



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

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

DAY: TUESDAY
DATE: JULY 25, 2023
CALENDAR: 9:00 A.M. CHAPTER 13 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

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

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

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

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

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

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

ERRORS IN RULINGS

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

1. [23-21502](#)-A-13 **IN RE: FAITH ARCHULETA**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE DAVID P. CUSICK
6-29-2023 [\[24\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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).

ORAL ARGUMENT

The court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$3,400.00 with another payment of \$3,400.00 due July 25, 2023. The plan cannot be confirmed if the plan payments are not current.

Failure to Timely Provide Income Tax Returns

The debtor failed to timely provide the trustee with required income tax returns under 11 U.S.C. § 521(e)(2)(A). The tax returns are essential to the trustee's review of the proposed plan and must be transmitted to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 4002(b)(3).

The failure to provide tax returns makes it impossible for the chapter 13 trustee to accurately assess the debtor's ability to perform the proposed plan. As such, the trustee cannot represent that the plan, in his estimation is feasible, under 11 U.S.C. § 1325(a)(6).

The court notes that the failure to timely provide the tax returns is also a basis for the dismissal of the case as the debtor is required to provide the trustee with a tax return (for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed) no later than 7 days before the date first set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)-(B).

The court need not reach the remaining issues raised in the trustee's objection. The failure to provide the tax returns 7 days prior to the meeting of creditors as required by Fed. R. Bankr. P. 4002(b)(3) is a sufficient basis to sustain the trustee's objection, which cannot be remedied by oral argument.

CIVIL MINUTE ORDER

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

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

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

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

2. [23-21505](#)-A-13 **IN RE: BRIAN FREEMAN**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-26-2023 [\[18\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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).

ORAL ARGUMENT

The court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$355.00 with another payment of \$355.00 due July 25, 2023. The plan cannot be confirmed if the plan payments are not current.

SOCIAL SECURITY DOCUMENTATION

- (b) Individual debtor's duty to provide documentation
- (1) Personal identification

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

- (A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and
- (B) *evidence of social-security number(s), or a written statement that such documentation does not exist.*

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

The debtor(s) failed to provide the required social security information at the meeting of creditors, causing the trustee to continue the meeting of creditors. The court will sustain the trustee's objection.

CIVIL MINUTE ORDER

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

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

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

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

3. [20-23908](#)-A-13 **IN RE: COLE RUMFORD**
[DPC-3](#)

MOTION TO DISMISS CASE
6-16-2023 [\[41\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: June 27, 2023 - 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 payments are delinquent in the amount of \$3,181.80, with another payment of \$3,196.36 due June 25, 2023.

The court has been made aware that debtor's counsel is experiencing significant health problems and has been hospitalized. Accordingly, the court will continue this matter to allow the debtor to file further opposition which is supported by admissible evidence. While counsel filed opposition to the motion it is not accompanied by admissible evidence.

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 August 22, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor may file additional opposition which is supported by evidence no later than August 8, 2023.

IT IS FURTHER ORDERED that the trustee shall file a status report regarding his motion no later than August 14, 2023. 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.

4. [21-22911](#)-A-7 **IN RE: CURTIS KNAPPENBERGER**
[DPC-3](#)

MOTION TO DISMISS CASE
6-16-2023 [\[61\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
CASE CONVERTED: 7/4/23

Final Ruling

This case was converted to Chapter 7 on July 4, 2023. Accordingly, the trustee's motion to dismiss will be removed from the calendar as moot.

5. [23-20616](#)-A-13 **IN RE: LINDA CATRON**
[DPC-2](#)

MOTION TO DISMISS CASE
6-27-2023 [\[56\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(1) - Plan Delinquency; failure to confirm plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$40.00 with a further payment of \$1,500.00 due July 25, 2023.

The trustee also seeks dismissal as the debtor has failed to serve and set for hearing the amended plan filed on May 15, 2023. The

trustee contends the delay in bringing the plan to confirmation is unreasonable delay which is prejudicial to creditors.

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.

6. [21-21817](#)-A-13 **IN RE: CORTRENA LEWIS**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[23\]](#)

KRISTY HERNANDEZ/ATTY. FOR DBT.
DEBTOR NON-OPPOSITION

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$3,898.50 with a further payment of \$447.00 due July 25, 2023.

The court notes that the debtor missed plan payments in an amount equivalent to 8.72 plan payments prior to the filing of the trustee's motion. The trustee filed this motion to dismiss on June 16, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

As a courtesy to the court the debtor filed a statement of non-opposition to the trustee's motion. Notice of Non-Opposition, ECF No. 27.

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.

7. [22-22320](#)-A-13 **IN RE: RUDY/ROBERTA GONZALEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[44\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$7,570.00, with two further plan payments of \$5,520.00 due by July 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtors, ECF Nos. 49, 50. The declaration states that the debtors have tendered a payment in the amount of \$2,850.00 and will pay two additional payments of \$2,850.00 prior to the hearing on this motion. See Declaration, ECF No. 50. The debtors have also requested a 60-day continuance of the motion to bring plan payments fully current.

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

The court will hear from the trustee at the hearing regarding the amount of the delinquency remaining under the plan. The court will consider a conditional order allowing the debtors a brief period to bring the plan payments fully current or to modify the plan. Absent issuing a conditional order or a showing that the plan payments are fully current the court intends to grant the trustee's 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.

8. [22-22620](#)-A-7 **IN RE: KARLA VOLLMER**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[21\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CASE CONVERTED: 6/30/23

Final Ruling

This case was converted to Chapter 7 on June 30, 2023. Accordingly, the trustee's motion to dismiss will be removed from the calendar as moot.

9. [22-21321](#)-A-13 **IN RE: LYNDA LOPEZ**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[22\]](#)

MATTHEW DECAMINADA/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,500.00 with two further payments of \$500.00 due by July 25, 2023.

The court notes that the debtor has not tendered any plan payments to the trustee since December 22, 2022. The trustee filed this motion to dismiss on June 21, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier of*: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

11 U.S.C. § 1307(c)

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under

this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

10. [20-20722](#)-A-13 **IN RE: ANTHONY/KAYLA YAZZIE**
[DPC-5](#)

MOTION TO DISMISS CASE
6-16-2023 [[179](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

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

the plan payments are delinquent in the amount of \$3,500.00, with two further payments of \$3,500.00 due by July 25, 2023.

The debtor has filed a timely opposition which consists of an unsworn statement by the debtors' attorney. The opposition states that the debtors will bring the plan payments current by the date of the hearing on this motion. See Opposition, ECF No. 183.

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 is required to prove the contentions in the opposition and to provide additional relevant information. For example, there is no evidence indicating that the debtors have the ability to bring the plan payments current, and no indication why the plan payments became delinquent.

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 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.

11. [22-21422](#)-A-13 **IN RE: MARTIN/MONIQUE ARCHULETA**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[58\]](#)

MARK BRIDEN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 29, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 10, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtors have failed to make all payments due under the plan. The trustee contends that the payments are delinquent under the confirmed plan in the amount of \$3,500.00, with two additional payments of \$1,750.00 due by July 25, 2023.

Debtors' counsel has filed a request for a continued hearing for exigent health reasons. The court will continue the hearing on this motion to dismiss to allow the debtors to file opposition and/or file a modified plan.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 29, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that no later than August 8, 2023, the debtors shall file and serve opposition to the motion accompanied by admissible evidence, and/or a motion to modify the Chapter 13 plan.

IT IS FURTHER ORDERED that not later than August 15, 2023, the Chapter 13 trustee shall file a status report updating his 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.

