

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 21, 2024 at 9:00 a.m.

1. <u>23-22592</u> -E-13	AMANDA WILSON	MOTION TO DISMISS CASE
<u>DPC-2</u>	Catherine King	1-19-24 <u>[41]</u>

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, persons having filed a Request for Notice, and Office of the United States Trustee on January 19, 2024. By the court’s calculation, 33 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:

1. The debtor, Amanda Dean Wilson (“Debtor”), has failed to file a new Amended Plan after Debtor’s motion to confirm an Amended Plan was denied on November 22, 2023. Order, Docket 40.

Docket 41. Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 43.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2024. Dckt. 45. In Debtor's Response, she informs the court she is proposing a Second Amended Plan in which she will pay \$665.00 for 12 months, and then \$1,151.00 for the remaining 48 months. *Id.*

Debtor also states that she will either find a renter for one of her rooms to account for the increase in payment after 12 months, or if she is unable to find a renter, Debtor put her house up for sale. *Id.* Additionally, the reason for the delay in filing a new Amended Plan was because Debtor had some serious health issues that prevented her from being able to come up with a confirmable plan until now. On February 8, 2024, Debtor filed a Second Amended Plan with the court. Amended Plan, Docket 47.

DISCUSSION

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 November 22, 2024. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan. Debtor offers the following explanation for the delay in setting the Plan for confirmation: Debtor had some serious health issues that hindered her ability to discuss her options that would enable her to propose a confirmable plan.

Debtor filed a Second Amended Plan with the court on February 8, 2024 (Docket 47). On February 15, 2024, the Debtor filed a Motion to Confirm the Second Amended Plan and supporting pleadings.

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. 50) states personal knowledge testimony in support of the Motion to Confirm.

The court finding that Debtor is now prosecuting the confirmation of a Plan in this case, the Motion is denied without prejudice.

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 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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 20, 2023. 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).

The Motion to Dismiss is xxxxxxx.

February 21, 2024 Hearing

As of the court’s review of the Docket on February 16, 2024, no new documents have been filed.

At the hearing, xxxxxxx.

REVIEW OF THE MOTION

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

1. The debtor, Daniel Zinn Crain (“Debtor”), is delinquent \$5,370 in plan payments. Debtor will need to have paid \$7,160 to bring the Plan current by the Hearing date.

Docket 113. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 115.

DEBTOR’S RESPONSE

Debtor filed a Response in the form of a Declaration on January 3, 2024. Decl., Dckt. 117. Debtor states that the delinquency will be partially cured prior to the hearing date. Debtor states that \$3,580 will be remitted on January 3, 2024 to cover half of the outstanding balance. *Id.* at p. 1:26-27. Debtor states

that an additional \$5,370 will be remitted before February 15, 2024 to cover the remaining outstanding balance and their January 2024 payment. *Id.* at p. 1:27-28–2:3.

DISCUSSION

Delinquent

Debtor is \$5,370 delinquent in plan payments, which represents multiple months of the \$1,790 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).

Debtor informs the court that a \$3,580 payment will be made on January 3, 2024 to cover a portion of the delinquency. Debtor states that the remainder of the delinquency will be paid prior to February 15, 2024, which will then bring the Plan current. No evidence of any payments has been submitted to the court.

January 21, 2024 Hearing

Given the age of the case and Debtor's efforts to address the defaults, at the hearing, counsel for the Trustee concurred with a request for a continuance.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024.

No further developments have arisen in this case.

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 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 the Motion to Dismiss is **XXXXXXX**.

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 May 8, 2023. By the court’s calculation, 44 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 XXXXXXX.

February 21, 2024 Hearing

The Debtor has filed a proposed Third Modified Plan, and Motion to Confirm with supporting pleadings on February 13, 2024. Dckts. 205 -209. Debtor has also filed a Motion for Authorization to obtain a reverse mortgage. Dckts. 200 - 204.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

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

1. The debtor, Robert Paul Hunter (“Debtor”), is delinquent in Plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 7, 2023. Dckt. 167. Debtor states there are two adversary proceedings, Case No.’s 22-02087 and 22-02088, and they have motions for entry of default judgment for both the adversaries. Debtor expects the default judgment will allow them to avoid two deeds of trust and obtain a reverse mortgage to pay off the Plan. Declaration, Dckt. 168.

Debtor requests that the Trustee’s motion be denied or, in the alternative, continued for sixty (60) days to allow for resolution of the adversary proceedings.

DISCUSSION

Delinquent in Plan Payments

Debtor is \$4,172.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 plan payment. Failure to make plan payments 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.

However, Debtor asserts that if they avoid the two deeds of trust subject to the adversary proceeding, they can obtain a reverse mortgage to complete the Plan. Debtor asserts the hearings on their Motions for Entry of Default Judgment are set for August 24, 2023. Upon review of the adversaries' dockets, no motions for entry of default judgment have been filed or set for hearing.

REQUEST FOR CONTINUANCE

On August 20, 2023, Debtor filed a request for continuance, as Debtor's Counsel was out of town and unavailable to attend the August 24, 2023 hearing. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) to continue the hearing.

Upon consideration of the *Ex Parte Motion*, the court continues the hearing on the Motion to Dismiss to September 21, 2023 at 11:00 a.m.

The court has further continued the hearing to October 18, 2023 at 9:00 a.m. pursuant to prior order of this court (Order, Dekt. 176).

October 18, 2023 Hearing

The continued hearings on the Motions for Entry of Judgment in the two Adversary Proceedings are scheduled for November 2, 2023.

November 29, 2023 Hearing

On November 9, 2023, the court entered its orders in *Hunter v. Peachtree Group Trust*, 22-2088, and *Hunter v. Fillmore Group Trust*, 22-2087, granting the motions for entry of default judgments determining that the respective deeds of trust were of no legal force and effect.

The Debtor had previously lodged two proposed judgments with the court, and then included two additional proposed judgments with the latest versions of the Motions for Entry of Default Judgment. The court noted that the various forms contained slight differences, some of which could be attributed to clerical errors, or possibly a substantive difference. Some conflicts were created in language used.

Though the court attempted to craft two judgements, in light of the "particularity" of title companies and the Debtor's need to get good clean judgments and clear title, the court requests that counsel for the Debtor prepare two final, clear, parallel language judgments for the two adversary proceedings, confirm that such are sufficient for title companies, and lodge such proposed judgments with the court.

At the hearing, the Trustee concurred that the hearing may be continued.

January 17, 2024 Hearing

The Court has now entered the judgments which have removed the two deeds of trust from the Debtor's property.

At the hearing, counsel for the Debtor reported that the reverse mortgage is taking longer than anticipated. Additionally, given the age of the case modification of the Plan is not a feasible alternative. Counsel requested a continuance so that he could meet further with Debtor so they can make a final decision of whether this case will be converted to one under Chapter 7 or dismissed.

The Trustee concurred with the request for a final continuance to allow Debtor's counsel to communicate further with Debtor.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024, one final time to afford Debtor and Debtor's counsel afford time for them to decide whether this case should be converted to Chapter 7 or 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 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 **XXXXXXX**.

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, persons having filed a Request for Notice, and Office of the United States Trustee on November 21, 2023. 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). 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 denied without prejudice.</p>
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February 21, 2024 Hearing

On February 7, 2024 Debtor's Attorney has filed a Status Report stating that the Debtor's records show that payment in the amount sufficient to cure the delinquency has been made to the Trustee. Status Report, Docket 29. Debtor has also filed an amendment to Schedule I and J that shows his current income from his new job at Kaiser Permanente. Petition, Docket 30.

At the hearing, **XXXXXXX**

Review of the Motion

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

1. The debtor, Austin Winston ("Debtor"), is \$1,158 delinquent in plan payments. Debtor will need to have paid \$1,978 to bring the Plan current before the Hearing date.

Docket20. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 22.

DEBTOR'S RESPONSE

Debtor filed a Response on January 1, 2024. Dckt. 24. Debtor states the delinquency will be cured prior to the hearing date by January 13, 2023. Debtor also informs the court that Debtor has cured a majority of the delinquency as of January 1, 2024, through electronic payments.

