

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 6, 2021 at 9:00 a.m.

1.	<u>20-23901</u>-E-13 1 thru 2	WENDY MORGAN Michael Hays	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 11-16-20 [71]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 18, 2020. The court computes that 49 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on November 10, 2020.

The Order to Show Cause is XXXXX.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

On December 8, 2020, Debtor filed a Response to an Order to Show Cause for failure to pay \$79.00 in fees due on October 13, 2020. Dckt. 77. Debtor requested that Trustee pay the fees from the funds he is currently holding and for her case to be dismissed now that her residence has been sold and there is no reason her to continue the case. *Id.* The court has ordered that the case remain pending in order to allow for the filing of any motions relating to the dismissing of the case and disbursement of monies held by the Trustee. *See* Civil Minutes, Dckt. 80. *See also* Notice of Entry of Order, Dckt. 82.

As of the court's December 31, 2020 review of the docket, no other pleadings or documents have been filed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is **XXXXX**.

2. [20-23901-E-13](#) **WENDY MORGAN** **ORDER TO SHOW CAUSE - FAILURE**
 Michael Hays **TO PAY FEES**
 12-15-20 [79]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 17, 2020. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 10, 2020.

The Order to Show Cause is XXXXX.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

On December 8, 2020, Debtor filed a Response to an Order to Show Cause for failure to pay \$79.00 in fees due on October 13, 2020. Dckt. 77. Debtor requested that Trustee pay the fees from the funds he is currently holding and for her case to be dismissed now that her residence has been sold and there is no reason her to continue the case. *Id.* The court has ordered that the case remain pending in order to allow for the filing of any motions relating to the dismissing of the case and disbursement of monies held by the Trustee. *See* Civil Minutes, Dckt. 80. *See also* Notice of Entry of Order, Dckt. 82.

As of the court's December 31, 2020 review of the docket, no other pleadings or documents have been filed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is **XXXXX**.

3. [19-26935-E-13](#) **HELEN COWAN** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Pro Se** **CASE**
7-6-20 [45]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion— Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 1, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is XXXXX.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that Debtor is delinquent in plan payments and has failed to file a new plan.

DEBTOR'S OPPOSITION

Trustee filed Debtor's Opposition pursuant to FRBP 5005(c) on July 24, 2020, which was sent directly to Trustee and not filed with the court. Dckt. 53. Debtor states she is disabled and does not understand why Trustee is bringing the instant Motion. *Id.*, at 2. Debtor admits she hit "a few bad patches" and is trying to fix them. *Id.* Debtor is worried about losing her home, and states she is "in this mess" because she cannot afford an attorney. *Id.*

TRUSTEE'S REPLY

Trustee filed a Reply on July 24, 2020, Dckt. 54. Trustee first restates the reasons for

bringing the instant Motion to dismiss including why her previous plan was denied and the current delinquency. *Id.*, at ¶ 1. Trustee notes Debtor may be able to file a new case if dismissed but may need to ask for the automatic stay to extend beyond 30 days. *Id.* Furthermore, Trustee lays out what Debtor needs to do in order to avoid a dismissal:

- A. Debtor needs to appear at the hearing and explain to the court how she will correct the problems with her bankruptcy.
- B. Debtor must file and set an amended plan for hearing serving the necessary parties accompanied by a Declaration, and become current in plan payments.
- C. Debtor may be able to hire counsel who will accept payment through the plan.
- D. Debtor needs to address mortgage arrears in the amount of \$16,140.29 in the new plan or Trustee will object to confirmation.

Id., at ¶ 2.

DISCUSSION

Delinquent

Debtor is \$230.00 delinquent in plan payments, which represents less than one month of the \$240.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 11, 2020, Dckt. 37. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of Debtor's Schedule I states that she is "not employed," but then states that Debtor has \$2,257.50 a month in "wage income." Dckt. 15 at 26-27. On Schedule J Debtor states that her income is from Social Security. *Id.* at 30.