12. [22-22423](#)-A-13 **IN RE: MATTIA DALLOSTO**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[45\]](#)

MATTHEW GILBERT/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$2,316.00 with two further payments of \$1,158.00 due by July 25, 2023.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

13. [21-23526](#)-A-7 **IN RE: JANET HAWK AND CALEB HENDRYX**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[59\]](#)

MICHAEL HAYS/ATTY. FOR DBT.
CASE CONVERTED: 6/28/23

Final Ruling

This case was converted to Chapter 7 on June 28, 2023. Accordingly, the trustee's motion to dismiss will be removed from the calendar as moot.

14. [18-21730](#)-A-13 **IN RE: SCOTT/REA MCFADDEN**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[32\]](#)

BRUCE DWIGGINS/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: July 11, 2023

Opposition Filed: Unopposed

Cause: 11 U.S.C. § 1307(c)(6) - Failure to complete plan

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. The trustee reports that the plan is currently in the 63rd month and is not yet completed. The trustee also reports that an unsecured claim filed by the debtor has caused the overextension in the plan such that the plan, which calls for a 100%

payment to unsecured creditors, will require an additional 86 months to complete. Under 11 U.S.C. § 1322(d)(1) the plan term may not exceed 60 months.

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 failure to complete the confirmed plan within 60 months in this case. The court hereby dismisses this case.

15. [18-27132](#)-A-13 **IN RE: STUART KOPPLE**
[DPC-5](#)

MOTION TO DISMISS CASE
6-21-2023 [\[201\]](#)

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$738.06 with two further payments of \$369.03 due by July 25, 2023.

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.

16. [20-20032](#)-A-13 **IN RE: NEIL GARCIA**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[46\]](#)

MARC CARPENTER/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

Motion to Modify Plan Filed: July 11, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$3,480.00, with another payment of \$1,080.00 due June 25, 2023.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 22, 2023, 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 August 22, 2023, 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.

17. [22-20532](#)-A-13 **IN RE: KELLI SIMPSON**
[BLG-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M JOHNSON, DEBTORS ATTORNEY(S)
6-19-2023 [[66](#)]

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Final Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$3,736.23

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Bankruptcy Law Group, PC, has applied for an allowance of final compensation and reimbursement of expenses.

The applicant requests that the court allow compensation in the amount of \$3,736.23. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

The Chapter 13 trustee has filed a non-opposition to the motion and indicated that payments to the plan are sufficient to fund the additional administrative expenses, ECF No. 81.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

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.

Bankruptcy Law Group, PC's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$3,736.23. The amount of \$3,736.23 shall be allowed as an administrative expense to be paid through the plan. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

18. [21-21833](#)-A-13 **IN RE: VANESSA GRIFFITH**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[26\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by moving party

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - 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)(6) as the debtor has failed to make all payments due under the confirmed plan.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 30, 31, 32. The debtor's declaration states that the debtor has brought the plan payment current. See Declaration, ECF No. 32.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On July 14, 2023, 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.

19. [21-23136](#)-A-13 **IN RE: SONYA ALCARAZ**
[CJC-104](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2023 [[109](#)]

PETER MACALUSO/ATTY. FOR DBT.
CALVIN CLEMENTS/ATTY. FOR MV.
LOUDEN LLC VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Louden, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice for the following reasons.

SPECIAL NOTICE CREDITORS

The motion will be denied without prejudice as the moving party has failed to properly provide notice to all parties as required.

The following parties filed a request for special notice: Synchrony Bank. See ECF No. 14.

As indicated in the Certificate of Service, the special notice parties were not served with the motion. See *Certificate of Service*, p. 2, no. 5, ECF No. 115. Moreover, there is no attachment which includes the special notice parties in the matrix. Counsel is reminded that a matrix of creditors requesting special notice is easily compiled using the clerk's feature developed for this purpose. This feature is located on the court's website.

NOTICE

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

Rules 9013 and 9007

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

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

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

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

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

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

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

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

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

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

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

Dismissal of Action for Failure to Comply with Local Rules

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

LBR 1001-1(g) (emphasis added).

Because the moving party has failed to comply with Local Rules regarding service of the motion 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:

Louden LLC's Motion for relief from the automatic stay 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.

20. [22-22936](#)-A-13 **IN RE: COURTNEY WILSON**
[DPC-3](#)

MOTION TO DISMISS CASE
6-27-2023 [[69](#)]

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 8, 2023, at 9:00 a.m.

Order: Civil minute order

Attorney Peter Macaluso is ordered to personally (physically) appear in Department A at the continued hearing on this matter on August 8, 2023, at 9:00 a.m.

Debtor Courtney Wilson is ordered to appear at the continued hearing on this matter on August 8, 2023, at 9:00 a.m. The debtor may appear in person in Department A, by telephone via CourtCall, or via Zoom. Instructions for appearing by CourtCall or Zoom are included

on the first page of these rulings, or may be found on the court's website.

The Chapter 13 trustee moves to dismiss this case contending that unreasonable delay exists under 11 U.S.C. § 1307(c)(1) and warrants dismissal because: 1) plan payments are delinquent; and 2) no amended plan has been filed after the court denied confirmation of the most recently filed plan on May 3, 2023. Motion, ECF No. 69.

The debtor, who is represented by counsel, filed a letter on her own behalf on July 10, 2023. Letter, ECF No. 73. Debtor's counsel filed a response to the motion on July 11, 2023, ECF No. 74.

The court will continue the hearing on this matter to establish: 1) a continued date for opposition to the motion; and 2) a further continued hearing date for argument.

CIVIL MINUTE ORDER

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

IT IS ORDERED that the motion is continued to August 8, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that attorney Peter Macaluso is ordered to personally (physically) appear in Department A at the hearing on this matter on August 8, 2023, at 9:00 a.m.

IT IS FURTHER ORDERED that the debtor, Courtney Wilson shall appear at the hearing on this matter on August 8, 2023, at 9:00 a.m. The debtor may appear in person in Department A, by telephone via CourtCall, or via Zoom. Instructions for appearing by CourtCall or Zoom are included on the first page of these rulings or on the court's website.

IT IS FURTHER ORDERED that no later than August 1, 2023, the Chapter 13 trustee shall file a status report updating his motion. The trustee shall apprise the court whether an amended plan has been filed, and shall indicate any payments made under the plan.

21. [20-22937](#)-A-13 **IN RE: ROBERT LOYA AND JULIE MCLAIN**
[DPC-3](#)

MOTION TO DISMISS CASE
6-16-2023 [\[81\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the moving party

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 10, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

MOTION AND OPPOSITION

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

The debtors filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 85, 86. The declaration states that the debtors will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 86.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On July 13, 2023, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041, ECF No. 88.

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.

22. [20-24137](#)-A-13 **IN RE: DAVID/JENNIFER NEAL**
[DPC-2](#)

MOTION TO DISMISS CASE
6-16-2023 [\[40\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 10, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtors have failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,600.00, with two further payments of \$925.00 due July 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 44, 45. The declaration states that the debtors will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 45.

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

11 U.S.C. § 1307(c)

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

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

IT IS ORDERED that the motion is granted. The 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.

23. [23-20838](#)-A-13 **IN RE: PAUL ROCCO**
[TBG-1](#)

MOTION TO CONFIRM PLAN
6-12-2023 [\[32\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtor seeks confirmation of the Chapter 13 Plan. For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

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

Matrix

Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, *such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading.* The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1(d) (emphasis added).

In this case the matrix attached to the certificate of service is dated May 5, 2023. See Certificate of Service, ECF No. 38. Service of the motion occurred on June 12, 2023. *Id.* The matrix is dated more than 7 days prior to the date of service of the motion and therefore does not comply with LBR 7005-1. 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 debtor's Motion to Confirm Chapter 13 Plan has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

24. [23-20838](#)-A-13 **IN RE: PAUL ROCCO**
[TBG-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE BANKRUPTCY
GROUP, P.C. FOR STEPHAN M. BROWN, DEBTORS ATTORNEY(S)
6-16-2023 [\[46\]](#)

STEPHAN BROWN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Approve Compensation

Disposition: Denied without prejudice

Order: Civil minute order

The Bankruptcy Group, P.C. seeks an order approving compensation.
For the following reasons the motion will be denied without
prejudice.