DISCUSSION

Delinquent

Debtor is \$1,158 delinquent in plan payments, which represents multiple months of the \$410 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor informs the court that he has paid most of the outstanding delinquency, and that he will pay the remainder by January 13, 2024. No evidence of any payment has been presented to the court. At the hearing, counsel for the Trustee reported that the delinquency is \$900, with two payments in process (however, in the past some electronic payments have not actually gone through).

The Trustee concurs with the request for a one month continuance.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024.

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 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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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:

1. The debtor, Toni Hamilton (“Debtor”), is delinquent \$200.00 in plan payments. Debtor will need to pay \$400.00 in total to bring the Plan current by the hearing date.

Docket 68. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 70.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2024. Dckt. 73. Debtor states that she has made a payment to the Trustee in the amount of \$120.00 on December 28, 2023, and another payment in the amount of \$110.00 on February 1, 2024. *Id.* Debtor states that she can make an additional payment in the amount of \$170.00 once she receives her next paycheck on February 9, 2024. *Id.* Additionally, in order to avoid having to pay attorney fees to modify the Plan, Debtor asks that she be given permission to make this \$170.00 payment after the deadline for opposition to the motion to dismiss. *Id.*

DISCUSSION

Delinquent

Debtor is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor has submitted evidence to the court that she has paid \$400.00 to the Trustee, which cures the delinquency. Exhibits, Dockets 75, 77.

At the hearing, **XXXXXXX**

Cause does not exist to dismiss this Case and the Motion is denied without prejudice.

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 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.

6. 21-21521 -E-13 DPC -2	LEA CHASE Joseph Canning	MOTION TO DISMISS CASE 12-21-23 [46]
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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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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:

1. The debtor, Lea Ann Chase (“Debtor”), is delinquent \$3,875.56 in plan payments. Debtor will need to pay \$11,626.68 to bring the Plan current by the hearing date.

Docket 46. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 48.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2024. Dckt. 50. Debtor states that the delinquency has been cured. Debtor states that \$10,800.00 was paid to the Trustee on or about February 2, 2024, and that \$826.68 was paid on or about February 5, 2024. These payments account for the \$11,626.68 delinquency.

DISCUSSION

Delinquent

Debtor was \$3,875.56 delinquent in plan payments, which represents one month of the \$3,875.56 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Here, Debtor states that the delinquency has been cured. The Debtor has submitted a deceleration certifying that they have made payments to the Trustee totaling \$11,626.88. Declaration, Docket 51.

At the hearing, **XXXXXXX**

Based on the foregoing, cause does not exist to dismiss this case. The Motion is denied without prejudice.

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 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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on January 10, 2024. By the court’s calculation, 42 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:

1. The debtor, Gary Duane Sparks (“Debtor”), is delinquent \$863.37 in plan payments.
2. Debtor’s Motion to Confirm an Amended Plan, (Docket 56), was denied by the Court on November 21, 2023, (Docket 75). Debtor has failed to file an Amended Plan and set for confirmation.

Docket 76. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 78.

DEBTOR’S RESPONSE

Debtor filed a Response on February 6, 2024. Dckt. 86. Debtor states he has filed an Amended Plan (Docket 83) and is current under the terms of the Amended Plan, having already made a payment of \$5,595. There was delay in filing an Amended Plan because Debtor had to wait on the IRS amending their claim, which the IRS did on January 25, 2024.

DISCUSSION

Trustee alleges there is a minor delinquency in the case, but Debtor informs the court that Debtor is current under the terms of the Amended Plan. At the hearing, **XXXXXXX**

The Motion to Dismiss is ~~denied without prejudice.~~

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 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.~~

PHH MORTGAGE CORPORATION VS.

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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 12, 2023. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

However, Co-Debtor has not been served according to Movant's Certificate of Service. Docket 30, p. 5. Section 1301(d) makes clear that Co-Debtor is also a party in interest who must be served, since the Co-Debtor is expressly given the right to object to the granting of relief. 3 COLLIER ON BANKRUPTCY ¶ 1301.03[1][c].

At the hearing, counsel for Movant requested a continuance so that the could properly serve the Co-Debtor.

The Motion for Relief from the Automatic Stay 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 non-responding parties 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 for Relief from the Debtor and Co-Debtor Automatic Stay is granted.

February 21, 2024 Hearing

On January 24, 2024 Debtor's counsel filed an amended Notice of Continued Hearing (Docket 36) and amended Certificates of Service (Dockets 37, 38) effectuating service on the Co-Debtor. However, the Notice of Continued Hearing improperly set the Motion as a 9014-1(f)(1) Motion for which at least 28 days notice be given. The court again continued the Motion to February 21, 2024, to allow the Co-Debtor ample time to file written response. Order, Docket 40. As of the court's review of the Docket on February 13, 2024, no written opposition has been filed by the Co-Debtor. At the hearing, **XXXXXXX**

Review of the Motion

PHH Mortgage Corporation ("Movant"), as the attorney in fact for Bank of America, N.A., which is the creditor in this Bankruptcy Case, seeks relief from the automatic stay with respect to Diana San Filippo ("Debtor") and James T. Kistler's ("Co-Debtor") real property commonly known as 5760 Quartz Dr., El Dorado, California 95623 ("Property"). Movant's well-pleaded facts stated with particularity (Fed. R. Bankr. P. 9013) include:

1. Movant is properly in possession of a Fixed Rate Home Equity Conversion Deed of Trust ("Deed of Trust") securing payment of the note, executed by Debtor and Co-Debtor, up to principal amount of \$547,500. Docket 24 p. 2:20-3:4.
2. The Deed of Trust provides Movant with a lien on the Property. *Id.* at 3:10-11.
3. The terms of the Deed of Trust have been in default since August 9, 2023. Specifically, Debtor and Co-Debtor have not maintained Hazard Insurance or paid property taxes on the Property, with page 2, section 2 of the Deed of Trust requires Debtor and Co-Debtor to maintain these property charges. *Id.* at 3:13-17.
4. The Hazard Insurance payment of \$1,797 came due on August 9, 2023. The property taxes of \$1,691.67 came due on October 13, 2023. *Id.* at 3:17-19.

Movant's Declaration and Supporting Exhibits

Movant has provided the Declaration of Daniel Delpesche to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 26. Mr. Delpesche testifies:

1. The Deed of Trust associated with this loan is a Reverse Deed of Trust. *Id.* at ¶ 2.
2. The terms and conditions of the Note and Deed of Trust are in default due to failure to perform an obligation under the Deed of Trust by failure to maintain hazard insurance and/or property taxes.
3. The default has not been cured.

Movant has provided the following evidence in support of its claim:

1. Borrower and Lender agreed to certain uniform covenants in the Security Instrument signed by Debtor and Co-Debtor and notarized on September 28, 2009. Docket 28, Fixed Rate Home Equity Conversion Deed of Trust at p. 10; Acknowledgment, Docket 28 at p.1.
2. Uniform Covenant 2 governs Payment of Property Charges. Docket 28, Fixed Rate Home Equity Conversion Deed of Trust: p. 2 Uniform Covenant 2.
3. Uniform Covenant 2 states that Borrower shall pay on all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges by withholding fund from monthly payments due to the Borrower or by charging such payments to a line of credit as provided for in the Loan Agreement. *Id.*
4. Debtor received a final notice on August 4, 2023, that their hazard insurance policy expired and that Movant had no evidence that she had obtained new coverage. Docket 28, Letter from PHH Mortgage to Diana Kistler and James T. Kistler, p.1.

CHAPTER 13TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on January 9, 2024. Dckt. 31. Trustee asserts that:

1. The plan was confirmed on February 15, 2023. Docket 31, p. 1:25-26.
2. The Debtor is current on plan payments to the creditor. *Id.* at 1:26-27.
3. Trustee requests the court grant Creditor’s Motion for Relief.

In support of this Response, David Cusick has filed the declaration of Angelina Fernandez. This declaration states:

1. Debtor budgeted for property taxes and insurance in Schedule J of their Voluntary Petition. Decl., Docket 32 p.2:2-5; Docket 1, Schedule J, p.1.
2. Movant’s Proof of Claim asserts that the arrears of \$15,276.72 is a pre-petition advancement for the hazard insurance and property taxes. *Id.* at 2:11-15.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$559,631.79 (Declaration, Dckt. 26 p. 4:1-2), while the value of the Property is determined to be \$542,300.00 as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Here, Movant has provided evidence that the value of the debt is (\$559,631.79). Exhibit B, Docket 28. Movant has provided evidence that the value of the house is \$542,300.00. Exhibit C, Docket 28, Debtor’s Schedule A/B. Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case. 11 U.S.C. § 362(d)(2).

