UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In re: JOSE ARMANDO ROLDAN CARRILLO and LANETTE LEA LARA, Debtors.	Case No. 26-40176-BRW Chapter 13

SUMMARY ORDER RE: MOTION FOR ADEQUATE PROTECTION

Before the Court is a *Motion for Adequate Protection* (Doc. No. 38) (the "Motion") filed by secured creditor Mountain America Credit Union ("MACU"). The Court held a hearing on the Motion, as well as confirmation of the amended chapter 13 plan (Doc. No. 27) (the "Plan") on June 30, 2026. Doc. No. 52 (minute entry). The Motion seeks payment of adequate protection to MACU related to a 2014 GMC Sierra 1500 pickup owned by the Debtors Jose Armando Roldan Carrillo and Lanette Lea Lara (the "Debtors"), in which MACU has a perfected security interest. The Plan provides for the Chapter 13 Trustee, Kathleeen A. McCallister (the "Trustee") to make the payments to MACU, as a secured creditor, upon confirmation. *See* Plan at paragraph 3.3. In the Motion, MACU requests that the Trustee distribute to it all pre-confirmation payments as adequate protection, citing 11 U.S.C. § 361 and Local Bankruptcy Rule ("LBR") 4001-3. The Debtors advised at the hearing that these secured payments are being made to the Trustee in advance of the Plan being confirmed.

Despite not filing a written objection, the Trustee verbally objected to the Motion during the hearing. While no case authority or further analysis was provided to the Court by the Trustee, the basis of her objection to making these adequate protection payments is her compensation. That is, the Trustee seeks to be paid her percentage fee under 28 U.S.C. § 586(e)(2) for the adequate protection payments she will make.

In response, during the hearing, the Debtors disagreed that the Trustee is entitled to receive compensation for the adequate protection payments and cited the Court to *Evans v. McCallister (In re Evans)*, 69 F.4th 1101 (9th Cir. 2023). That case held that a chapter 13 trustee does not receive the percentage fee on pre-confirmation plan payments made by the debtor to the trustee when the case is dismissed prior to confirmation of a plan.

At the conclusion of the hearing, the Court took the matter under advisement, noting that it was not provided any briefing on the Trustee's objection to the Motion, necessitating its own research and consultation of relevant authorities to determine the appropriate outcome. The Court has now done so and concludes the Motion will be granted. The Trustee shall make the adequate protection payments to MACU, as stated in the Plan and requested in the Motion, without deducting her percentage fee.

The duties of a Chapter 13 trustee are listed in 11 U.S.C. § 1302. Among them are several required acts that must be done without regard to compensation (*i.e.* duties required to be done even if the case eventually gets dismissed). *See, e.g.*, 11 U.S.C. § 1302(b)(1) (perform duties incumbent upon chapter 7 trustees); 11 U.S.C. § 1302(b)(2) (appear at various hearings); 11 U.S.C. § 1302(b)(6) (provide a notice in the event of a domestic support obligation owed by a debtor). Also on the list of duties is the chapter 13 trustee's obligation to ensure the debtors begin to make payments as required under 11 U.S.C. § 1326. *See* 11 U.S.C. § 1302(b)(5) ("The trustee shall— . . . (5) ensure that the debtor commences making timely payments under section 1326 of this title[.]").

Section 1326 governs payments made as "proposed by the plan" (§ 1326(a)(1)(A)), adequate protection payments (§ 1326(a)(1)(C)), and those payments made "under the plan" (§ 1326(b) and (c)). Specifically as to adequate protection payments, it provides:

> (a)(1) *Unless the court orders otherwise*, *the debtor shall* commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—
>
> . . . .
>
> (C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

11 U.S.C. § 1326(a)(1)(C) (emphasis added). In turn, in the District of Idaho, a Local Bankruptcy Rule provides:

> (a) <u>Amount of Adequate Protection Payments</u>. Adequate protection payments shall be made as provided by court order after motion that includes proof that the creditor has a properly perfected security interest and notice.
>
> (b) <u>Disbursements and Accounting</u>. Disbursements under § 1326(a)(1)(C), by debtor(s) *or a trustee* shall be made monthly on allowed secured claims commencing within 30 days of the filing of the proof of claim. A trustee holding insufficient funds to make such payments may make payments in his or her discretion as funds held will permit. For adequate protection payments made directly by the debtor(s), debtor(s) must provide the trustee proof of the direct payments. The trustee is authorized to deduct from the allowed amount of a claim all § 1326(a)(1)(C) preconfirmation disbursements made by the trustee or by debtor(s).