NO CERTIFICATE OF SERVICE

There is no evidence that any creditor in this case has received notice of the motion or the hearing. Because creditors do not have notice of the hearing, due process has not been satisfied given that creditors 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)). Creditors will be unable to present their objections at a hearing of which they have no notice.

Here, service of the motion was insufficient because a certificate of service evidencing service of the notice and the motion was never filed.

The court will deny the motion without prejudice on grounds of insufficient service of process.

CIVIL MINUTE ORDER

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

The Bankruptcy Group, P.C.'s motion to approve compensation 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.

25. [22-23039](#)-A-13 **IN RE: KAREN GARLINGTON**
[PGM-4](#)

MOTION TO RECONSIDER
7-6-2023 [\[127\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

Motion: Reconsider motion granting relief from automatic stay

Notice: LBR 9014-1(f)(2); written opposition filed by creditor

Disposition: Denied

Order: Civil minute order

The debtor requests that the court reconsider and vacate its order granting relief from the automatic stay (DP-2) under Fed. R. Civ. P. 59(e) and 60(b) *as incorporated by* Fed. R. Bankr. P. 9023, 9024. The order was entered on June 28, 2023. The motion to reconsider and vacate order was filed July 6, 2023. The motion is timely. Fed. R. Civ. P. 59(e), 60(c)(1).

CASE HISTORY

The instant Chapter 13 case was filed on November 22, 2022. A Chapter 13 plan has never been confirmed. Creditor, John W. Cosby, as co-trustee of the Cosby Family Trust dated May 9, 2013, as amended and restated, and as attorney-in-fact of Grace L. Cosby (Creditor), sought an order for relief from the automatic stay of 11 U.S.C. § 362(a), (DB-2). The motion was filed May 3, 2023, with the hearing initially set for May 31, 2023. The hearing on the motion was continued to June 27, 2023, at 9:00 a.m. to coincide with the hearing on confirmation of the debtor's Chapter 13 plan.

The creditor holds a deed of trust against property located at 6081 Sly Park Rd., Placerville, California, (property) as evidenced by Claim No. 10. Payments to the creditor were proposed through the Chapter 13 plan in Class 1.

The deed of trust securing the creditor's rights in the subject property provides that the debtor is obligated "[t]o provide, maintain and deliver to Beneficiary fire insurance satisfactory to *and with loss payable to Beneficiary.*" Claim No. 10, Deed of Trust, page 2, Item 2 (emphasis added).

The creditor argued that relief from stay was warranted under 11 U.S.C. § 362(d)(1) for cause because: 1) the debtor has failed to confirm a plan; and 2) the creditor's interest in the real property was not adequately protected as the debtor has failed to provide proof of contractually required fire insurance.

On May 16, 2023, the debtor filed opposition to the motion for relief from stay, and provided a declarations page from AAA Insurance which evidences that an insurance policy had been issued covering the period of April 24, 2023, through April 24, 2024.

Exhibit A, ECF No. 83. The declarations page lists the Cosby Family Trust (Creditor) as an "Additional Interest".

The motion to confirm plan was denied on June 27, 2023. An order denying the motion to confirm was entered June 29, 2023, ECF No. 124.

At the hearing on the motion for relief from stay on June 27, 2023, the parties presented oral argument. During oral argument the court stated its position that listing the creditor in the insurance policy as an "Additional Interest" did not comply with the contractual requirement as indicated in the deed of trust. The deed of trust required the creditor to be listed "with loss payable to Beneficiary". "Loss payable" was not indicated on the declarations page submitted as Exhibit A, ECF No. 83.

At the hearing on the motion, the court initially ruled that it would allow the debtor though close of business on Friday June 30, 2023, to comply with the insurance requirements of the deed of trust, and that if the debtor failed to do so that the automatic stay would be lifted.

Having reflected on the matter further, the court believed its initial ruling was in error, and that cause existed to grant the motion. The court adopted its prehearing disposition as the ruling on the motion and the motion was granted. Order, ECF No. 123.

While not required to do so under LBR 9014-1(f)(2) the creditor has filed opposition to this motion, ECF NO. 139.

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Rule 59(e)

Federal Rule of Civil Procedure 59(e) permits motions to alter or amend a judgment. Fed. R. Civ. P. 59(e), *incorporated by* Fed. R. Bankr. P. 9023. "Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Id.* at 1255 n.1 (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2810.1 (2d. ed. 1995)).

"A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (emphasis omitted) (internal quotation marks omitted). A clear or manifest error of law or fact "is the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). "A 'manifest error' is not demonstrated by the disappointment of the losing party." *Id.*

More recently, the Ninth Circuit has established "four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc) (per curiam)).

Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) held that such a "motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Stated differently, "[a] district court does not abuse its discretion when it disregards legal arguments made for the first time on a motion to amend, and a party that fails to introduce facts in a motion or opposition cannot introduce them later in a motion to amend by claiming that they constitute 'newly discovered evidence' unless they were previously unavailable." *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001) (citation omitted); accord *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) ("The overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not turn the late filed documents into 'newly discovered evidence.'").

Discussion

A. Evidence Before the Court Supported Finding of Cause

The debtor argues that the court had not considered the opposition previously filed by the debtor. The opposition consisted of the following: 1) Opposition, ECF No. 82; and 2) Exhibits, ECF No. 83. The exhibits were: Exhibit A) Policy Declaration from AAA Insurance; and Exhibit B) a receipt of payment for the insurance policy. No declaration by the debtor or any other individual was offered as evidence in support of the debtor's opposition to the motion.

Exhibit A, the policy declarations page, shows the creditor was listed as an "Additional Interest", ECF No. 83. The policy declarations page was a subject of the oral argument by the parties on June 27, 2023.

In response to the debtor's opposition and exhibits the creditor filed a reply which argued that the listing of the creditor as an additional interest did not satisfy the requirement that the creditor be listed as a loss payee. Reply, ECF No. 100. In support of the reply the creditor also filed the Declaration of Brian Aton, ECF No. 101.

It was the debtor's burden to prove that the insurance policy properly complied with the requirement found in the deed of trust. Based upon the evidence before it the court found that the insurance policy did not satisfy the requirement contained in the deed of trust, and cause existed to grant the motion.

B. Evidence Filed in Support of Motion to Reconsider

The debtor argues that the facts at the time of the hearing were not as presented, and therefore the court must vacate the order granting relief from stay. The debtor contends that the insurance policy in place at the time of the prior hearing complied with the deed of trust.

In support of this premise the debtor submitted, for the first time, the declaration of April Asako Nakatani, ECF No. 131. The declaration states in part:

That I called AAA Insurance on May 8, 2023 (sic) and spoke with an Agent regarding the format of the HomeOwners Policy Declaration and I was informed that Cosby Family Trust was listed correctly as loss payee as "other interested". I was also infomred (sic) that their Declaration pages (sic) does not specifically state "loss payee" (sic)

Declaration of April Asako Nakatani, 1:23-27, 2:1, ECF No. 131.

Ms. Nakatani's declaration appears to be offered as evidence that the insurance policy as *initially* presented in the declarations page complied with the requirements of the deed of trust. For the following reasons the court disagrees with this premise.

Submitted with the declaration of April Asako Nakatani is a document titled Evidence of Property Insurance which the debtor obtained on June 27, 2023. See Exhibit G, ECF No. 132. The Evidence of Property Insurance lists the creditor not only as an "Additional Interest" but also as a "Mortgagee/Lender". *Id.* Moreover, the document provides a reference in the "Remarks" section as follows: "Lenders Loss Payable". *Id.* Each of these indications were missing from the initial declarations page. The court notes that there is no declaration from a representative of AAA which accompanies the exhibits and explains the meanings of these changes, or which explains the how the previous declarations page complied with the requirements in the deed of trust.