Co-Debtor Stay

However, Movant may not have clearly provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). 11 U.S.C. § 1301(c) permits relief from Co-Debtor stay only if (1) as between the debtor Co-Debtor, the Co-Debtor received the consideration for the claim held by such creditor, (2) the plan filed by the Debtor proposes not to pay such claim, or (3) such creditor’s interest would be irreparably harmed by continuation of such stay.

With respect to the Co-Debtor Stay, 11 U.S.C. § 1301(c) and (d) provide:

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) **the plan filed by the debtor proposes not to pay such claim; or**

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

Grounds for Relief of Co-Debtor Stay

First, Movant asserts that the Co-Debtor/Co-Borrower received consideration for the claim held by movant at least in the form of money loaned. Docket 24, p. 8:10-12. Movant further asserts that there is currently a default in the post-petition payment in the amount of \$3,448.67. *Id.* at 8:11-12. This represents the cost of the hazard insurance premiums and property taxes that have come due. Co-Debtor is listed as a borrower on the Deed of Trust. However, it is not enough that the Co-Debtor received some consideration. This first ground for relief is available in situations where the Co-Debtor, not the Debtor, received the consideration and benefit of the claim held by the creditor. 3 COLLIER ON BANKRUPTCY ¶ 1031.03[2][a]; *In re Ragin*, 249 B.R. 118 (Bankr. D.S.C. 2000) (granting motion for relief from co-debtor stay where co-debtor was true recipient of loan proceeds and sole owner of the property).

The Motion states that the Debtor and Co-Debtor James T. Kistler's were joint borrowers for a "Fixed-Rate Note Home Equity Conversion Mortgage Closed End Note" and that is secured by a "Fixed Rate Home Equity Conversion Deed of Trust." Mtn, p. 2: -3:3; Dckt. 24. The maximum amount that could be obtained on the loan is the principal amount of \$547,500. *Id.*

A copy of the Note is provided as Exhibit A, on which both Debtor and Co-Debtor are the two borrowers. The Deed of Trust is provided as Exhibit B, for which both the Debtor and Co-Debtor are the Borrowers who grant the security interest in the Property to secure the Note.

Here, both the Debtor and Co-Debtor sought, obtained a loan, and granted a security interest in the Property to secure the monies that they received from the loan they jointly requested and obtained.

The Declaration of Sayeth Naught provides testimony that the balance due on the Note was (\$559,631.79). Dec., ¶ 8; Dckt. 26. In the Motion a chart states the breakdown of this obligation as follows:

A. Principal Advances.....(\$270,176.90)

- B. Accrued Interest.....(\$237,861.79)
- C. Mortgage Insurance Premium.....(\$ 22,764.48)
- D. Servicing Fees.....(\$ 5,040.00)
- E. Corporate Advances.....(\$ 21,741.33)
- F. Current Month Per Diem Total.....(\$ 2,047.29)

Total Balance Owed as of the Motion.....(\$559,631.79)

- G. The Motion then states the amount of the Delinquency in payments for property taxes (10/13/2023 payment due) and insurance (08/09/2023 payment due) by Debtor is (\$3,488.67).

Motion, p. 3:20 -4:9; Dckt. 24; and Exhibit B; Dckt. 28.

While Debtor and Co-Debtor are not obligated to make principal or interest payments, the grounds stated in the Motion include that Debtor and Co-Debtor are not making the property tax payments and have not maintained liability insurance – both of which are obligations of Debtor and Co-Debtor under the Note and Deed of Trust. Deed of Trust Note, ¶ 2, 3, Exhibit A; Dckt. 28.

The Motion cites to Debtor having valued the Property that secured this obligation on Exhibit A/B to be \$542,300.00. Motion, p. 4:10-13; Dckt. 24; and Exhibit C, Schedule A/B; Dckt. 28. Based on that the Balance Owed, Movant asserts that there is no equity in the Property. *Id.*

Here, both Debtor and Co-Debtor received the benefit of the Loan that was made, received the \$270,176.90 in principal advances, and have not been required to pay (with them accruing to the Loan Balance) any principal, interest, service fees or other amount this being a “Reverse Mortgage.”

On Schedule A/B Debtor states that she is the sole owner of the Property, with the Co-Debtor not having any interest therein. Dckt. 1 at 10. The relief from stay requested to allow Movant to exercise the power of sale under the Deed of Trust and foreclosure on the Property. The Deed of Trust expressly states:

10. No Deficiency Judgments. Borrower shall have no personal liability for payment of the debt secured by this Security Instrument. **Lender may enforce the debt only through sale of the Property lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed.** If this Security Instrument is assigned to the Secretary upon demand by the Secretary, Borrower shall not be liable for any difference between the mortgage insurance benefits paid to Lender and the outstanding indebtedness, including accrued interest, owed by Borrower at the time of the assignment

Deed of Trust, ¶ 10; Exhibit A; Dckt. 28 at 11 (emphasis added).

In addition to the Co-Debtor stating to have no interest in the Property, the Co-Debtor will not have any personal liability for the secured debt owed on the Note and Deed of Trust.

Terms of Confirmed Chapter 13 Plan

The Confirmed Chapter 13 Plan in this case provides for payment of this secured debt as a Class 1 Claim. Plan, ¶ 307; Dckt. 3. It provides for payment of a (\$20,000) arrearage at the rate of \$370.37 a month, which amortizes payment of the (\$20,000) over 54 months. The Bankruptcy Case was filed on January 2, 2023, and the Plan was confirmed by the Order entered on February 15, 2023. Ord.; Dckt. 15.

The defaults in payment of property taxes (October 2023 payment) and insurance (August 2023 payment) arise post-confirmation. These are not pre or post-petition arrearages which are provided for in the Chapter 13 Plan confirmed in this case on February 15, 2023.

Irreparable Harm Asserted by Movant

Movant also asserts that the continuation of the stay as it pertains to the Co-Debtor/Co-Borrower would irreparably harm Movant in the absence of post-petition payments. *Id.* at 8:12-15. The creditor must show harm exceeding the simple delay caused by the stay. Such harm arises when a creditor must take immediate action in order to preserve its rights. 3 COLLIER ON BANKRUPTCY ¶ 1031.03[2][c]. Examples provided by the legislative history include cases in which a Co-Debtor is filing for bankruptcy themselves, are deteriorating financially, or are about to leave the jurisdiction. *Id.*, H.R. Rep. No. 595, 95th Cong., 1st Sess. 122 (1977). They also include situations where there is reasonable cause to believe the property is about to be disposed of by the Co-Debtor, or is subject to rapid depreciation or decrease in value. S. Rep. No. 959, 95th Cong., 2d Sess (1978). *See In re Case*, 148 B.R. 901 (Bankr. W.D. Mo. 1992) (finding creditor would suffer irreparable harm if not permitted to file a claim against estate of deceased co-debtor). However, absent such circumstances, or when the creditor may suffer harm for other reasons such as its own inaction, relief from the stay should not be granted under 11 U.S.C. § 1301(c)(3). 3 COLLIER ON BANKRUPTCY ¶ 1031.03[2][c].

Here, based on the recent valuation stated by Debtor on Schedule A/B and the amount of the secured debt, there is no equity in the Property, the obligation exceeding the value of the Property. Additionally, the property taxes (which are a superior lien to the Deed of Trust) further increase the short fall of the value of the Property for Movant for the secured debt. The liability insurance being allowed to lapse puts Movant with the potential loss of the value of the collateral if there were a fire or other substantial damage to the Property. To protect its financial interests, Movant is forced to provide the insurance on the Property in light of Debtor's (and Co-Debtor's) default in the obligation to have the Property insured.

Granting of Motion

As reviewed above, grounds exist to grant relief from both the Debtor's stay and the Co-Debtor's Stay.