Check Into Cash Inc. has filed Proof of Claim No. 5-1 asserting a secured claim in the amount of (\$3,984.61), for which Debtor's BMW is identified as the collateral.

In Debtor's Opposition she pleads that as a 77 year old disabled person, if she loses her home, she will be homeless. She requests the Trustee to help explain the process.

Proof of Claim No. 4-1 filed by NewRez, LLC is in the amount of (\$128,519.32), for which there is asserted to be a pre-petition arrearage of (\$16,140.29), and that the collateral for the obligation is

Debtor's residence.

On Schedule A/B Debtor states that her residence is worth \$283,000, but her interest in it is worth only \$160,739. Dckt. 15 at 1. Debtor does not list any secured claims on Schedule D, nor any unsecured claims on Schedule E/F. It appears that the stating of Debtor's value on Schedule A/B is the equity in the property in excess of the NewRez, LLC's claim secured by the property.

It is clear that Debtor has some substantial assets, including the \$100,000+ equity in the real property. However, it appears somewhat clear that Debtor is so deep in the financial hole that she will continue on a downward spiral in which she could lose the \$100,000+ equity through foreclosure.

Debtor, while able to function in life, may well need the assistance of Adult Protective Services or other community legal service group to obtain the necessary legal representation. It may be that Debtor cannot keep her home, but if she sells it and puts \$100,000+ in the bank, she can use her Social Security benefits to pay rent in a nice condo and use the \$100,000+ to supplement her expenses.

The \$100,000+ in equity can be used to pay reasonable and necessary attorney's fees and expenses so that Debtor does not lose the \$100,000+ in equity.

At the hearing, Debtor appeared and expressed an understanding of the need to obtain counsel. Trustee agreed to a continuance.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on September 16, 2020 pointing the court to Debtor's continued lack of filing and confirming an amended plan. Dckt. 61.

September 23, 2020 Hearing

At the hearing, the Debtor's brother appeared. He addressed with the court that he was attempting to assist his sister, the Debtor, in moving forward to protect her financial interest. He appeared to understand the need for Debtor to obtain counsel to protect her rights and interests.

In light of the apparent family effort to address these issues the court continues the hearing.

November 18, 2020 Hearing

Unfortunately, no further action has been taken for the prosecution of this case by Debtor. Though now having family support (Debtor's brother), nothing further has been filed and no attorney has substituted in to represent the *pro se* Debtor.

It appears that Debtor may not be legally competent (the ability to prosecute this legal proceeding, as opposed to the ability to function in day to day life) to continue in this legal proceeding and a personal representative or conservator needs to be appointed.

At the hearing, Debtor and Debtor's Brother addressed Debtor's prosecution of this case. By the conclusion of the hearing, they appeared to appreciate the need to obtain knowledgeable counsel to navigate this federal area of the law to protect Debtor's exempt interest in property. Further, that filing a

bankruptcy case was not merely a “pause button” for the real life events, without any need to prosecute the bankruptcy case itself.

January 6, 2021 Hearing

The Docket reflects that nothing further has been filed in this case by Debtor. No counsel has substituted to represent Debtor and assist in the good faith prosecution of this case. In reviewing the Schedules in this case, it does not appear that Debtor has effectively claimed exemptions, so if the court were to convert this case to one under Chapter 7, the Trustee would be compelled, due to his/her fiduciary duties to the bankruptcy estate, to pursue selling the Debtor’s residence and using the proceeds to pay creditors, rather than Debtor as a properly claimed exemption.

Cause exists to dismiss this case. Debtor has not prosecuted this case or a Chapter 13 Plan. Debtor, though given time over the past four months to engage counsel, Debtor has not done so.

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 19, 2020. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 14, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 30, 2020. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, William Brooks Schroyer ("Debtor"), is delinquent in plan payments,
2. Has failed to file a new plan after the court denied Debtor's motion to confirm the prior proposed plan, and
3. Debtor's schedules are inaccurate.

DEBTOR'S RESPONSE

Debtor filed a Response on December 22, 2020. Dckt. 44. Debtor states that an amended plan will be filed prior to the hearing.