Thus, the debtor's argument that the policy issued had always complied with the requirements as stated in the deed of trust is

inconsistent with the changes shown in the Evidence of Property Insurance filed by the debtor.

C. Evidence Not Presented at Prior Hearing

Neither the document titled Evidence of Property Insurance nor the Declaration of April Asako Nakatani were before the court on the date of the hearing.

The debtor has failed to explain why the declaration of April Asako Nakatani was not filed in support of the debtor's opposition to the motion for stay relief. Ms. Nakatani states that she obtained the information from the insurance company relating to the sufficiency of the policy as issued on May 8, 2023. Thus, the evidence was readily available when the debtor filed her opposition to the motion on May 16, 2023. Yet the debtor failed to include this information in her defense of the motion.

The debtor has also submitted copies of emails between the creditor's attorney and debtor's counsel. See Exhibit C, ECF No. 132. On April 25, 2023, and prior to filing the motion for stay relief, the creditor's attorney indicated his concerns to debtor's counsel about the sufficiency of the provisions contained in the initial declarations page. Creditor's concerns about whether it appropriately listed as a "loss payee" on the insurance policy was made known to debtor's counsel more than *two months* prior to the date the motion was heard on June 27, 2023.

As the creditor argues in its opposition to this motion the debtor had ample opportunity to raise the evidentiary issues prior to June 27, 2023, but failed to do so. No admissible evidence regarding the sufficiency of the initial declarations page was ever submitted by the debtor.

The court disagrees with the assertion that a clear or manifest error was committed in its finding, based on the evidence presented. For the reasons discussed, the court does not find that a manifest error was made. The court did not misapply the law in concluding that a relief from the automatic stay was warranted for cause based on the facts presented. The motion under Rule 59(e) is denied.

Rule 60(b)

Fed. R. Civ. P. 60(b), *incorporated* by Fed. R. Bankr. P. 9024, authorizes this court to grant relief after considering "all relevant circumstances surrounding the party's omission" including "[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith," *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 US 380, 395 (1993).

The court acknowledges that there is danger of prejudice to the debtor as the creditor has set a foreclosure sale date on August 16, 2023. See Exhibit A, ECF No. 140. However, the debtor has failed

to provide any reasons for her failure to provide evidence regarding the sufficiency of the insurance policy in place at the time of the prior hearing.

Reason for Delay

The court must determine whether the neglect in this case was "excusable".

In *Pioneer*, the Supreme Court held that the determination of whether a party's neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." 507 U.S. at 395, 113 S.Ct. at 1498. Briones' conduct appears to have been at least negligent, so the issue is whether his neglect was excusable.

Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997).

The debtor argues that relief under Rule 60(b) is appropriate based upon mistake, inadvertence, surprise, or excusable neglect. See Points and Authorities, ECF No. 129.

The debtor states "[h]ere, the Court was not presented with the fact (sic) of the matter, that proper insurance was in place." The debtor's argument is not clearly stated. However, the court presumes that the debtor refers to her failure to present evidence regarding the sufficiency of the insurance policy in place at the hearing on the motion for stay relief.

The debtor has failed to state why she did not submit evidence regarding the sufficiency of the insurance policy which was in place at the time of the prior hearing. As the court has discussed above in this ruling the debtor submitted no admissible evidence proving the insurance policy complied with the deed of trust. The debtor had ample time to provide this information to the court but failed to do so.

Sufficient detail is not included which would assist the court in determining whether the failure to file the declaration of the April Asako Nakatani as opposition to the motion for stay relief constitutes "excusable neglect".

The court will deny the motion under Rule 60(b).

CIVIL MINUTE ORDER

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

The debtor's motion to vacate its order granting relief from the automatic stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.

26. [23-20543](#)-A-13 **IN RE: KADEN KOFFLER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-28-2023 [\[53\]](#)

PETER MACALUSO/ATTY. FOR DBT.
DEBTOR DISMISSED: 6/29/23

Final Ruling

This case was dismissed on June 29, 2023. Accordingly, this Order to Show Cause is removed from the calendar as moot. No appearances are required.

27. [22-20845](#)-A-13 **IN RE: JINA HALE**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[24\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 7, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) and (6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$2,983.83, with two further payments of \$2,844.91 due by July 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 28, 29. The debtor's declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 29.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

28. [23-21645](#)-A-13 **IN RE: RICHARD/ANGELA PARRISH**

AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-27-2023 [\[30\]](#)

PETER MACALUSO/ATTY. FOR DBT.

Tentative Ruling

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

29. [23-21645](#)-A-13 **IN RE: RICHARD/ANGELA PARRISH**
[PGM-2](#)

MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC
6-26-2023 [\[25\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

This matter has been resolved by stipulation of the parties. Accordingly, it will be removed from the calendar. No appearances are required.

30. [22-21346](#)-A-13 **IN RE: ALLAN WEST**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[40\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

Modified Plan Due: July 11, 2023

Modified Plan Filed: July 18, 2023 - untimely as opposition

Cause: 11 U.S.C. § 1307(c)(1) - Unreasonable Delay - Failure to
Modify Plan

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to file a modified plan after the court denied the debtor's previous motion to modify, 7 months ago, on December 6, 2022. A modified plan is necessary as the currently confirmed plan provides for payment to an incorrect mortgage lender, and fails to provide payment to the correct lender.

After the previous motion was denied, the debtor failed to file another motion to modify. "The Trustee has been asked to hold disbursements and has a balance on hand of \$18,880.52, of which over \$13,009.67 is held for the mortgage." Motion, 2:1-2, ECF No. 40. It is unclear to the court who asked the trustee to hold disbursements.

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

The debtor has filed a timely written opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 44, 45, 46. The debtor's declaration states that the debtor will file a modified plan and a motion to modify the plan before the hearing on this motion. Declaration, ECF No. 45. The court notes that the opposition does not indicate why the debtor has failed to file a modified plan during the 7-month period since the court denied the previous motion. Moreover, the motion does not indicate why the debtor did not timely file the modified plan as opposition to this motion as required.

A modified plan was filed on July 18, 2023, and set for hearing on August 22, 2023, at 9:00 a.m. The modified plan is offered as opposition to the motion to dismiss. Opposition to a motion noticed under LBR 9014-1(f)(1) is due 14 days prior to the hearing. LBR 9014-1(f)(1)(B). Since this opposition--albeit of the de facto variety--is late, it will not be considered in ruling on the motion to dismiss.

The court is aware that the motion to dismiss was filed June 16, 2023, giving the debtor 39 days 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 modify the Chapter 13 plan to correct errors which were identified

by the trustee more than 7 months ago. The failure to modify the plan constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). The court hereby dismisses this case.

31. [23-21546](#)-A-13 **IN RE: JAMES/KELLY STARLING**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-26-2023 [\[18\]](#)

MARY ANDERSON/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

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

The Chapter 13 trustee objects to confirmation contending that: 1) the debtors are not paying all available income into the plan; 2) because of technical difficulties the trustee was unable to sufficiently examine the debtors at the meeting of creditors; and 3) that required pay advices were not provided to the trustee.

Because the trustee was unable to complete his examination of the debtors, he has continued the meeting of creditors. The court will continue the hearing on the trustee's objection to allow the trustee to complete his examination of the debtors and to allow the debtors to either: 1) file opposition to the trustee's objection; or 2) file and serve a statement of non-opposition to the objection. Should the debtors fail to file either opposition or a statement of non-opposition the court may rule on this matter without further notice or 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 hearing on the trustee's objection is continued to August 22, 2023, at 9:00 a.m. No later than August 8, 2023, the debtors shall file and serve opposition to the trustee's

motion. Alternatively, the debtors shall file and serve a statement of non-opposition to the trustee's objection not later than August 8, 2023.