Co-Debtor Stay

For the Co-Debtor, this is not a business debt, but one that Co-Debtor and Debtor incurred to pull \$270,176.90 of equity from the Property for however they desired to use it. The Co-Debtor received the consideration from which this secured debt arises - the requested disbursement of the \$270,176.90. The Plan

does not provide for payment of the post-confirmation defaults in property taxes and insurance. Given the lack of equity in the Property, the default in property taxes encumbering the Property as a lien senior to Movant under California law, and Movant being put at the risk of losing the value in the collateral through uninsured loss, relief from the stay as to the Co-Debtor is proper.

However, the Certificate of Service does not document that service has been made on the Co-Debtor. Without the Co-Debtor having been served, the court cannot purport to adjudicate the rights of the Co-Debtor (basic Due Process requirement).

At the hearing, counsel for Movant requested a continuance so they can get service of the pleadings and notice of continued hearing on the Co-Debtor.

Debtor/Estate Stay

With respect to the Debtor, Movant has established that: (1) cause exists for modification of the Stay given the Debtor's post-confirmation default in the property taxes and liability insurance, and, as a separate independent basis for such relief, that there is no equity in the property for the Debtor or Estate in light of Debtor's statement under penalty of perjury that the value of the Property is \$541,300 and the amount of the secured debt is (\$559,631.79), the amount computed as of the filing of the Motion.

Here, Movant has provided evidence that the value of the debt is (\$559,631.79). Exhibit B, Docket 28. Movant has provided evidence that the value of the house is \$542,300.00. Exhibit C, Docket 28, Debtor's Schedule A/B. Based upon the evidence submitted to the court, and no opposition or showing by the Debtor that the Property is necessary for an effective reorganization (for which the Debtor has the burden of proof; 11 U.S.C. § 362(g)), granting relief from the Stay pursuant to 11 U.S.C. § 362(d)(2) is proper.

Additionally, cause has been shown for granting relief pursuant to 11 U.S.C. § 362(d)(1) in light of the post-petition defaults, post Plan confirmation defaults in paying the property taxes and insurance on the Property, there being no equity in the Property to cover such advances, and the amount of the debt exceeding the value of the Property with respect to the post-petition, post Plan confirmation defaults.

Attorneys' Fees Requested

Typically, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014. However, taken up as a practical matter where attorney's fees are reasonable, the request may be made in conjunction with another motion. Here, Movant alleges contractual grounds for such fees. Docket 24, p. 8:19-21. Movant provides evidence that the Note and Deed of Trust states: "If Lender has required immediate payment-in-full as described above, the debt enforced through sale of the Property may include costs and expenses, including reasonable and customary attorney's fees, associated with enforcement of this note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note." Composite Exhibit A, Docket 28, Fixed Rate Home Equity Conversion Mortgage Closed End, ¶6(C).

Movant is seeking \$1,081.00 in attorney's fees and costs, including \$188.00 for the filing fee paid to the court in order to file their Motion for Relief from Automatic Stay. Movant provides Exhibit D, authenticated by the sworn Declaration of Daniel Delpesche, breaking down the fees and costs incurred in

connection with the filing of the Motion. The fees for reviewing the loan documents, drafting the motion, and preparing the exhibits total \$850.00, while the costs total \$188.00, for a total of \$1,038. Exhibit D, Docket 28.

Thus, Movant has adequately alleged a contractual ground for their attorneys fees and costs and provided evidence of how they were incurred, up to \$1,038.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, because the “Debtor and Co-Debtor will have minimal motivation to insure, preserve, or protect the collateral,” that the court grant relief from the Rule as adopted by the United States Supreme Court.

Rule 4001(a)(3) recognizes that motions granting relief from the stay can have enormous consequences for the parties involved and can often dictate the success or failure of the entire bankruptcy case. 3 COLLIER ON BANKRUPTCY ¶4001.05. In addition, without a stay pending appeal, appeals from such orders can often become moot if the party granted relief proceeds with a sale or some other action that cannot be easily undone. *Id.* The purpose of this provision is to permit a short period of time for the debtor or other party opposing relief to seek a stay pending an appeal of the order. *Id.*

The reason given that the “Debtor and Co-Debtor will have minimal motivation to insure, preserve, or protect the collateral” does warrant a waiver of the fourteen day stay.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 for Relief from the Automatic Stay filed by PHH Mortgage Corporation (“Movant”) 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5760 Quartz Dr., El Dorado, California (the “Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of James T. Kistler of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

9. [20-20702-E-13](#) **VICKI/PAUL SCHLAHT** **CONTINUED MOTION TO DISMISS**
[DPC-1](#) **James Keenan** **CASE**
11-20-23 [\[28\]](#)

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, persons having filed a Request for Notice, and Office of the United States Trustee on November 20, 2023. By the court’s calculation, 58 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 XXXXXXX
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February 21, 2024 Hearing

As of the court’s review of the docket on February 13, 2024, no new documents have been filed. At the hearing, XXXXXXX

Review of the Motion

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

1. The debtor, Vicki and Paul Schlaht (“Debtor”), is delinquent \$1,800 in plan payments. Prior to the hearing, two additional payments of \$900 will come due, meaning Debtor must pay \$3,600 to bring the Plan current.

DEBTOR’S RESPONSE

Debtor filed a Response on January 3, 2024. Dckt. 32. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is at least \$1,800 delinquent in plan payments, which represents multiple months of the \$900 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's counsel reported that Debtor's counsel's family member was in an accident the day prior to the hearing, had contacted Trustee's counsel, and Trustee's counsel requested a one month continuance of the hearing to afford Debtor's counsel time to address further with his client the curing of the default.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024.

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 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 **XXXXXXX**.

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 May 8, 2023. By the court's calculation, 44 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 XXXXXXX.

February 21, 2024 Hearing

No new documents have been filed with the court as of February 13, 2024. At the hearing, XXXXXXX

REVIEW OF THE MOTION

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

1. The debtor, David Howerton ("Debtor"), is in default with respect to the plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 7, 2023. Dckt. 119. Debtor states a new plan will be filed.

DISCUSSION

Delinquent

Debtor is \$5,929.46 delinquent in plan payments, which represents multiple months of the \$2,040.86 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).

Unfortunately for Debtor, a promise to file a new Plan is not evidence that resolves this Motion.

The Trustee reports that the delinquency has increased. Debtor's counsel reports that the Debtor has passed away and his representative want to complete the Plan.

The Debtor Representative will make an immediate \$4,000 payment and is in the process of doing a refinance to pay off the Plan.

The parties agreed to a continuance.

July 19, 2023 Hearing

At the hearing, counsel for the Debtor's Successor Representative reported how they will now proceed with the refinance or liquidation of the property. The Chapter 13 Trustee concurred with the request for a continuance of the hearing on this Motion.

September 12, 2023 Hearing

At this hearing, counsel for the Successor Representative reports that counsel has the \$6,000.00 to fund the Plan, however there are two more payments that have come due. The Debtor and Successor have funding the Plan with \$105,000.00 and that the payoff on the Plan is under \$20,000.00.

Counsel for the Trustee reported that the total payoff would be a little less than \$21,000.00 to pay off the Plan. With the payment of the \$6,000.00 today, then it will be substantially reduced.

With the \$6,000.00 payment being made, the Trustee concurred with the request for a further continuance in light of the efforts manifested by the Successor to Debtor.

November 7, 2023 Hearing

Since the September 13, 2023 hearing, nothing further has been filed. At the hearing, counsel for the Chapter 13 Trustee reported that the \$6,000.00 payment has been received, but Debtor is still delinquent \$9,000 +/-.

At the hearing, the court addressed with counsel for the successor representative that this is a situation where various family members who continue to reside in the residence property of the late Debtor must pay their monthly rent. This is not an opportunity for the successor representative, the fiduciary of the Bankruptcy Plan Estate, to live the Plan Estate property and not pay their rent.

The Trustee agreed to a modest continuance to afford the successor representative to get the finances straighten out, and get the Plan payments back on track and current.

January 17, 2024 Hearing

Trustee filed a Status report on January 3, 2024, explaining to the court that the Plan remains \$11,193.95 delinquent with mortgage payments and arrears of \$11,567.27 outstanding. Trustee requests the court grant this Motion. Debtor has not filed a response.

At the hearing, counsel for the Debtor reported that \$4,600 has been sent to the Trustee by cashier's check to the Trustee. \$6,593.95 is the balance due on the Plan after crediting the \$4,600 payment.