DISCUSSION

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 15, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Delinquent

Debtor is \$3,173.00 delinquent in plan payments, which represents one month of the \$3,173.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Inaccurate Bankruptcy Documents

Trustee asserts that Debtor has failed to include or amend the Schedules where Debtor admitted at the First Meeting of Creditors that he is married, living at 672 Bourn Drive, Woodland, California, and his non-filing spouse has separate debt that was not listed as part of the expenses on Schedule J.

Debtor also failed to identify gross income on Form 122C-1 where Schedule I identifies the gross income of the Debtor's non-filing spouse as \$6,905 and according to the Business Income and Expense Statement provided to Trustee, Debtor has a monthly business gross income of \$24,768.00.

Moreover, the Trustee argues that Debtor has failed to file a statement of gross business income and expenses attached to Schedule I. Line 8a of Schedule I requires Debtor to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." Debtor is required to submit that statement and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Debtor has not provided the required attachment.

Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

6. [20-24155-E-13](#) **LANDER GREEN**
[DPC-1](#) **Arete Kostopoulos**

MOTION TO DISMISS CASE
12-9-20 [33]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 9, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Lander Green ("Debtor"), is delinquent in plan payments,
2. Has failed to file a new plan after Debtor's motion to confirm the prior proposed plan was denied, and
3. Debtor has not provided the Domestic Support Obligation Checklist.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 9, 2020. Dckts. 38, 37. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 40. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

However, Debtor has failed to address Trustee's objection regarding Debtor's failure to provide the Domestic Support Obligation Checklist as required by the bankruptcy code. At the hearing,
XXXXXXX

DEBTOR'S OPPOSITION

Trustee filed on June 18, 2020 a note received by Debtor (apparently prepared without the assistance of Debtor's counsel) which Trustee deemed an Opposition. Dckt. 37. Debtor describes having difficulty in pursuing a loan modification with Debtor's mortgage lender, and explains health issues and unexpected increases to income and decreases to income.

DISCUSSION

Since the case was filed in November 2019, Debtor has filed one plan. The Trustee filed an Objection To Confirmation (Dckt. 19), which was sustained January 28, 2020. Dckt. 26.

Since then, nothing has really been done to prosecute the case.

At the July 1, 2020 hearing, Debtor's counsel reported the status of the case and lack of effective communication with his client.

The court continued the hearing, requiring the appearance of both the Debtor and Debtor's counsel, to address these issues, if possible, and allow the Debtor the opportunity to explain how this Chapter 13 case will be prosecuted.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on September 8, 2020 pointing to the court that Debtor continues to fail to file and set for hearing a new plan since the instant Motion was continued from July 1, 2020. Dckt. 43. Moreover, Debtor is \$6,500 delinquent in plan payments. Thus, Trustee requests the court dismiss the case.

DEBTOR'S OPPOSITION

Debtor's Counsel filed an Opposition and a Declaration meant to expand Debtor's *pro se* Opposition in order to inform the court of specific events affecting the current case. Dckt. 46. Debtor's Counsel testifies that Debtor is 93 years old and has recently been diagnosed with a terminal medical condition and has been told that she has six months to two years to live.

Counsel advised Debtor to convert the case to a Chapter 7 after the mortgage pre-petition arrearage came much higher than expected (\$78,723.89). Under this approach, Debtor would have to pursue a short sale in the hopes that the lender will allow her to remain in the residence until the property sells. However, Debtor has refused this approach as she does not want to lose her home and wishes to stay at the property.

Debtor has disposable income of two thousand five hundred forty-two and 94/100 dollars (\$2,542.94), however, sometimes the debtor does not receive her rental income in the amount of one thousand two hundred fifty dollars (\$1,250). Counsel believes the amount for monthly plan payments needed for Debtor to become current is not feasible. Absent a loan modification, there is no additional evidence to support a feasible plan.

Finally, Counsel has also discussed conversion to a Chapter 11 but Debtor does not have

sufficient income to sustain a mortgage payment after taking the costs of medical care into account.