IT IS FURTHER ORDERED that if the debtors file and serve opposition to the trustee's objection then the trustee may file and serve a reply, if any, no later than August 15, 2023.

32. [20-23749](#)-A-13 **IN RE: SCOTT DAVIS AND TRACY TANNER**
[DPC-3](#)

MOTION TO DISMISS CASE
6-16-2023 [\[94\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
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: July 11, 2023

Opposition Filed: July 8, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$7,396.00, with two payments of \$3,696.00 due by July 25, 2023.

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 98, 99, 100. The declaration states that the debtors have submitted payments via TFS sufficient to cure the plan delinquency. See Declaration, ECF No. 99. The debtors have submitted exhibits evidencing the tender of payments via TFS.

Absent the trustee's contention that that payments remain delinquent, it appears the debtors have made the plan payments, the court will deny the motion.

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

July 20, 2023, the Chapter 13 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.

33. [23-21949](#)-A-13 **IN RE: ALLISON JOHNSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-28-2023 [\[14\]](#)

REUBEN NOCOS/ATTY. FOR DBT.

Final Ruling

This case was dismissed on July 13, 2023. Accordingly, this Order to Show Cause is removed from the calendar as moot. No appearances are required.

34. [22-21450](#)-A-7 **IN RE: MELISSA WILDER**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[21\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
CASE CONVERTED: 6/30/23

Final Ruling

This case was converted to Chapter 7 on June 30, 2023. Accordingly, the trustee's motion to dismiss will be removed from the calendar as moot. No appearances are required.

35. [19-26951](#)-A-13 **IN RE: FRANK/SYLIVIA FERNANDEZ**
[DPC-2](#)

MOTION TO DISMISS CASE
6-16-2023 [\[60\]](#)

MARK WOLFF/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

Motion to Modify Plan Filed: July 6, 2023 - timely

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the debtor is delinquent in the amount of \$4,359.00, with two further payments of \$2,875.00 due by July 25, 2023.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 22, 2023, 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 August 22, 2023, 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. [20-20251](#)-A-13 **IN RE: MATTHEW/ROSE MARGOLIS**
[CYB-4](#)

MOTION TO SELL
6-20-2023 [\[71\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

37. [20-20251](#)-A-13 **IN RE: MATTHEW/ROSE MARGOLIS**
[CYB-5](#)

MOTION TO EMPLOY PATTI SMITH REAL ESTATE AS REALTOR(S)
6-27-2023 [\[76\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

No Ruling

38. [21-24252](#)-A-13 **IN RE: MARY MURPHY**
[DPC-2](#)

MOTION TO DISMISS CASE
7-5-2023 [\[30\]](#)

DAVID RITZINGER/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted - Case Converted to Chapter 7

Order: Civil minute order

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

Best Interests of Creditors/Estate: Convert to Chapter 7

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For

the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$18,134.92 with a further payment of \$3,955.67 due July 25, 2023.

The court notes that the debtor has not tendered any plan payments to the trustee since January 27, 2023. The trustee filed this motion to dismiss on July 5, 2023. Prior to the filing of this motion the plan was in default 4.58 months. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the earlier of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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).

According to the Trustee's records, there is \$146,648.076 in non-exempt equity in the assets listed on Schedules A & B. Because the plan proposes to pay unsecured claims 100% the Trustee believes that conversion to a Chapter 7 is not in the best interest of creditors or the estate.

Motion, 2:7-10, ECF No. 30.

The court does not understand the trustee's argument supporting dismissal. It appears that the debtor has a significant amount of equity in non-exempt assets which could be liquidated for the benefit of creditors. Absent any opposition by the debtor at the hearing the court will convert the case to Chapter 7.

The court finds that conversion is in the best interests of the creditors and the estate and will issue an order accordingly.

Should the debtor appear and oppose the motion at the hearing the court will continue the matter for briefing.

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 finds that conversion is in the best interest of the creditors and the estate and hereby converts this case to Chapter 7.

39. [22-22253](#)-A-13 **IN RE: STEVEN CHOE**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[23\]](#)

LARS FULLER/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$17,550.00 with two further payments of \$3,510.00 due by July 25, 2023.

The court notes that the debtor has not tendered any plan payments to the trustee since December 28, 2022. The trustee filed this

motion to dismiss on June 21, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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.

40. [22-23053](#)-A-13 **IN RE: VERNICE/LINDA MOORE**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[32\]](#)

MICHAEL REID/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: July 11, 2023

Opposition Filed: July 18, 2023 - Untimely

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$385.00 with two further payments of \$385.00 due by July 25, 2023.

UNTIMELY DEBTOR RESPONSE

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).

On July 18, 2023, the debtors filed a response to the trustee's motion. The response is accompanied by a declaration of the debtors. ECF Nos. 36, 37.

The response is untimely. As such the court will not consider the opposition and gives it no weight. Moreover, the response fails to acknowledge the tardiness of the opposition to the motion, provide any reason for the late filing, or request additional time to file a late response. Fed. R. Bankr. P. 9006(b), LBR 9014-1.

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. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[JLS-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2023 [\[41\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
JOSHUA SCHEER/ATTY. FOR MV.
AJAX MORTGAGE LOAN TRUST 2020-A, MORTGAGE-BACKED SECURITIES,
SERIES 2020-A VS.
RESPONSIVE PLEADING

No Ruling

42. [23-20956](#)-A-13 **IN RE: JUANETHEL ALEXANDER**
[MET-3](#)

MOTION TO CONFIRM PLAN
6-2-2023 [\[56\]](#)

MARY TERRANELLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

43. [21-23557](#)-A-13 **IN RE: PERRY MAYER**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[42\]](#)

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$6,025.00 with two further payments of \$1,500.00 due by July 25, 2023.

The court notes that the plan payment was in default in an amount equivalent to 4 payments when the trustee filed the motion to dismiss. The trustee filed this motion to dismiss on June 16, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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.

44. [23-21857](#)-A-13 **IN RE: TAMMARA WILLIAMS**
[TRM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-14-2023 [\[12\]](#)

TREVOR MIRKES/ATTY. FOR MV.
LOGAN PARK APARTMENTS, LP VS.
DEBTOR DISMISSED: 7/6/23

Final Ruling

Motion: Stay Relief

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

Disposition: Denied without prejudice

Order: Civil minute order

Logan Park Apartments, LP, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). For the following reasons the motion will be denied without prejudice.

SERVICE AND NOTICE

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

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or

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

LBR 1001-1(g) (emphasis added).

The movant failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 16. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

Logan Park Apartments, LP's motion for relief from the automatic stay 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.

45. [20-20658](#)-A-13 **IN RE: BERNARDO/RACHAEL HUBBARD**
[DPC-5](#)

MOTION TO DISMISS CASE
6-16-2023 [\[87\]](#)

THOMAS AMBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Denied without prejudice

Order: Civil minute order

The Chapter 13 trustee moves to dismiss the case under 11 U.S.C. § 1307(c). See Motion to Dismiss, 1:22-23, ECF No. 87. For the following reasons the court will deny the motion without prejudice.

MOTION FAILS TO SUFFICIENTLY CITE BASIS FOR RELIEF

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

. . .

Fed. R. Bankr. P. 9013.

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

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

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

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

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

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c).

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

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

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

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

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

IT IS ORDERED that the motion is denied without prejudice.

46. [23-20758](#)-A-13 **IN RE: WILLIAM/MARANDA KEENE**
[PLG-1](#)

MOTION TO CONFIRM PLAN
5-26-2023 [\[21\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

The motion requests confirmation of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1323, 1325; Fed. R. Bankr. P. 2002(b);

LBR 3015-1(d)(1)-(2). The Chapter 13 trustee opposes the motion, objecting to confirmation.

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

LIQUIDATION

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

. . . .

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

. . . .