Counsel for the Trustee reported that given the age of this case, the partial cure that is in progress, and the Debtor's efforts to cure the default, the Trustee concurred with Debtor's counsel's request for a short continuance. The Trustee suggested continuing the hearing to the next regular dismissal date to afford Debtor and Debtor's counsel a reasonable time to get this cured and documented.

The hearing Motion to Dismiss is 9:00 a.m. on February 21, 2024.

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 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 **XXXXXXX**

11. 19-26718-E-13 DPC-1	DAVID SKULTETY AND SHANNON MCNAB Mark Wolff	MOTION TO DISMISS CASE 1-24-24 [27]
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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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on January 24, 2024. 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).

The Motion to Dismiss is granted, and the case is dismissed.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, David Aaron Skultety, Sr and Shannon K. McNab (“Debtor”), will not complete the Plan within 6 months of its stated term. The Trustee shows that the Plan will run 105 months due to the excess priority claims of the Internal Revenue Service, totaling \$33,666.26, whereas the Plan estimated this amount to be \$5,880.00.

Docket 27. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 29.

DEBTOR’S RESPONSE

Debtor filed a Response on January 31, 2024. Dckt. 31. Debtor’s Response states that they do not oppose the Trustee’s Motion to Dismiss Case.

TRUSTEE’S REPLY

On February 2, 2024 Trustee filed a Reply to Debtor’s Response. Docket 33. In his Reply, Trustee requests the hearing be held on this Motion because Trustee received a call from the Debtor who opposes the Motion.

DISCUSSION

Material Default for Breaching a Plan Term

Debtor is in material default under the Plan because Debtor’s Plan will not complete within 6 months of its stated term and will exceed the 60 month period. Section 6.04 of the Plan requires a plan to be completed within six months of its stated term, not to exceed 60 months. Failure to provide for the IRS claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Despite Debtor’s Attorney filing a Non-Opposition to the Trustee’s Motion to Dismiss Case, the Trustee filed a Reply to Debtor’s Non-Opposition requesting that a hearing be held. Reply, Docket 33. Trustee states that he was contacted by the Debtor on February 1, 2024, and based on their telephone conversation, Trustee believes Debtor opposes the motion. *Id.* Trustee asks for the court to conduct a hearing on February 21, 2024 to give Debtor the opportunity to appear and state their position. *Id.* 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 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 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.~~

12. 20-25519-E-13 DPC-4	ANDREW/RINA CARAGAN Mark Shmorgon	MOTION TO DISMISS CASE 12-21-23 [59]
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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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Andrew and Rina Caragan (“Debtor”), is delinquent \$1,106.00 in plan payments. Debtor will need to have paid \$2,212.00 to bring the Plan current by the hearing date.

Docket 59. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 61.

DEBTOR’S RESPONSE

Debtor filed a Response on December 21, 2023. Dckt. 63. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$1,106.00 delinquent in plan payments, which represents multiple months of the \$553.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor states that the Plan will be current by the hearing date, but no evidence has been submitted to the court showing that payments have been made. 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 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 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 (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on February 5, 2024. The court computes that 16 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: \$78.00 due on January 30, 2024.

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 subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00.

At the hearing, **XXXXXXX**

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 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, persons having filed a Request for Notice, and Office of the United States Trustee on January 9, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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, David Karleskint (“Debtor”), is delinquent \$5,100.00 in plan payments. Debtor will need to have paid \$6,800.00 to bring the Plan current by the hearing date.
2. Trustee objected to confirmation of the Debtor’s original Plan, which was sustained at hearing on September 26, 2023. Debtor has failed to file an amended Plan.

Docket 41. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 43.

DEBTOR’S RESPONSE

Debtor’s Attorney filed a Response on February 7, 2024. Dckt. 45. Debtor’s Attorney states that it is the Debtor’s intention to convert his Chapter 13 case to a Chapter 7, and that he anticipates doing so before the hearing date.

DISCUSSION

Delinquent

Debtor is \$5,100.00 delinquent in plan payments, which represents multiple months of the \$1,700.00 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 September 27, 2023. 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).

Conversion of Case from Chapter 13 to Chapter 7

Debtor has indicated that he intends to convert his case from a Chapter 13 to a Chapter 7. Response, Docket 45. Debtor's Attorney states that Debtor was not available to sign any conversion documents, but that he anticipates filing documents to convert to a Chapter 7 prior to the hearing date. *Id.* A review of the docket on February 13, 2024 shows no documents have been submitted by the Debtor to convert his case to a Chapter 7.

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 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 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.

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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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on January 2, 2024. By the court's calculation, 50 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 XXXXXXX.

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

1. The debtor, Bryan Gallinger ("Debtor"), is engaging in unreasonable delay that is prejudicial to creditors.
2. Debtor's previous Plan called for a sale of real property commonly known as 9421 Fair Oak Blvd, Fair Oaks, California 95628 ("Property") in 36 months, and that Plan was denied confirmation on December 6, 2023. Dockets 49, 50.
3. Debtor has asserted he has property insurance and rent but has not proven it and has not proposed a feasible payment to creditor before an eventual sale.

Docket 52. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 54.

DEBTOR'S RESPONSE

Debtor filed a Response and accompanying declaration on February 6, 2024. Dockets 82, 83. Debtor states:

1. The sale of the Property will be conducted within 120 days, intended to be sold by June 2024. Docket 82 p. 1:21-22.
2. Debtor is insured through November of 2024. *Id.* at p. 1:23-24.
3. Debtor is current under the previously denied Plan. *Id.* at p. 1:26-27.
4. Debtor is making payments of \$2,250 through June of 2024, then a pay off from the sale of the Property. *Id.* at p. 2:1-2.
5. Debtor is proposing a 100% Plan. *Id.* at p. 2:3.
6. Debtor has filed an Application to hire a Real Estate Agent to list the property, and will include the MLS listing as requested by the Trustee, to be heard February 27, 2024. *Id.* at p. 2:11-14.
7. The Proposed Broker has completed a fair market analysis of the property and determined that the value of the property is \$550,000.00. *Id.* at p. 2:20-23.
8. Debtor intends that the Secured Creditor receive monthly dividend of \$1,380.00 per month during the period prior to the sale, i.e. through June of 2024. *Id.* at p. 2:24-26.
9. Debtor has amended Schedule B to add the Bitcoin asset. *Id.* at p. 3:5-6.
10. The Debtor is receiving "Room Rental" income of \$1,800.00. *Id.* at p. 3:7-8.
11. The Debtor is no longer receiving income from "Dog Walking". *Id.* at p. 3:9-10.
12. In this case there are no unsecured claims, only claims subject to the Property, and is a 100% plan. *Id.* at p. 3:15-16.

Debtor also submitted A liquidation summary, Exhibit A, and proof of insurance, Exhibit B. Docket 84. Exhibit B purports to show the policy period runs from November 16, 2023 through November 16, 2024.

TRUSTEE'S REPLY

On February 9, 2024 Trustee filed a Reply to Debtor's Response. Docket 86. In his Reply, Trustee states:

1. June 2024 is the ninth month, not the sixth month as Debtor suggests.
2. The Amended Plan calls for \$1,380 payments to the Levick Family Trust creditor at 10% interest with the estimated claim of \$453,675.57. The

monthly interest on that claim will accrue at \$3,780.62, so the monthly payment will only pay 36.5% of the interest accruing each month.

3. The amended plan still says there is an unidentified arbitration and that Debtor will object in the future if the arbitration is not successful, but no evidence exists of any pending arbitration.
4. Debtor simply ignores the \$11,748.89 unsecured claim of the Franchise Tax Board, (Claim 2), for 2005 & 2006 taxes.
5. Debtor maintains he has proof of insurance but the exhibit submitted is only a quote, and it is not clear that it covers the secured creditor.

DISCUSSION

This case remains troubled by the terms surrounding the sale of the Property, as well as making sufficient adequate protection payments to creditors in the mean time. In Debtor's proposed Amended Plan, Debtor states the Property will be sold by June 2024 and creditor Levick Family Trust will receive monthly dividends of \$1,380 per month. Plan, Docket 58 § 7. As Trustee notes, this payment is not sufficient to pay even the interest on the Levick Family Trust Claim. There is also no contingency in place if the Property cannot be sold on the projected date.