DEBTOR'S IN *PRO SE* MOTION NOT TO CLOSE

Debtor filed a handwritten note to the court on September 18, 2020 that the court has taken to be an Opposition to Trustee's Motion to Dismiss. Dckt. 50. Through this one page note, Debtor states the following:

I Dorothy Miko am asking you to not close the Chapter 13. I need more time to get the Tenants, David Beerschinger and Teresa Fisher out of 6173 Dark Canyon Rd. Kelsey, Ca. 95667. The Courts here are still closed and I (Dorothy Miko) can not serve[sic] the tenants with court papers to move[.]

They have been given (2) 3 day notices to pay rent or Quit and a 60 Day Notice to Move. They are still here and not paying total amount of rent. I am sending you a copy of the papers.

[signature] Dorothy Miko

Dckt. 50. Attached to this note are:

- 60 Day Notice to Vacate for tenants David Boerschinger and Teresa Fisher dated September 14, 2020
- 3-Day Notice to Pay Rent or Quit for tenants David Boerschinger and Teresa Fisher dated September 14, 2020
- 3-Day Notice to Pay Rent or Quit for tenants David Boerschinger and Teresa Fisher [undated]
- 3-Day Notice to Pay Rent or Quit for tenants David Boerschinger and Teresa Fisher dated May 1, 2020
- 60 Day Notice to Vacate for tenants David Boerschinger and Teresa Fisher dated May 1, 2020

Debtor's handwritten opposition (Dckt. 50) discusses the need to evict tenants. What it does not address is what Debtor's Chapter 13 plan can and will be. In effect, Debtor has "parked" in Chapter 13, protected but not prosecuting a plan. While such may appear to a lay person to be a reasonable device in the 2020 COVID-19 pandemic world, for a Chapter 13 case Debtor needs to be prosecuting a plan. That may include seeking a loan modification. That may be selling property. But it must be part of a properly confirmed Chapter 13 plan.

At the hearing, Debtor's counsel appeared, but not the Debtor or her Daughter (who is identified as also interacting with Debtor's counsel).

The court continues the hearing, ordering both Debtor and Debtor's Daughter to appear.

November 12, 2020 Hearing

As of the court's November 10, 2020 review of the docket in preparation for this pre-hearing disposition, no other pleadings have been filed.

At the hearing, Counsel for Debtor reported that the Debtor is working on a reverse mortgage, and she should know within a week.

Counsel for the Chapter 13 Trustee noted that in this unusual case, a further continuance is warranted.

Trustee's Status Report

On December 23, 2020, Trustee filed a Status Report. Dckt. 63. Trustee informs the court that Debtor has failed to file an amended Plan and set it for confirmation and remains delinquent under the last plan proposed.

January 6, 2021 Hearing

Though the case has been pending since November 8, 2019, Debtor has been unable to confirm a Plan. Though it has been represented to the court in prior months that determination of whether Debtor can obtain a loan modification is imminent, no information of any such modification, status, or other information relating to Debtor's ability to prosecute this case have been filed.

Cause exists to dismiss this case. The Motion is granted and this case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 15, 2020. The court computes that 52 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$154.00 due on November 9, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$154.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 16, 2020. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$231.00 due on December 8, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$231.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 18, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Colette Yvonne White ("Debtor"), failed to appear at the first Meeting of Creditors,
2. Debtor's Chapter 13 Plan form is incomplete,
3. Debtor has failed to provide copies of pay advices and tax returns,
4. Debtor has failed to provide business documents, and
5. Debtor's first and second plan payments are due prior to the hearing on the instant motion.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The First Meeting of Creditors has been continued to January 21, 2021.