11 U.S.C. § 1325(a)(4).

The Chapter 13 trustee opposes the motion contending that the proposed 36-month plan fails the liquidation calculation. The plan calls for 1% payment to unsecured creditors. The unsecured claims are estimated at \$246,199.94 and priority claims are estimated at \$27,172.45. The trustee estimates that non-exempt equity in estate assets is \$32,316.00. The trustee calculates that the plan fails the liquidation test of 11 U.S.C. §1325(a)(4) by \$2,681.55. The trustee proposes that the plan length be extended from 36 months to 40 months to resolve the liquidation issue.

The court will continue the hearing on the motion to confirm plan to allow the parties to discuss the trustee's proposed resolution, and to file a joint status report.

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 motion is continued to August 22, 2023, at 9:00 a.m. No later than August 8, 2023, the debtors and the trustee shall file a joint status report which appraises the court of any stipulation achieved regarding the trustee's opposition.

IT IS FURTHER ORDERED that should the parties fail to resolve the trustee's opposition then the debtors may file and serve a reply no later than August 15, 2023. Should the debtors fail to file and

serve a reply then the court may resolve the motion without further notice or hearing.

47. [22-21659](#)-A-13 **IN RE: ROBIN LECA-HENDERSON**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[25\]](#)

PETER MACALUSO/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$330.00 with two further payments of \$165.00 due by July 25, 2023.

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.

48. [23-20059](#)-A-13 **IN RE: WILLIS MARSH**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[38\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 15, 2023 - not timely

Motion to Modify Plan Filed: July 15, 2023 - not 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 \$2,508.00, with two payments of \$1,254.00 due by July 25, 2023.

A modified plan has been filed and set for hearing in this case. The scheduled hearing on the modification is August 22, 2023, 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.

The court notes that both the opposition to the motion and the modified plan were not timely filed. Given the circumstances, and only in this instance, the court will allow the opposition and the motion to modify to proceed. In the future counsel shall make an appropriate request to file late opposition. Fed. R. Bankr. P. 9006(b), LBR 9014-1.

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.

IT IS ORDERED that the chapter 13 trustee's motion to dismiss is continued to August 22, 2023, 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.

49. [22-22860](#)-A-13 **IN RE: CHRISTOPHER SORENSON**
[MWB-2](#)

MOTION TO CONFIRM PLAN
6-8-2023 [\[39\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: Second Amended Chapter 13 Plan, filed June 8, 2023

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before

the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks confirmation of the Second Amended Chapter 13 Plan, ECF No. 43. The plan is supported by Schedules I and J filed, June 8, 2023, ECF No. 42. The Chapter 13 trustee has filed a non-opposition to the motion, 45.

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.

50. [22-21661](#)-A-13 **IN RE: ROBIN LJUBI**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[29\]](#)

ERIC SCHWAB/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$9,455.01 with two further payments of \$2,375.00 due by July 25, 2023.

The court notes that plan payments were 3.95 months in arrears when the trustee's motion was filed. The trustee filed this motion to dismiss on June 21, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

STATUS REPORT

As a courtesy to the court, debtor's counsel filed a Status Report, on July 12, 2023, ECF No. 33. The report details counsel's efforts to contact the debtor to prepare opposition to the motion. The debtor did not respond to counsel's queries and no opposition to the motion has been 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.

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.

51. [21-20663](#)-A-13 **IN RE: MICHAEL GUINN**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[23\]](#)

GABRIEL LIBERMAN/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$7,452.86 with two further payments of \$1,889.07 due by July 25, 2023.

The court notes that plan payments were 3.98 months in arrears when the trustee's motion was filed. The trustee filed this motion to dismiss on June 16, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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.

52. [23-21564](#)-A-13 **IN RE: TAMARA NELSON**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
6-29-2023 [\[16\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained and confirmation denied

Order: Civil minute order

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).

ORAL ARGUMENT

The court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$2,110.00. The plan cannot be confirmed if the plan payments are not current.

MEETING OF CREDITORS

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

11 U.S.C. § 343.

All debtors are required to attend the meeting of creditors. The debtor did not attend the scheduled meeting. Thus, the trustee was unable to examine the debtor regarding the issues raised in this motion. Because the debtor failed to attend the meeting of creditors the trustee was required to continue the hearing. The court will sustain the objection

CIVIL MINUTE ORDER

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

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

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

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

53. [22-21365](#)-A-13 **IN RE: RAFAEL/VIANA LARA**
[KMB-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-15-2023 [\[260\]](#)

KIM BEATON/ATTY. FOR DBT.
KELLI BROWN/ATTY. FOR MV.
BOSCO CREDIT, LLC VS.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 895 Wiegand Ct., Dixon, California

Petition Filed: May 31, 2022

Delinquency: Post-Petition - \$7,769.88/12 payments

Bosco Credit, LLC, (creditor) seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The debtors oppose the motion. The opposition is not supported by any evidence although the opposition references exhibits. There are no exhibits filed by the debtors in support of their opposition. There is no declaration

by the debtors or any other party attesting to the facts alleged in the debtors' opposition to this motion.

FACTS

The creditor holds a note secured by a deed of trust against the subject property. The creditor has filed a claim against which no current objection is pending. Claim No. 10. Creditor contends that payments have not been paid on the note since July 20, 2009.

The Chapter 13 trustee has filed a response to this motion and states that there is currently no plan pending. The most recently filed amended plan was filed on May 16, 2023, ECF No. 234. The court denied the debtors' motion to confirm that plan on June 29, 2023. The previously filed plan, the debtors' fifth amended Chapter 13 plan, made no provision for the payment of the creditor's note. *Id.*

Debtor Opposition

The debtors contend that the creditor's loan was stripped in a prior bankruptcy proceeding in 2013.

In 2013 the debtors filed a Chapter 13 bankruptcy case in this district. *In re Rafael Lara and Viana Maria Lara*, 2013-20477-E-13, E.D Cal. (2013). The 2013 case was filed on January 15, 2013, and dismissed on July 16, 2013. During the pendency of the 2013 case the debtors sought and obtained an order valuing the collateral of the creditor. See *Id.*, Order Valuing Collateral, ECF No. 78. The debtors were represented by counsel during this case. The case was dismissed on the motion of the Chapter 13 Trustee for unreasonable delay prejudicial to creditors as the debtors failed to file an amended plan following a hearing on confirmation which denied confirmation of a previous plan. See *Id.*, Motion to Dismiss, ECF No. 47, Order, ECF No. 80.

Because the debtors did not obtain a discharge in the 2013 Chapter 13 case the creditor's lien remains on the subject property until the debt is paid off as determined under nonbankruptcy law. 11 U.S.C. § 1325(a) (5) (B) (i).

The debtors' opposition also states:

The LARAS are alleging that BOSCO/FRANKLIN are fraudulently attempting to enforce a wrongful foreclosure - in typical 2008 mortgage fraud fashion.

The LARAS allege the debt is uncollectable as a result of BOSCO/FRANKLIN'S own failure to make any attempt to collect upon the alleged debt for well over four 4 years.

Opposition, 3:6-8, 3:13-15, ECF No. 265.

The debtors have failed to provide any admissible evidence in opposition to the motion. Moreover, the debtors cite no

authority regarding the extinguishment of the deed of trust held by the creditor based upon the collectability of the note.

STAY RELIEF

The debtors are obligated to make loan payments to the moving party pursuant to a promissory note secured by a deed of trust on the real property described above. The debtor has defaulted on the loan as – both prepetition and postpetition payments are past due. Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). Cause exists to grant relief under § 362(d)(1).

Alternatively, because the plan which has not been confirmed does not provide for the moving party's claim, the court concludes that such property is not necessary to the debtor's financial reorganization. Therefore, relief from the automatic stay under § 362(d)(2) is warranted as well.

The debtors have failed: 1) to confirm a plan 13 months after filing this case; 2) to bring a successful objection to the claim of the creditor; or 3) to successfully value the collateral of the creditor in this bankruptcy proceeding. There is currently no plan pending before this court, and the previously filed plan made no provision for creditor's claim. The debtors have tendered no payment to the creditor since the filing of the petition and are post-petition delinquent.