Moreover, Debtor still submits that the Levick Family Trust claim (POC 1-1) is subject to ongoing arbitration. *Id.* However, there is no evidence of any pending arbitration surrounding this claim. Debtor also fails to account for the Franchise tax Board's claim (POC 2-1) entirely. The court has raised these concerns in prior hearings, but Debtor has failed to timely address them. Failure to address these concerns amounts to unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 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 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 **XXXXXXX**.

Final Ruling

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 January 22, 2024. The court computes that 23 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: \$76 due on January 17, 2024.

<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 subject of the Order to Show Cause has been cured.

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 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 February 21, 2024 Hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 14, 2024, Dckt. 92; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Wills and Nicole Wills (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 92, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 20, 2023. 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).

The Motion to Dismiss is xxxxxxx.

February 21, 2024 Hearing

George Pence and Dolores Pence ("Debtor") filed the Notice and Motion on Suggestion of Death on February 15, 2024, stating that Debtor Dolores Pence has died. Docket 40.

At the hearing, xxxxxxx.

REVIEW OF THE MOTION

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

1. Debtor is \$2,223 delinquent in plan payments.

Docket 30. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 32.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on January 3, 2024. Dckts. 34, 35. Debtor informs the court that joint debtor Mary Pence passed away in October of 2023. Debtor George Pence's income has decreased by approximately \$3,700.00 as a result of Mrs. Pence passing. Debtor's current income consists of social security income and pension income. Debtor is in the process of either proposing a modified plan or converting to address this issue.

DISCUSSION

Delinquent

Debtor is \$2,223 delinquent in plan payments, which represents multiple months of the \$743 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).

The court notes that no Notice of Suggestion of Death of the joint debtor in this case has been filed. Neither has a motion been filed for the appointment of a successor representative for the late co-debtor.

In this case, Debtor has presented the court with real world difficulties showing why payments have been delayed.

January 17, 2024 Hearing

At the hearing, counsel for the Debtor reported that the Suggestion of Death is in process. The Trustee concurred with the request for a continuance, noting that the only disbursements left to be made under the Plan are to creditors holding general unsecured claims.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024.

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 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 the Motion to Dismiss is **XXXXXXX**.

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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 Notice, on January 4, 2024. The court computes that 48 days' notice has been provided.

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

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on January 2, 2024.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00.

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 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 and Debtor's Attorney, as stated on the Certificate of Notice, on February 5, 2024. The court computes that 16 days' notice has been provided.

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

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on January 29, 2024.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00.

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 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, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 17, 2024. The court computes that 35 days' notice has been provided.

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

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on January 12, 2024.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00.

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 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court's calculation, 62 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, Sally Laura Mungwa ("Debtor"), is currently delinquent \$2,446.64 in play payments.
2. Prior to the hearing in this matter, two payments of \$2,382.21 will come due.
3. As a result debtor will need to pay \$7,211.06, in order to bring this plan current by the date of the hearing.

Docket 71. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 73.

DEBTOR'S REPLY

Debtor filed a Reply and supporting declaration on January 23, 2024. Dockets 75, 76. Debtor states the delinquency will be cured prior to the hearing date. Debtor asserts the following:

1. Debtor has fallen behind due to two necessary repairs. First, unexpected and significant repairs for her car and second, repairs to a leaky spot in the roof of her home. Docket 75 p. 2:6-11.

2. Debtor made two payments in December to the Trustee totaling \$1,600. *Id.* at 13-15.
3. Debtor made a payment through TFS of \$2,807.99 on January 4, 2024.
4. Debtor plans to make another payment by the end of January plus another payment in mid-February to catch up.

DISCUSSION

First, it is not clear through Debtor's Reply what amount was paid in December. The Motion states that "Debtor completed one payment through TFS BillPay in the amount of \$1,600.00 on December 15, 2023 and December 21, 2023." *Id.* at 13-15. Yet, Debtor's Declaration states "I made two payments in December totaling \$1,600." It is not clear whether Debtor paid \$1,600.00 or more.

Thus, it is hard to estimate to what degree Debtor is still delinquent. Debtor has not provided evidence of any TFS transactions since the filing of Trustee's motion. A promise to pay is not evidence that resolves the Motion.

Delinquent

Debtor is \$2,446.64 delinquent in plan payments, which represents slightly more than one month of the \$2,382.21 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments 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 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 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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on November 20, 2023. By the court’s calculation, 58 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 XXXXXXX
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February 21, 2024

As of the court’s review of the docket on February 16, 2024, no new documents have been filed. At the hearing, XXXXXXX

Review of the Motion

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

1. The debtor, Eufemio and Liza Seguban (“Debtor”), is \$1,055 delinquent in plan payments. To become current by this Hearing, Debtor will need to have paid \$2,425.

Docket 147. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 149.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on January 3, 2024. Dckts. 151, 152. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$1,055 delinquent in plan payments, which represents over one month of the \$685 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Here, Debtor has promised the court the delinquency will be cured. No evidence of any payment has been uploaded with the court. At the hearing, counsel for the Trustee reported that Debtor is still in default, with no payment having been received since November 16, 2023.

At the hearing, Debtor's counsel, with the Debtors in attendance at the hearing, requested some additional time to work with his clients to determine whether the cure can be made or if they elect to convert the case to one under Chapter 7.

The Trustee concurred with the request for a continuance for the Debtor to either have the default cured or electing to convert the case to one under Chapter 7.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024, to allow the Debtor to either cure the default or have the case converted to one under Chapter 7.

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 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 **XXXXXXX**

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 20, 2023. 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).

The hearing on the Motion to Dismiss is XXXXXXX

February 21, 2024 Hearing

As of the court's review of the docket on February 14, 2024, no new documents have been filed. At the hearing, XXXXXXX

Review of the Motion

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

1. The debtor, Manuel Maravilla ("Debtor"), is \$3,362 delinquent in plan payments. Trustee received last payment on October 30, 2023. Debtor will need to have paid \$6,724 to bring the Plan current before the Hearing date.

Docket 28. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 30.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on January 2, 2024. Dockets 32, 33.. Debtor states the delinquency will be cured prior to the hearing date. Decl., Docket 33 p. 1:20-22. Debtor asserts that he had an issue with his bank account which caused him to miss the payments. *Id.* at 1:20-21. To date, Debtor has not provided evidence of payment to trustee.

DISCUSSION

Debtor is \$3,362 delinquent in plan payments, which represents one month of the \$3,362 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). A promise to pay is not evidence that resolves the Motion.

At the hearing, counsel for the Trustee reported that an electronic payment is pending that will cure the default and that Debtor has also scheduled the January 2024 payment to be made timely.

The Trustee concurred with the request for a continuance to afford the Debtor to consummate the cure of the default and proceed with the regular payments.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on February 21, 2024.

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 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 **XXXXXXX**

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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:

1. The debtor, Forrest Gardens (“Debtor”), is delinquent \$1,882.50 in plan payments. Debtor will need to pay \$3,628.50 in order to bring the Plan current by the hearing date.

Docket 79. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 81.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2024. Dckt. 83. Debtor states the delinquency will be cured prior to the hearing date. Debtor had some medical issues that resulted in him having to take some time off work. This resulted in a reduction in his income. Debtor has since returned to work and is receiving a full paycheck. On February 9, 2024, Debtor will schedule a payment to the Trustee in the amount of \$3,628.50, which will cure the delinquency.

DISCUSSION

Delinquent

Debtor is \$1,882.50 delinquent in plan payments, which represents multiple months of the \$873.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor states that a \$3,628.50 payment will be made on or around February 9, 2024 to the Trustee to cure the delinquency. No evidence has yet been presented to the court showing that payment has been made. At the hearing, **XXXXXXX**

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 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.~~

26. 23-21584-E-13	CASSANDRA VISCIA	MOTION TO DISMISS CASE
DPC-2	Mark Shmorgon	12-21-23 [60]

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2024. By the court’s calculation, 62 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, Cassandra Viscia (“Debtor”), is delinquent \$2,372.00 in plan payments. Debtor will need to pay \$7,116.00 to bring the Plan current by the hearing date.

Docket 60. Trustee submits the Declaration of Neil Enmark to provide evidence of the facts alleged in the Motion. Decl., Docket 62.