LBR 4001-3 (emphasis added). A local rule has the effect of a court order. *See, e.g.*, *Kirton v. Valley Health System (In re Kirton)*, 2015 WL 777685, at *5 (9th Cir. BAP Feb. 24, 2015) ("It is well- and long-established that a court's local rules have the force of law.") (citing *Weil v. Neary*, 278 U.S. 160, 169 (1929)). As such, in this district, the chapter 13 trustee, upon court order, may make adequate protection payments to a secured creditor, despite § 1326(a)(1)(C)'s directive that the *debtor* shall make those payments, because the Court has ordered otherwise, as allowed in the introductory phrase of § 1326(a).

With that background and statutory structure clearly allowing the chapter 13 trustee to make adequate protection payments, the Court must address whether the Trustee may take her percentage fee from the adequate protection payments she will make. The Court concludes, based on binding authority from the Ninth Circuit Court of Appeals, and following that legal precedent to its logical conclusion as to the issue of adequate protection, the Trustee is not entitled to her percentage fee on those pre-confirmation (*i.e.* not "under the plan") payments.

As the Ninth Circuit has determined, "[t]he plain text of Section 1326(b) unambiguously shows that it is the specific provision governing when a trustee 'shall be paid': 'before or at the time of each payment to creditors *under the plan*,' which necessarily means post-confirmation of a plan." *In re Evans*, 69 F.4th at 1107-08 (quoting 11 U.S.C. § 1326(b)) (emphasis added) (footnote omitted).

Pre-confirmation payments by a chapter 13 trustee, which would include adequate protection payments under § 1326(a)(1)(C), therefore do not qualify for the percentage fee under the holding of *In re Evans*. *Cf. Medina v. Derham-Burk*, 2026 WL 446308, at *3 (N.D. Cal. Feb. 17, 2026) (relying on *In re Evans* and rejecting the chapter 13 trustee's argument that the trustee's pre-confirmation payments to a creditor gave rise to the entitlement to the percentage fee under 28 U.S.C. § 586(e) because such a payment is not "under the plan," which *In re Evans* determined requires a confirmed plan); *see also id.* (holding "the Ninth Circuit has interpreted

[28 U.S.C.] § 586(e) and [11 U.S.C.] § 1326(b) to mean that a standing trustee is not entitled to her statutory fee where a plan is never confirmed[]") (citing *In re Evans*, 69 F.4th at 1107-08).

Consistent with this analysis, the Seventh Circuit has denied compensation to a 13 trustee for her adequate protection payments as well as pre-confirmation payments received from the debtor, relying in part on *In re Evans*. *See generally Marshall v. Johnson*, 100 F.4th 914 (7th Cir. 2024). In *Marshall*, the chapter 13 trustee received $3,800 in payments from the debtor and the trustee paid around $750 in pre-confirmation adequate protection payments to the debtor's creditors. *Id.* at 916. The Seventh Circuit determined, applying the reasoning of *In re Evans*, that the trustee was not entitled to her statutory fee on these funds or adequate protection distributions and held that "§ 1326(b) is inapplicable to adequate protection payments because such payments are not payments 'under the plan.' They are owed under an 'order for relief,' not the plan." *Id.* at 917 (citation omitted). Accordingly, on the basis of this authority and analysis,

IT IS HEREBY ORDERED that the Motion, Doc. No. 38, is **GRANTED,** as follows. The Trustee shall, pursuant to § 1326(a)(1)(C) and LBR 4001-3 make the adequate protection payments to MACU. The Trustee is not entitled to her statutory fee for these pre-confirmation payments.

DATED: July 10, 2026

Brent R. Wilson
U.S. Bankruptcy Judge