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

CIVIL MINUTE ORDER

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

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

Bosco Credit, LLC's motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion, the opposition, and oral argument, if any,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 895 Wiegand Ct., Dixon, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

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

54. [23-20865](#)-A-13 **IN RE: CHARLES LEONARD**
[DPC-2](#)

MOTION TO DISMISS CASE
7-7-2023 [\[57\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1) to dismiss the case. Payments under the plan are delinquent in the amount of \$8,990.40 with a further payment of \$4,496.80 due July 25, 2023.

The trustee further requests dismissal as the debtor has failed to file an amended plan after the court denied confirmation of the most recently filed plan on June 14, 2023.

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.

55. [23-20865](#)-A-13 **IN RE: CHARLES LEONARD**
[RPH-3](#)

OBJECTION TO CLAIM OF WILMINGTON SAVINGS FUND SOCIETY, FSB,
CLAIM NUMBER 1
6-12-2023 [\[45\]](#)

ROBERT HUCKABY/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Objection: Objection to Claim of Wilmington Savings Fund Society

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

Disposition: Overruled without prejudice

Order: Civil minute order

The debtor objects to the claim of Wilmington Savings Fund Society, FSB. The objection will be overruled without prejudice for the following reasons.

INSUFFICIENT NOTICE

(b) Amount of Notice.

- 1) Objections Set on 44 Days' Notice. Unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2), the objecting party shall file and serve the objection at least forty-four (44) days prior to the hearing date.

LBR 3007-1(b)(1).

The notice of motion, ECF No. 46, provides that opposition, if any, 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. This is the notice required under LBR 3007-1(b)(1). LBR 3007-1(b)(1) also requires 44 days' notice of any objection requiring written opposition.

The movant has only provided 43 days' notice of the objection. See Certificate of Service, ECF No. 48. The objection will be overruled without prejudice.

CIVIL MINUTES ORDER

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

The debtor's Objection to the Claim of Wilmington Savings Fund Society, FSB has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the objection is overruled without prejudice.

56. [23-21765](#)-A-13 **IN RE: RAUL/SONIA GUTIERREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-5-2023 [[16](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
7/6/2023 FINAL INSTALLMENT FEE PAID \$313

Final Ruling

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

57. [22-22866](#)-A-13 **IN RE: ANDREA/LELAND SMITH**
[BLG-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S)
6-19-2023 [\[72\]](#)

CHAD JOHNSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation: \$15,320.00

Reimbursement of Expenses: \$191.50

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this business Chapter 13 case, Bankruptcy Law Group, PC, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$15,320.00 and reimbursement of expenses in the amount of \$191.50.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

Given the complexity of this case the court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

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.

Bankruptcy Law Group, PC's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$15,320.00 and reimbursement of expenses in the amount of \$191.50. The aggregate allowed amount equals \$15,511.50. As of the date of the application, the applicant held a retainer in the amount of \$542.00. The amount of \$14,069.50 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

58. [23-21169](#)-A-13 **IN RE: HOLLY PLICHTA**
[TLA-1](#)

MOTION TO CONFIRM PLAN
6-5-2023 [\[20\]](#)

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

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Granted

Order: Prepared by the movant, approved by the trustee

Subject: First Amended Chapter 13 Plan, filed June 5, 2023

DEFAULT OF RESPONDENT

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

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtor seeks confirmation of the First Amended Chapter 13 Plan, ECF No. 24. The plan is supported by Schedules I and J filed, at the inception of the case. The Chapter 13 trustee has filed a non-opposition to the motion, 27.

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.

59. [20-23870](#)-A-13 **IN RE: DARRELL/ELIZABETH KEITH**
[DPC-3](#)

MOTION TO DISMISS CASE
6-16-2023 [\[49\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

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: July 11, 2023

Opposition Filed: July 11, 2023 - timely

Modified Plan Due: July 11, 2023

Modified Plan Filed: Not filed - untimely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$6,980.00, with two payments of \$1,910.00 due by July 25, 2023.

UNTIMELY OPPOSITION - MOTION TO MODIFY

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

The debtors have filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 53, 54. The debtor's declaration states that the debtor will file a modified plan prior to the date of the hearing on this motion. See Declaration, ECF No. 54.

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

The court is aware that the motion to dismiss was filed June 16, 2023, giving the debtors 39 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 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)(6). The court hereby dismisses this case.

60. [19-27775](#)-A-13 **IN RE: RANKIN LYMAN**
[TEC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-20-2023 [\[86\]](#)

PETER MACALUSO/ATTY. FOR DBT.
TIMOTHY CARY/ATTY. FOR MV.
CALIFORNIA AUTOMOBILE INSURANCE COMPANY VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

California Automobile Insurance Company seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). For the following reasons the motion will be denied without prejudice.

SERVICE

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable

notice and opportunity for hearing shall be afforded the party against whom relief is sought.” Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. The debtor was not served with the moving papers. See Certificate of Service, p. 2, Section 5, ECF No. 92. Moreover, the debtor is not listed on the attachments to the certificate which list the parties served. *Id.*

CIVIL MINUTE ORDER

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

California Automobile Insurance Company’s motion for relief from the automatic stay 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.

61. [21-22675](#)-A-13 **IN RE: DEDAN KIMANI**
[DPC-2](#)

MOTION TO DISMISS CASE
6-16-2023 [\[52\]](#)

STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Dismiss Case

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

Disposition: Withdrawn by the moving party

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 5, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

MOTION AND OPPOSITION

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

The debtor filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 56, 57, 58. The declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion.

TRUSTEE REPLY – Fed. R. Civ. P. 41

On July 13, 2023, the trustee filed a timely request to dismiss his motion under Fed. R. Civ. P. 41; Fed. R. Bankr. P. 9014, 7041, ECF No. 61.

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.

62. [18-27876](#)-A-13 **IN RE: WILLIAM/TONJA JARRELL**
[MMM-1](#)

MOTION TO MODIFY PLAN
6-2-2023 [\[35\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Modify Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

PLAN CONTAINS CONFLICTING TERMS - IS NOT MATHEMATICALLY FEASIBLE

Nonstandard provisions. Any nonstandard provision is in section 7 below. If there are nonstandard provisions this box must be checked. *A nonstandard provision will be given no effect unless this section indicates one is included in section 7 and it appears in section 7.*

Chapter 13 Plan, Section 1.02, ECF No. 38.

Section 7.01 This section modifies the following:
Section 3.14: Notwithstanding any other provision in the plan, general non-priority unsecured creditors "FEDERAL LOAN SERVICING" shall not receive dividends through this plan. These claims are long-term unsecured non-dischargeable educational obligations being paid directly by the Debtor outside of the plan. As of the date of filing, Debtor is current on its payments for the student loans. Debtor's failure to maintain payments as required by the terms of the underlying contract(s) shall be a breach of this plan.

Id., Section 7.01.

The box at Section 1.02 was not checked. As such the provisions of Section 7.01 of the proposed plan are given no effect. The claim filed by the student loan creditor referenced in Section 7.01 total \$257,961.19, Claim No. 23. The debtors' plan proposes a 75% dividend to unsecured creditor. Chapter 13 Plan, Section 3.14, ECF no. 38. The trustee reports that with the additional unsecured debt of \$257,961.19 the plan is underfunded. This contravenes 11 U.S.C. §§ 1322(a)(1) and 1325(a)(1).

In their reply the debtors propose to remedy the conflicting plan terms in the order granting the motion to modify. The court will not approve correction in the order as the impacted creditor will be given no notice of the change in payment provision. The debtors must file a further modified plan.

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

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

63. [21-23978](#)-A-13 **IN RE: RYAN PICCHI**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[57\]](#)

PAULDEEP BAINS/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,131.01 with two further payments of \$1,612.00 due by July 25, 2023.