DEBTOR’S RESPONSE

Debtor filed a Response on December 21, 2023. Dckt. 64. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,372.00 delinquent in plan payments, which represents one month of the \$2,372.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor states that the delinquency will be cured prior to the hearing date. No evidence has yet been presented to the court that shows payment has been made. Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

At the hearing, **XXXXXXX**

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 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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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, Shirlean Sparkle Moore-Jordan (“Debtor”), is delinquent \$6,957.94 in plan payments. Debtor will need to pay \$16,963.50 in order to bring the Plan current by the hearing date.

Docket 49. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 51.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on February 7, 2024. Dckts. 56, 57. Debtor states the delinquency will be cured prior to the hearing date. Debtor’s main source of income comes from driving for UBER. Debtor states that she was involved in two vehicle accidents, which disrupted her flow of income. *Id.* Debtor’s vehicle has since been repaired, and so Debtor is now able to continue earning income.

DISCUSSION

Delinquent

Debtor is \$6,957.94 delinquent in plan payments, which represents multiple months of the \$5,002.78 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor states that the delinquency will be cured prior to the hearing date. No evidence has been presented to the court to show that Debtor is now current under the Plan. 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 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 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.

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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court's calculation, 62 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 XXXXXXX
--

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

1. The debtor, Marc A. Wilkie ("Debtor"), \$2,559 delinquent in plan payments.

Docket 101. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 103.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting declaration on February 7, 2024. Dockets 105, 106. Debtor testifies he has struggled finding employment and affordable housing. Decl., Docket 106 ¶ 6. He is now seeking new employment and plans to file a Modified Plan before this hearing date to address his current delinquency.

DISCUSSION

Delinquent

Debtor is \$2,559 delinquent in plan payments, which represents multiple months of the \$937 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has presented the court with testimony and real life reasons for the delinquency. However, Debtor has not yet proposed a Modified Plan to cure the delinquency as of the court's review of the docket on February 13, 2024. 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 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 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 **XXXXXXX**.

FINAL RULINGS

29. [22-21200-E-13](#)
[DPC-1](#)

AMADA ROGERS
Mary Ellen Terranella

MOTION TO DISMISS CASE
12-21-23 [\[20\]](#)

Final Ruling: No appearance at the February 21, 2024 Hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on February 14, 2024, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Amada Rogers (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

DEBTOR DISMISSED: 01/19/24
30 thru 31

Final Ruling: No appearance at the February 21, 2024 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 January 8, 2024. The court computes that 44 days' notice has been provided.

The Order to Show Cause is discharged as moot.

The court issued an Order to Show Cause based on Debtor's failure to pay the filing fee installment.

The court having dismissed this bankruptcy case by prior order filed on January 19, 2024 (Dckt. 54), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and this Bankruptcy Case having been dismissed on January 19, 2024 (Order; Dckt. 54) and good cause appearing,

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

DEBTOR DISMISSED: 01/19/24

Final Ruling: No appearance at the February 21, 2024 Hearing is required.

The case having previously been dismissed, the Motion is denied as moot without prejudice.
Order, Docket 54.

The Motion to Dismiss is denied without prejudice as moot, case having been dismissed on January 19, 2024.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and this Bankruptcy Case having been dismissed (Order; Dckt. 54) good cause appearing,

IT IS ORDERED that the Motion is denied as moot without prejudice, the case having been dismissed.

Final Ruling: No appearance at the February 21, 2024 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 January 16, 2024. The court computes that 36 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: \$78 due on January 10, 2024.

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 subject of the Order to Show Cause has been cured.

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 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.

THE TRUSTEE MAY ORALLY ON THE RECORD, OR BY A FILING REQUEST FOR DISMISSAL PRIOR TO THE HEARING IF THE TRUSTEE WANTS TO DISMISS WITHOUT PREJUDICE THIS MOTION IN LIGHT OF THE FIRST MODIFIED PLAN HAVING BEEN FILED AND THE MOTION TO CONFIRM THE FIRST MODIFIED PLAN SET FOR HEARING.

Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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 hearing on the Motion to Dismiss is continued to 2:00 p.m. on March 26, 2024, to be heard in conjunction with the Motion to Confirm First Modified Plan.

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

1. The debtor, Maureen Denise Johnson (“Debtor”), is delinquent \$3,255.50 in plan payments.

Docket 21. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 23.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2024. Dckt. 25. Debtor states that there is a First Modified Plan on file that proposes to address and cure the delinquency. *See* Modified Plan, Docket 29. Debtor is current under these new proposed Plan terms.

DISCUSSION

Delinquent

Debtor is \$3,255.50 delinquent in plan payments, which represents multiple months of the \$1,088 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has proposed a Modified Plan to cure the delinquency. The hearing on the Modified Plan will be conducted on March 26, 2024. *See* Notice, Docket 28 p. 2.

The court continues the hearing on the Motion to Dismiss to 2:00 p.m. on March 26, 2024, to be conducted in conjunction with Debtor's Motion to Confirm the First Modified Chapter 13 Plan.

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 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 **2:00 p.m. on March 26, 2024**, to be heard in conjunction with the Motion to Confirm First Modified Plan.

Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on January 19, 2024. By the court’s calculation, 33 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, Earl Moore (“Debtor”), is delinquent \$9,000 in plan payments.
2. Trustee objected to confirmation of the Debtor’s original Plan, which was sustained at hearing on January 9, 2024, (Docket 27). The Debtor has failed to file an amended Plan and set for confirmation.
3. Debtor has failed to provide Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.
4. Debtor has failed to provide Trustee with business documents, including: a description of assets, another four Bank of America statements, a business license, proof of insurance, six months of profit and loss statements, and tax returns for 2021 and 2022.

Docket 28. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 30.

Debtor did not file any written response.

DISCUSSION

Delinquent

Debtor is \$9,000 delinquent in plan payments, which represents multiple months of the \$4,500 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 January 9, 2024. 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).

Failure to Provide Tax Returns

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). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to File Documents Related to Business

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

- A. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Four additional months of bank account statements, and
- D. 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 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. 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 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 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.

35. 23-23625-E-13

SAVANNAH WESTFALL
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-16-24 [37]

DEBTOR DISMISSED: 01/19/24

35 thru 36

Final Ruling: No appearance at the February 21, 2024 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 January 16, 2024. The court computes that 36 days' notice has been provided.

The Order to Show Cause is discharged as moot.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fees.

The court having dismissed this bankruptcy case by prior order filed on January 19, 2024 (Dckt. 46), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and this Bankruptcy Case having been dismissed (Order; Dckt. 46), and good cause appearing,

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

DEBTOR DISMISSED: 01/19/24

Final Ruling: No appearance at the February 21, 2024 hearing is required.

The Motion to Dismiss is denied without prejudice as moot, the case having been dismissed on January 19, 2024.

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 46.

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 Case having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and this Bankruptcy Case having been dismissed (Order; Dckt. 46), and good cause appearing,

IT IS ORDERED that the Motion is denied as moot without prejudice, the case having been dismissed.

Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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, Severo Solilap Simundo (“Debtor”), is delinquent \$5,109.31 in plan payments. Debtor will need to pay \$9,382.51 to bring the Plan current by the hearing date.

Docket 58. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 60.

DEBTOR’S RESPONSE

Debtor failed to file a response.

DISCUSSION

Delinquent

Debtor is \$5,109.31 delinquent in plan payments, which represents multiple months of the \$2,136.60 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor did not file a response to this motion.

Based on the foregoing, cause exists to dismiss this case. 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 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 February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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, Christopher Doyle (“Debtor”), is delinquent \$5,950 in plan payments.

Docket 19. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 21.

Debtor has not filed any written opposition.

DISCUSSION

Delinquent

Debtor is \$5,950 delinquent in plan payments, which represents multiple months of the \$2,975 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments 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 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 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.

39. [22-21740-E-7](#) **ROBERT/CHELSEA GARCIA** **MOTION TO DISMISS CASE**
[DPC-1](#) **Matthew Gilbert** **12-21-23 [24]**

CASE CONVERTED: 01/03/24

Final Ruling: No appearance at the February 21, 2024 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 21, 2023. By the court’s calculation, 62 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 denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed their Notice of conversion on January 3, 2024. Docket 31.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Robert Garcia, Jr. And Chelsea Garcia’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on January 3, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 31. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on January 3, 2024. *McFadden*, 37 B.R. at 521.