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Sections 2.03, 3.12, and 3.14 of the plan are blank. Additionally, Section 3.06 has an administrative monthly payment of \$180.00 but there is no attorney representation in this case. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

11. [20-23890-E-13](#) **RICARDO CORTEZ** **MOTION TO DISMISS CASE**
[DPC-2](#) **Timothy Walsh** **12-1-20 [21]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 1, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Ricardo J. Cortez ("Debtor"), is delinquent in plan payments, and
2. Has failed to file a new plan after the court sustained Trustee's Objection.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 7, 2020. Dckt. 25. Debtor states the delinquency will be cured and that Debtor will address Trustee's other requests prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,817.47 delinquent in plan payments, which represents multiple months of the \$1,972.49 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 20, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 23, 2020. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 14, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Anton Axelsson ("Debtor"):

1. Failed to appear at the First Meeting of Creditors,
2. Debtor is delinquent in plan payments,
3. Debtor may not be able to make plan payments,
4. Debtor failed to file business documents,
5. Debtor failed to provide tax returns, and
6. Debtor failed to file the Spousal Waiver.

DEBTOR'S RESPONSE

Debtor filed a Response on December 21, 2020. Dckt. 33. Debtor asserts that his restaurant business has recently closed, thus the plan is no longer feasible and the case will be converted to a Chapter 7 prior to the hearing date.

DISCUSSION

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$977.00 delinquent in plan payments, which represents one month of the \$977.00 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor's income is from his restaurant business listed on Schedule I, Debtor may no longer have income with the stay at home orders under COVID 19. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Documents Related to Business

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Failure to Provide Tax Returns

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide

the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

No Spousal Waiver

Debtor indicates he is married and claims exemptions pursuant to California Code of Civil Procedure section §703.10. That section requires that, if a married person is filing individually, the spouses execute a written waiver. Debtor here has not filed a spousal waiver.

As of the court's review of the docket for the drafting of this tentative ruling, Debtor had not filed a Notice of Conversion for case. At the hearing, **xxxxxxx**

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

FINAL RULINGS

14. [20-21910-E-13](#) **TIMOTHY TROCKE** **MOTION TO DISMISS CASE**
[DPC-1](#) **Gary Fraley** **11-10-20 [123]**

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on November 10, 2020. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 3, 2021.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Timothy Tobias Trocke (“Debtor”), is delinquent in plan payments and
2. Has failed to file a new plan after the court sustained Trustee’s objection to the prior plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 17, 2020. Dckts. 151, 149. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 152. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

December 17, 2020 Joint Stipulation

On December 17, 2020, Debtor and Trustee filed a Joint Stipulation agreeing that the hearing on this motion be continued to the next available court date in February 2021. Dckt. 154. Debtor also informs the court that Debtor’s attorney mailed a \$100.00 payment to the Trustee that should be received by December 18, 2020. *Id.*

The court granted Debtor's motion to sell real property on December 22, 2020. Civil Minutes, Dckt. 179. The property is currently in escrow and scheduled to close on January 6, 2020. Motion, Dckt, 156.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is continued to 9:00 a.m. on March 3, 2021.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 3, 2021.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 7, 2020. The court computes that 60 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 2, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 9, 2020. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on November 30, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on November 30, 2020. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Kenneth Wayne Snowder (“Debtor”), has failed to file a new plan after the court denied Debtor’s motion to confirm the prior proposed plan.

DISCUSSION

Prior Plan Denied

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on October 20, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

18.	<u>20-23834</u> -E-13	CHRISTINE BONILLA Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 12-9-20 [39]
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Final Ruling: No appearance at the January 6, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 11, 2020. The court computes that 26 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$70.00 due on December 4, 2020.

<p>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</p>

The court’s docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no

sanctions ordered, and the bankruptcy case shall proceed in this court.

