022

Final Ruling

This case was dismissed on April 11, 2022, the matter is removed from the calendar as moot. No appearances are necessary.

25. [21-23647](#)-A-13 **IN RE: ROBERT KOEHLER**
[DNL-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-24-2022 [\[75\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISMISSED: 4/11/2022

Final Ruling

This case was dismissed on April 11, 2022, the matter is removed from the calendar as moot. No appearances are necessary.

26. [22-20851](#)-A-13 **IN RE: ALEKSANDR ROMANOVICH**
[ELP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-13-2022 [\[11\]](#)

ERICA LOFTIS/ATTY. FOR MV.
U.S. BANK TRUST, N.A. VS.

Final Ruling

This case was dismissed on April 25, 2022, ECF No. 21. Accordingly, this matter will be removed from the calendar as moot. No appearances are necessary.

27. [21-24162](#)-A-13 **IN RE: CASEY WOODBURY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-8-2022 [\[66\]](#)

SARAH SHAPERO/ATTY. FOR DBT.
4/8/22 INSTALLMENT FEE PAID \$78

Final Ruling

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

28. [21-24162](#)-A-13 **IN RE: CASEY WOODBURY**
[DPC-1](#)

MOTION TO DISMISS CASE
3-29-2022 [[53](#)]

SARAH SHAPERO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

This case was converted to Chapter 7 on April 25, 2022, ECF Nos. 86, 90. This matter will be removed from the calendar as moot. No appearances are necessary.

29. [21-24162](#)-A-13 **IN RE: CASEY WOODBURY**
[DPC-2](#)

OBJECTION TO HOMESTEAD EXEMPTION
4-4-2022 [[62](#)]

SARAH SHAPERO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

This case was converted to Chapter 7 on April 25, 2022, ECF Nos. 86, 90. This matter will be removed from the calendar as moot. No appearances are necessary.

30. [19-24564](#)-A-13 **IN RE: DWAYNE/ROSEMARY WRIGHT**
[DPC-1](#)

MOTION TO DISMISS CASE
4-7-2022 [\[26\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

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

Opposition Due: April 19, 2022
Opposition Filed: Unopposed
Cause: 11 U.S.C. § 1307(c)(1), (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 debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,798.00 with a further payment of \$899.00 due April 25, 2022.

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.

31. [20-21066](#)-A-13 **IN RE: VERONICA LARA**
[DPC-2](#)

MOTION TO DISMISS CASE
4-4-2022 [\[72\]](#)

MARK HANNON/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: April 19, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (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 debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the

confirmed plan are delinquent in the amount of \$12,123.92 with a further payment of \$3,089.00 due April 25, 2022.

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.

32. [21-20167](#)-A-13 **IN RE: HARLAN/CHARLOTTE CONFER**
[BHS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-15-2021 [\[20\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
BARRY SPITZER/ATTY. FOR MV.
JACOB AND JAMES WATSON VS.
RESPONSIVE PLEADING

Final Ruling

This case was dismissed on April 20, 2022, ECF No. 138. The hearing on this motion will be removed from the calendar as moot. No appearances are required.

33. [18-24068](#)-A-13 **IN RE: JUAN COLEMAN**
[DPC-2](#)

MOTION TO DISMISS CASE
4-5-2022 [\[55\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

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

Opposition Due: April 19, 2022

Opposition Filed: April 18, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

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 confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$5,339.52, with another payment of \$3,396.87 due April 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, and Exhibits, ECF Nos. 59-61. The debtor's declaration states that the debtor has brought the plan payments current. See Declaration, ECF No. 60. The Exhibit shows that the debtor has paid \$8,000.00 to the chapter 13 trustee.

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.

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.

34. [21-23868](#)-A-13 **IN RE: BRANDON/REBECA DOMINGUES HENDERSON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-30-2022 [\[42\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by Moving Party

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 18, 2022 – timely

Motion to Modify Plan Filed: April 18, 2022 – timely

Reply Filed: April 25, 2022 – timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to confirm

a plan after the court sustained an objection to confirmation on January 19, 2022.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is May 24, 2022, at 9:00 a.m.

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. See ECF No. 78.

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. [19-23272](#)-A-13 **IN RE: ALLEN FOWLER**
[DPC-4](#)

MOTION TO DISMISS CASE
4-5-2022 [\[153\]](#)

SCOTT SHUMAKER/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 13, 2022 - timely

Motion to Modify Plan Filed: April 7, 2022 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$30,590.18, with another payment of \$4,165.78 due April 25, 2022.

A modified plan has been timely filed as opposition to this motion and set for hearing. The scheduled hearing on the modification is May 24, 2022, 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 24, 2022, 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.

36. [21-23274](#)-A-13 **IN RE: JASON/SARAH SMITH**
[KLG-2](#)

MOTION TO SELL
4-4-2022 [\[55\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

37. [22-20276](#)-A-13 **IN RE: JOSEPH NOVAK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-13-2022 [\[33\]](#)

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. [22-20276](#)-A-13 **IN RE: JOSEPH NOVAK**
[DPC-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-4-2022 [\[29\]](#)

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Continued to June 9, 2022, at 9:00 a.m.
Order: Civil minute order

The chapter 13 trustee objects to exemptions claimed by the debtor.

The court will continue the hearing on the trustee's objection to exemptions to allow the trustee to amend his objection as follows.

OBJECTION

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 (emphasis added).

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).

LBR 9014-1(d)(3)(A) does not contemplate that argument should be omitted from the motion simply because a memorandum of points and authorities is not filed with the motion.

The objection to exemptions, ECF No. 29, is not accompanied by a memorandum of points and authorities. Thus, analysis of the exemptions claimed, and legal argument must be contained in the motion itself. Instead, the trustee's objection is accompanied by a declaration of counsel, ECF No. 31. The identification of the specific objections made by the trustee, along with analysis and additional argument are contained in the declaration. This is confusing and as such the court is unable to determine to which exemptions claimed the trustee objects and the legal basis for each objection.

Additionally, the objection lacks the specificity required under Rule 9013 and LBR 9014-1 as it fails to cite legal authority. For example, the objection is based in part upon the debtor's claim of exemption at "100% of fair market value, up to any applicable statutory limit" in certain assets, an option provided for in the official bankruptcy forms. The trustee has objected to this exemption but has provided no legal authority for his objection.

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 the objection is continued to June 9, 2022, at 9:00 a.m.;

IT IS FURTHER ORDERED that not later than May 19, 2022, the trustee shall file and serve an amended objection to the debtor's claim of exemptions;

IT IS FURTHER ORDERED that not later than May 19, 2022, the trustee shall file and serve on all interested parties a notice of continued hearing. The notice shall inform the debtor that a written response to the amended objection must be filed and served not later than June 2, 2022;

39. [22-20276](#)-A-13 **IN RE: JOSEPH NOVAK**
[DPC-3](#)

MOTION TO DISMISS CASE
4-4-2022 [\[25\]](#)

Tentative Ruling

Motion: Dismiss Chapter 13 Case

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

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). 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 chapter 13 trustee moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1), 521(a)(3), (4). The trustee contends that he has not received all the documents to which he is entitled, and which are necessary for the performance of his duties.

DISMISSAL

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. P. 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. P. 4002(b).

Section 521(a), (e) & Rule 4002(b) Documents

The debtor has not provided the trustee the tax return and/or 60 day pay advices at least 7 days prior to the meeting of creditors.

The court will grant the motion.

Unsecured Debt Limitation

The trustee contends he is unable to determine if the debtor's unsecured debts fall within the prescribed debt limitations of 11 U.S.C. § 109(e). Currently the limitation for unsecured debts equals \$419,275.00. While the debtor's Schedules E/F do not list any unsecured debt the plan proffered by the debtor states that unsecured debts total \$502,000.00. This exceeds the unsecured debt limitation of Section 109(e). The court will grant the motion.

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, opposition and ancillary documents thereto the motion,

IT IS ORDERED that the motion be granted, and the case dismissed.

40. [18-25278](#)-A-13 **IN RE: NOEMI LICON**
[DPC-1](#)

MOTION TO DISMISS CASE
4-5-2022 [\[26\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (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 debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,380.00 with a further payment of \$770.00 due April 25, 2022.

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.

41. [18-21479](#)-A-13 **IN RE: JAN BULLARD**
[DPC-2](#)

MOTION TO DISMISS CASE
3-31-2022 [\[39\]](#)

MARY ANDERSON/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: Non-opposition filed April 19, 2022

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 debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,905.00 with a further payment of \$635.00 due April 25, 2022.

DEATH OF DEBTOR

On April 19, 2022, counsel for the debtor filed a response to the trustee's motion to dismiss informing the court of the debtor's death and indicating that an amended plan is not anticipated in this case. Counsel has also filed a Notice of Death pursuant to Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025, LBR 1016-1(a).

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.

42. [19-24481](#)-A-13 **IN RE: KIMBERLY BIGGS-JORDAN**
[DPC-2](#)

MOTION TO DISMISS CASE
3-31-2022 [\[65\]](#)

GARY FRALEY/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn

Order: Civil minute order

Chapter 13 trustee David P. Cusick filed a motion to dismiss under 11 U.S.C. § 1307(c)(6). The debtor(s) has not responded to the trustee's objection. On April 20, 2022, the trustee filed a request to dismiss his motion under Fed. R. Civ. P. 41. See ECF No. 69.

DISCUSSION

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).

As no other parties have appeared in this matter the court will allow the withdrawal of the motion by the moving party.

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 objection is withdrawn.

43. [19-21082](#)-A-13 **IN RE: RONDELL DANIEL**
[DPC-3](#)

MOTION TO DISMISS CASE
4-5-2022 [\[143\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022, 2022

Opposition Filed: April 19, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$2,055.00, with another payment of \$675.00 due April 25, 2022.

LBR 9014-1(f)(1)(B)

Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. *Opposition shall be accompanied by evidence establishing its factual allegations.*

Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

LBR 9014-1(f)(1)(B) (emphasis added).

The debtor has filed an opposition to the motion. The opposition consists of unsworn factual statements, and exhibit, and argument by the debtor's attorney. See ECF No. 147.

The opposition does not comply with LBR 9014-1(f)(1)(B). The debtor's declaration is required to prove the factual contentions in the opposition and to provide additional relevant information. Thus, the argument and analysis contained in the opposition is not supported by admissible evidence. Neither are the exhibits submitted in support of the argument authenticated.

The court gives no weight to an opposition which fails to provide sworn testimony by the party opposing the motion. Unsworn statements by counsel are not evidence and will not be considered.

The debtor's opposition does not fully resolve the grounds for dismissal. According to the trustee's records and sworn testimony a delinquency still exists as of the date of the opposition. The court is unable to deny the motion given the outstanding delinquency.

Henceforth oppositions which are unsupported by admissible evidence will not be considered and the court will issue a final ruling based upon the evidentiary record.

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.

44. [21-24284](#)-A-13 **IN RE: RICHARD/CYNTHIA SPICKLER**
[BLG-2](#)

MOTION FOR COMPENSATION FOR CHAD M. JOHNSON, DEBTORS
ATTORNEY(S)
4-1-2022 [\[34\]](#)

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

Final Ruling

Application: Allowance of Compensation

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Number of Requests for Compensation: First Interim

Compensation Requested: \$5,284.00

Reimbursement of Expenses: \$60.59

COMPENSATION AND EXPENSES

In this chapter 13 case, Chad Johnson, attorney for the debtor(s), has applied for an allowance of interim compensation.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

DEBTOR DECLARATION

The motion is not supported by a declaration of the debtors. The court also notes that the legal services agreement executed by the

parties and submitted concurrently with the motion as Exhibit A, ECF No. 37, is only signed by one of the debtors in this case. The court requires a declaration from the debtors regarding their support of the motion.

The court will continue the matter to allow the debtor to file a declaration indicating support of the payment of additional compensation. Alternatively, the applicant shall file a declaration indicating that the debtors refuse to file a declaration in support of the payment of additional compensation.

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 hearing on this motion is continued to May 24, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 17, 2022, the debtors shall file a declaration in support of the motion for additional compensation; or the applicant shall file a declaration stating that the debtor(s) refuse to do so.

45. [19-23685](#)-A-13 **IN RE: ERIC/SAXON JOHNSON**
[DPC-2](#)

MOTION TO DISMISS CASE
3-31-2022 [\[39\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: April 14, 2022 - timely

Cause: 11 U.S.C. § 1307(c)(1), (6) - Plan Delinquency

Best Interests of Creditors/Estate: Dismiss

MOTION TO DISMISS

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 confirmed plan. The trustee

contends that the debtor is delinquent in the amount of \$680.00, with another payment of \$340.00 due April 25, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 43-44. The debtor's declaration is sparse, cursory, and states as follows.

We are now current on plan payments. We have paid \$680 during the last two weeks pursuant to the Trustee's request.

Declaration, ECF No. 44, 1:20-21.