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 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 as moot.

Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on January 2, 2024. By the court’s calculation, 50 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 hearing on the Motion to Dismiss is continued to 2:00 p.m. on February 27, 2024, to be heard in conjunction with several other Motions pending before the court in this Case.

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

1. The debtor, Satinder Singh (“Debtor”), does not have a plan pending, resulting in prejudicial delay to creditors in this case.

Docket 102. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 104.

DEBTOR’S RESPONSE

Debtor filed a Response on February 8, 2024. Dckt. 164. Debtor states he is not engaging in unreasonable delay and that he has filed an Amended Plan (Docket 151) that will pay all creditors 100% value of his business. Debtor argues he “has received no space or breathing room” since the court sustained creditor Placerville Interment Group, LLC’s (“Creditor”) objection to claimed exemption. Docket 164 p. 2: 5-6. Debtor argues Trustee’s numbers are wrong; there is not \$214,188.12 in non-exempt equity as the value of the assets in Debtor’s bankruptcy estate are over-encumbered by three secured creditors’ claims. Debtor is current in plan payments. The only issue remaining is the value of the business assets encumbered by the creditors.

DISCUSSION

Debtor is current in plan payments, and the record shows Debtor has an Amended Plan and Motion to Confirm on file. Debtor is prosecuting this case.

The court is hearing Creditor's Motion for Relief (DCN: RLL-2), Debtor's Motion to Value Movant's claim (DCN: RCW-9) and Motion to Confirm Plan (RCW-89), and Creditor's separate Motion to Dismiss or Convert this Bankruptcy Case (DCN: RLL-3) at 2:00 p.m. on February 27, 2024.

The court continues the hearing on the Trustee's Motion to Dismiss to 2:00 p.m. on Feb.

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 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 **2:00 p.m. on February 27, 2024**, to be heard in conjunction with several other Motions pending before the court in this Case.

41. [23-24448](#)-E-13

LACEY DEROCK
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-17-24 [26]**

Final Ruling: No appearance at the February 21, 2024 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 January 17, 2024. The court computes that 35 days' notice has been provided.

The Order to Show Cause is discharged and no sanctions ordered pursuant thereto, the Docket stating that the \$79.00 filing fee installment was paid on February 16, 2024.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on January 11, 2024.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured. February 16, 2024 Docket Entry Report.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel; the Docket Report Stating that the \$79.00 filing fee installment was paid on February 16, 2024; and good cause appearing,

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

CASE CONVERTED: 12/26/23

Final Ruling: No appearance at the February 21, 2024 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 21, 2023. By the court’s calculation, 62 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 denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed her Notice of Conversion on December 26, 2023. Docket 36.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Olga Bolin’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on December 26, 2023, however, converting the case to a proceeding under Chapter 7. Dckt. 36. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 26, 2023. *McFadden*, 37 B.R. at 521.

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 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; the case having been converted to one under Chapter 7; and good cause appearing,

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

43. <u>22-21656-E-13</u> <u>DPC-4</u>	ERROL QUOCK AND IRENE WONG Michael Mahon	MOTION TO DISMISS CASE 1-19-24 [107]
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Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on January 19, 2024. By the court’s calculation, 33 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, Errol Quock and Irene Wong (“Debtor”), are delinquent \$7,412.25 in plan payments.
2. Debtors’ Motion to Confirm an amended Plan, (Docket 96), was denied by the Court on December 6, 2023, (Docket 106.) Debtors have failed to file an amended Plan and set for confirmation.

Docket 107. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 109.

Debtor did not file any written opposition.

DISCUSSION

Delinquent

Debtor is \$7,412.25 delinquent in plan payments, which represents multiple months of the \$3,064.90 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 December 6, 2023. 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 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 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 February 21, 2024 Hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 14, 2024, Dckt. 117; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Matthew Michael Hannah and Tara Noel Hannah (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 117, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 days’ notice was provided. 14 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, Isidro Rodrigo Flores (“Debtor”), is delinquent \$560.00 in plan payments. Docket 82, p. 1:19-20.
2. Prior to the hearing in this matter, two payments of \$280.00 will come due. *Id.* at 20-21.
3. As a result, Debtor will need to pay \$1,120.00 in order to bring this plan current by the date of the hearing.

Docket 82. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 84.

DISCUSSION

Delinquent

Debtor is \$560.00 delinquent in plan payments, which represents two months of the \$280.00 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).

Therefore, cause exists to dismiss this case. 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 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.

46. 23-20458 -E-13	BEATRIS QUINONEZ	MOTION TO DISMISS CASE
DPC-1	Mo Mokarram	12-21-23 [18]

Final Ruling: No appearance at the February 21, 2024 Hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 14, 2024, Dckt. 25; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Beatris Quinonez (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 25, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

47. 23-20962-E-13 DPC-3	RUTHIE SHOULDERS Catherine King	MOTION TO DISMISS CASE 12-21-23 [75]
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Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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, Ruthie May Shoulders (“Debtor”), is delinquent \$2,520.10 in plan payments.

2. Prior to the hearing in this matter, two payments of \$1,412.00 will come due.
3. As a result debtor will need to pay \$5,344.10, in order to bring this plan current by the date of the hearing.

Docket 75. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 77.

DISCUSSION

Delinquent

Debtor is \$2,520.10 delinquent in plan payments, which represents slightly more than one month of the \$1,412.00 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).

Based on the foregoing, cause exists to dismiss this case. 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 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.

48. 22-22666 -E-13 DPC-1	KEVIN WELCH Mo Mokarram	MOTION TO DISMISS CASE 12-21-23 [20]
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Final Ruling: No appearance at the February 21, 2024 Hearing is required.

The Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 14, 2024, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Kevin Welch (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 27, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

49. [23-24387](#)-E-13

JERRY HARDEMAN
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-11-24 [\[19\]](#)**

Final Ruling: No appearance at the February 21, 2024 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 January 11, 2024. The court computes that 41 days’ notice has been provided.

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

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 January 8, 2024.

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

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 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.

50. [23-21488-E-13](#) **SHARMAINE MORZO** **MOTION TO DISMISS CASE**
[DPC-3](#) **Chad Johnson** **1-9-24 [59]**

DEBTOR DISMISSED: 01/26/24

Final Ruling: No appearance at the February 21, 2024 hearing is required.

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 67.

The Motion to Dismiss is denied without prejudice as moot, the case having been dismissed on January 26, 2024.

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 Case having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice as moot, the case having been dismissed.

Final Ruling: No appearance at the February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on December 21, 2023. By the court’s calculation, 62 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, William Doty (“Debtor”), is delinquent \$10,422.27 in plan payments. Debtor will need to have paid \$21,358.33 to bring the Plan current by the hearing date.

Docket 66. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 68.

DEBTOR’S RESPONSE

Debtor did not file a response.

DISCUSSION

Delinquent

Debtor is \$10,422.27 delinquent in plan payments, which represents multiple months of the \$5,468.03 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan

payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor did not file a response to this motion which may be considered a statement of nonopposition under Local Bankruptcy Rule 9014-1(f)(1)(B).

Based on the foregoing, cause exists to dismiss this case. 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 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 February 21, 2024 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, persons having filed a Request for Notice, and Office of the United States Trustee on January 19, 2024. By the court’s calculation, 33 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, Myesha Denise Payne (“Debtor”), is \$1,718 delinquent in plan payments.
2. The Trustee objected to confirmation of the Debtor’s original Plan, which was sustained at hearing on December 6, 2023, (Docket 31). The Debtor has failed to file an amended Plan and set for confirmation.

Docket 43. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 45.

Debtor did not file any written response.

DISCUSSION

Delinquent

Debtor is \$1,718 delinquent in plan payments, which represents multiple months of the \$859 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 sustaining Trustee's prior objection on December 5, 2023. 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 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 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.

53. [23-23393](#)-E-13

ERNIE BECKSTEAD
Candace Brooks

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-31-24 [\[22\]](#)**

Final Ruling: No appearance at the February 21, 2024 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 January 31, 2024. The court computes that 21 days' notice has been provided.

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

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78 due on January 26, 2024.

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

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 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.