STATUS REPORT

As a courtesy to the court, debtor's counsel filed a Response, on July 11, 2023, ECF No. 61. The response details counsel's efforts to contact the debtor to prepare opposition to the motion. The debtor did not respond to counsel's queries and no opposition to the motion has been 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.

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.

64. [23-20883](#)-A-13 **IN RE: MELISSA CHAVEZ**
[PLC-2](#)

MOTION TO CONFIRM PLAN
6-9-2023 [\[21\]](#)

PETER CIANCHETTA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Final Ruling

Motion: Confirm Chapter 13 Plan

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

Disposition: Denied

Order: Civil minute order

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

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

ORAL ARGUMENT

The issues in this matter having been sufficiently briefed by the parties, the court finds that the matter does not require oral argument. LBR 9014-1(h); *Morrow v. Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971) (approving local rules that authorize disposition without oral argument). Further, no evidentiary hearing is necessary for resolution of material, factual issues.

MATHEMATICAL FEASIBILITY

The trustee opposes confirmation of the plan contending the plan is not mathematically feasible. The trustee calculates that the plan will take 66 months to fund as proposed.

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$499.00. The plan cannot be confirmed if the plan payments are not current.

Because the plan is not mathematically feasible the court need not reach the remaining issues raised in the trustee's opposition to the motion. The debtor has not filed a reply refuting the trustee's contentions.

The court will deny confirmation of the debtor's plan.

CIVIL MINUTE ORDER

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

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

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

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

65. [20-24684](#)-A-13 **IN RE: KIM BLAND**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[37\]](#)

GEORGE BURKE/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$10,554.73 with two further payments of \$2,725.78 due by July 25, 2023.

The court notes that plan payments were nearly 4 months in arrears when the trustee's motion was filed. The trustee filed this motion to dismiss on June 16, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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.

66. [22-22985](#)-A-13 **IN RE: BRANDY ORR**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[26\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$800.00, with two payments of \$400.00 due by July 25, 2023.

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 by the date of the hearing on this motion. The debtor explains the plan delinquency and indicates her ability to become current is because she has obtained new employment. See Declaration, ECF No. 31.

The court will hear from the trustee regarding the status of the plan payments. Given the circumstances and the detail provided by the debtor in her opposition the court will consider a conditional order if necessary.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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

67. [21-22486](#)-A-13 **IN RE: ANNA MURPHY**
[DPC-5](#)

MOTION TO DISMISS CASE
6-27-2023 [\[311\]](#)

PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

Petition Filed: July 6, 2021

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(1) as the debtor has failed to make all payments due under the plan. The trustee contends that the plan payments are delinquent in the amount of \$1,090.00, with another payment of \$545.00 due July 25, 2023.

The trustee further requests dismissal because the debtor has failed to file an amended plan after the court denied confirmation of the most recently filed plan on September 14, 2022.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 325, 326. The declaration states that the debtor will bring the plan payment current by the date of the hearing on this motion. See Declaration, ECF No. 326. Neither the opposition nor the declaration states why an amended plan has not been filed.

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 and the debtor's failure to file an amended plan.

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

The court finds that dismissal is in the best interests of the creditors and the estate. This case has not been previously converted from a chapter 7. 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 chapter 13 plan in this case. Delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1). Moreover, the debtor's failure to file an amended plan is also unreasonable delay which is prejudicial to creditors. The court hereby dismisses this case.

68. [22-21488](#)-A-13 **IN RE: CECILIA SMITH**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[53\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

Final Ruling

Motion: Dismiss Case

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

Disposition: Continued to August 22, 2023, at 9:00 a.m.

Order: Civil minute order

Opposition Due: July 11, 2023

Motion to Modify Plan Filed: July 7, 2023 - 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 \$3,808.85, with two additional payments of \$2,074.97 due by July 25, 2023.

A modified plan has been timely filed and set for hearing in this case. The scheduled hearing on the modification is August 22, 2023, 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 August 22, 2023, 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.

69. [22-22289](#)-A-13 **IN RE: CASS CRINER**
[DPC-1](#)

MOTION TO DISMISS CASE
6-21-2023 [\[33\]](#)

GABRIEL LIBERMAN/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$4,400.00 with two further payments of \$1,100.00 due by July 25, 2023.

The court notes that plan payments were 4 months in arrears when the trustee's motion was filed. The trustee filed this motion to dismiss on June 21, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the *earlier* of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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.

70. [21-21592](#)-A-13 **IN RE: SUSAN FIFIELD**
[DPC-1](#)

MOTION TO DISMISS CASE
6-16-2023 [\[27\]](#)

JULIUS CHERRY/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: July 11, 2023

Opposition Filed: Unopposed

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

Best Interests of Creditors/Estate: Dismiss

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

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

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for delinquency in payments under the confirmed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(6) to dismiss the case. Payments under the confirmed plan are delinquent in the amount of \$1,875.00 with two further payments of \$375.00 due by July 25, 2023.

The court notes that plan payments were 5 months in arrears when the trustee's motion was filed, and that the trustee received the last plan payment on December 27, 2022. The trustee filed this motion to dismiss on June 21, 2023. Going forward the court expects that the trustee will promptly bring his motions to dismiss. The trustee's motions brought pursuant to 11 U.S.C. § 1307(c) should be filed the earlier of: 1) when deemed appropriate by the trustee; or 2) when the plan payment is no more than two months delinquent. The motion should generally be filed with notice sufficient to allow the debtor to file written opposition.

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.

71. [18-22995](#)-A-13 **IN RE: YOUNG YOO**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[36\]](#)

H. AHN/ATTY. FOR DBT.
DAVID CUSICK/ATTY. FOR MV.
WITHDRAWN BY M.P.

Final Ruling

The motion was withdrawn July 7, 2023, ECF No. 41. Accordingly, the motion will be removed from the calendar. No appearances are required.

72. [23-21497](#)-A-13 **IN RE: CHRISTOPHER HIGGINBOTHAM**
[DPC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-26-2023 [\[25\]](#)

PATRICIA WILSON/ATTY. FOR DBT.

Tentative Ruling

Objection: Trustee's Objection to Confirmation of Plan

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

Disposition: Sustained in part; overruled in part; and confirmation denied

Order: Civil minute order

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

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

PLAN FEASIBILITY

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

Plan Delinquency

The trustee indicates that the plan payments are delinquent in the amount of \$1,865.00 with another payment of \$1,865.00 due July 25, 2023. The plan cannot be confirmed if the plan payments are not current.

The court notes that the trustee also objected to confirmation as the debtor failed to appear at the initial meeting of creditors. The court's docket indicates that the debtor and counsel attended the continued meeting of creditors on July 14, 2023. This objection will be overruled.

CIVIL MINUTE ORDER

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

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

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

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

73. [22-21299](#)-A-13 **IN RE: DAMON TURNER**
[DPC-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[80\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Case

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

Disposition: Granted

Order: Civil minute order

Opposition Due: July 11, 2023

Opposition Filed: July 11, 2023 - timely

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

Best Interests of Creditors/Estate: Dismiss

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c)(6) as the debtor has failed to make all payments due under the confirmed plan. The trustee contends that the plan payments are delinquent in the amount of \$4,300.00, with two payments of \$4,300.00 due by July 25, 2023.

The debtor has filed a timely opposition which is accompanied by the Declaration of the Debtor, ECF Nos. 84, 85. The debtor's declaration states that the debtor has made one payment of \$4,300.00 and has schedules a further payment of \$8,600.00 through TFS. The debtor states this will bring the plan payment current through July 2023 by the date of the hearing on this motion. See Declaration, ECF No. 85.

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

11 U.S.C. § 1307(c)

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

...

11 U.S.C. § 1307(c).

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

CIVIL MINUTE ORDER

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

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

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

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