Insufficient Opposition

The debtor's opposition does not resolve the grounds for dismissal, and it provides insufficient evidence for the court to find that the motion should be denied. First, it does not explain when or by what method the \$680.00 plan payment was made and therefore the court finds the evidence submitted lacks credibility. Second, the declaration is not supported by any additional evidence such as an exhibit containing a copy of money order receipt, or a TFS printout showing payments tendered to the trustee. Third, the opposition fails to address the issue raised by the trustee regarding the tender of the April 25, 2022, payment which comes 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. The court will dismiss the case.

CIVIL MINUTE ORDER

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

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

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

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

46. [19-23687](#)-A-13 **IN RE: MARK/GIGI COTTOR**
[DPC-1](#)

MOTION TO DISMISS CASE
3-31-2022 [\[33\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: April 19, 2022

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1), (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 debtor's confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,276.72 with a further payment of \$3,148.40 due April 25, 2022.

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.

47. [12-26989](#)-A-13 **IN RE: ANTONIO/MARIA HERNANDEZ**
[JJF-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2022 [[106](#)]

C. HUGHES/ATTY. FOR DBT.
JAMES FALCONE/ATTY. FOR MV.
DEBTORS DISMISSED: 01/17/2013

RESPONSIVE PLEADING

No Ruling

48. [18-27595](#)-A-13 **IN RE: MARLINE PARIZAL**
[DPC-1](#)

MOTION TO DISMISS CASE
3-31-2022 [\[20\]](#)

MATTHEW GILBERT/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.

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: April 19, 2022

Opposition Filed: April 18, 2022

Cause: 11 U.S.C. § 1307(c)(1), (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)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$4,416.78 with another payment of \$3,664.72 due April 25, 2022.

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

On April 18, 2022, the debtors filed an opposition to the motion to dismiss, ECF No. 24. The opposition consists of a declaration by the debtor(s)' attorney stating his intention to file a modified plan by the date of the hearing on the motion to dismiss. The opposition does not resolve the motion to dismiss as the plan payments are still delinquent on the date of the opposition. A statement indicating that the debtor(s) will take future action to resolve the delinquency is not a resolution of the motion to dismiss.

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

The court is aware that the motion to dismiss was filed March 31, 2022, giving the debtor 33 days to resolve the grounds for dismissal or to file a motion to modify. To such an argument there are two responses. First, the Chapter 13 trustee's motion complies with the applicable provisions of national and local rules. Absent a different time specified by the rules or by court order, Rule 9006(d) allows any motion to be heard on 7 days notice. Local rules

for the Eastern District Bankruptcy Court have enlarged that period for fully noticed motions to 28 days. And the trustee has availed himself of that rule. Second, and moreover, if the debtor believes that additional time to oppose the motion is required, even if by presentation of a modified plan, it is incumbent on the debtor prior to the date opposition to the motion is due to seek leave to file a late opposition, LBR 9014-1(f), or to seek a continuance of the hearing date on the motion to dismiss. Such a motion must include a showing of cause (including due diligence). LBR 9014-1(j). No such orders were sought here.

A statement of intent to modify the plan 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.

Henceforth the court will not consider opposition which fails to provide sworn testimony by the debtor. Additionally, in the absence of an appropriate request to file late opposition the court will dismiss by final ruling cases where the motion to modify is not timely filed.

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.

49. [22-20196](#)-A-13 **IN RE: MARY FALCONER**
[BLG-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S)
4-1-2022 [\[15\]](#)

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

Final Ruling

Application: Allowance of Compensation

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

Disposition: Continued to May 24, 2022, at 9:00 a.m.

Order: Civil minute order

Number of Requests for Compensation: First Interim

Compensation Requested: \$3,057.00.00

Reimbursement of Expenses: \$32.37

COMPENSATION AND EXPENSES

In this chapter 13 case, Chad Johnson, attorney for the debtor(s), has applied for an allowance of interim compensation.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

DEBTOR DECLARATION

The motion is not supported by a declaration of the debtors. The court requires a declaration from the debtors regarding their support of the motion.

The court will continue the matter to allow the debtor to file a declaration indicating support of the payment of additional compensation. Alternatively, the applicant shall file a declaration indicating that the debtors refuse to file a declaration in support of the payment of additional compensation.

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 hearing on this motion is continued to May 24, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than May 17, 2022, the debtors shall file a declaration in support of the motion for additional compensation; or the applicant shall file a declaration stating that the debtor(s) refuse(s) to do so.

50. [22-20496](#)-A-13 **IN RE: LAMBERT DAVIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-7-2022 [[17](#)]

PETER MACALUSO/ATTY. FOR DBT.
4/4/22 INSTALLMENT FEE PAID \$80

Final Ruling

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