19. [19-27838-E-13](#) **TAZJANAE WILRIDGE** **MOTION TO DISMISS CASE**
[DPC-3](#) **Peter Cianchetta** **12-8-20 [53]**

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Tiazjanae Imani Wilridge (“Debtor”), has failed to file a new plan after the court denied Debtor’s motion to confirm the prior proposed plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 18, 2020. Dckt. 62, 59. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 61. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13

Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

20. [20-21241-E-13](#) **LORNE/JAMIE WILLIAMS** **MOTION TO DISMISS CASE**
[DPC-4](#) **Randall Enslinger** **12-9-20 [61]**

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 9, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Lorne Howard Williams and Jamie Lynn Williams (“Debtor”), are delinquent in plan payments and
2. Have failed to file a new plan after the court denied Debtor’s motion to confirm the prior proposed plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 18, 2020. Dckts. 69, 65. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 67. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

21. 20-22954-E-13 **NORMAN CIVELLO** **MOTION TO DISMISS CASE**
 DPC-3 **Randall Enslinger** **11-10-20 [51]**

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on November 10, 2020. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Norman Franklin Civello (“Debtor”), is delinquent in plan payments, and

2. Has failed to file a new plan after the court sustained Trustee's objection to the prior plan.

DISCUSSION

Delinquent

Debtor is \$8,910.00 delinquent in plan payments, which represents one month of the \$4,455.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 25, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 12, 2020. The court computes that 55 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 5, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Gregory Roger Borgerson and Cherie Marquez Borgerson (“Debtor”), are delinquent in plan payments,
2. Have failed to file a new plan after Debtor’s motion to confirm the proposed plan was denied, and
3. Debtor are serial filers.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$4,096.00 delinquent in plan payments, which represents one month of the \$4,096.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 10, 2020. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Serial Filing

Trustee argues that this case is one of a series of cases under Chapter 13 where Debtor seeks to retain possession of the house but fails to obtain confirmation of a plan, which may be impossible unless the residence is sold or surrendered. Debtor has two prior cases under Chapter 13 in the last 4 years: 16-24598 (dismissed January 9, 2017), and 18-23460 (filed June 1, 2018 and dismissed October 2, 2019). The current case was filed on April 4, 2020.

Opposition Filed by Debtor

Debtor filed an Opposition on December 28, 2020. The court authorized the untimely filing of this case as requested in the *Ex Parte* Motion of the Debtor. Dckt. 97.

Debtor has filed a proposed Third Amended Plan and Debtor believes that through this Plan the Trustee's grounds are resolved. Debtor is also prosecuting loan modification applications.

The Motion to Confirm (Dckt. 85) appears to state with particularity the grounds upon which the relief is requested, and the Declaration in support provides (mostly) personal knowledge factual testimony (Dckt. 87). The Motion does purport to provide several "legal conclusions" by the lay person Debtor.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the January 6, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 9, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Adam Scott Newland and Sherri Ann Newland (“Debtor”), are delinquent in plan payments, and
2. Debtor has failed to follow the court’s order to segregate funds meant for paying taxes which is to be audited by Trustee on a quarterly basis.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on December 30, 2020. Dckts. 58, 54. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 56. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

25. [20-21181](#)-E-13 TANYA HALL **CONTINUED MOTION TO DISMISS**
[DPC-2](#) Timothy Walsh **CASE**
9-11-20 [48]

Final Ruling: No appearance at the January 6, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 11, 2020. By the court’s calculation, 68 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tanya Dorene Hall (“Debtor”), has failed to file and confirm an amended plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 12, 2020. Dckt. 54. Debtor states that a confirmable amended plan will be filed and set for hearing prior to the hearing.

DISCUSSION

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on June 2, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to an amended plan is not evidence that resolves the Motion.

At the hearing, Counsel for the Debtor reported that the issue is whether the court would

approve a plan with no future funding source identified. The court addressed with the Parties a recent decision concerning the treatment of a secured claim for which a balloon payment

The court continues the hearing to allow the Parties to address the issues in this case.

January 6, 2020 Hearing

On December 30, 2020, Debtor filed an amended plan and motion to confirm. Dckts. 60, 58. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 61) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 14, 2020. The court computes that 53 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 6, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the January 6, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Creditor, and Chapter 13 Trustee as stated on the Certificate of Service on November 15, 2020. The court computes that 52 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor Koraf Corporation's failure to pay the required fees in this case: \$181.00 due on October 30, 2020.

The Order to Show Cause is discharged, and no sanctions are ordered.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered.