

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 20, 2024 at 9:00 a.m.

1. [23-24387-E-13](#) **JERRY HARDEMAN** **MOTION TO DISMISS CASE**
[DPC-1](#) **Pro Se** **2-15-24 [25]**

1 thru 2

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 15, 2024. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 ~~XXXXXX~~ .

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

1. The debtor, Jerry G. Hardeman (“Debtor”), is delinquent \$484.44 in plan payments. This case was filed on December 7, 2023, and Debtor has paid

\$0.00 into the Plan to date. Prior to the hearing in this matter, another payment of \$484.44 will come due. Motion, Docket 25, p. 1:22-26.

2. Trustee was unable to conduct the Debtor's First Meeting of Creditors, held on January 18, 2024, at 11:00 a.m., due to the Debtor's failure to provide Trustee verification of both his Social Security number and his identification. *Id.* at 2:1-4.
3. Debtor has failed to provide the 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. *Id.* at 2:7-10.
4. The Debtor has not correctly utilized the Chapter 13 Plan standard form. The Debtor filed a Chapter 13 Plan using Official Form 113, which is not used in the Eastern District of California Court. Debtor then filed an Amended Plan using the same exact form. *Id.* at 2:14-20.
5. Debtor has failed to file a Motion to Confirm the Amended Plan. *Id.* at 2:21-22.
6. Debtor's income listed on Schedule J is negative \$185.00, which is insufficient to make payments under any plan the Debtor proposes. *Id.* at 2:25-28.
7. The Debtor's Schedules and other documents filed in the case include the following missing and/or inaccurate information:
 - A. Voluntary Petition: Debtor marked "No", on Question #9, regarding any previous bankruptcies being filed in the previous 8 years. Debtor has filed eight (8) previous bankruptcy cases since 2017.
 - B. Form 122 C: Question #10 identifies Social Security, where the question specifically states not to include income received under the Social Security Act. Debtor is also claiming four (4) dependents, where Schedule J the box is marked "No" regarding whether the Debtor has any dependents. Additionally, Debtor used the wrong median income. According to the United States Trustee website, the median income one (1) dependent is \$71,861.00 and \$123,451.00 for four (4) dependents. Debtor states the median income for household of four (4) is \$103,232.00.
 - C. Schedule A/B: Questions #6, Household goods and furnishings, Question #7 Electronics, Question #12 Jewelry, all have the "No" box checked. Trustee believes that these are common items, that most Debtors commonly list, and it appears to the Trustee that information regarding assets may have been omitted and/or not identified this Schedule.

- D. Schedule J: Shows a mortgage or rent payment of \$2,400.00, which is the same amount listed, as post-petition payments in Part 3, #3.1 of the Plan. The Debtor also shows on Question #7, for food and housekeeping supplies, the monthly total is \$50.00. Home maintenance, Clothing, Personal care, Medical and Dental expenses are all silent regarding any expenses. It does not appear to the Trustee that the Debtor has listed reasonable expenses, which the Debtor does not actually incur \$50 per month for food or not incur any expenses for items the other items.
- E. The Statement of Financial Affairs: Question #16 states “No regarding having any help preparing a bankruptcy petition; however, Part 12 states that the Debtor had Nailah Murphy help fill out the bankruptcy forms. The Trustee is concerned that the information provided is inaccurate or incorrect.
- F. Bankruptcy Petition Preparer’s Notice, Declaration, and Signature has not been filed with the Court. The Trustee is concerned that Nailah Murphy is not adhering to the Court’s General Order 23-06.

Id. at 3:1-4:7.

- 8. Debtor has filed eight (8) prior bankruptcy cases since 2017, where all the cases were dismissed, except for 19-24122 filed 6/28/19, which was discharged on 10/8/19. Additionally, the following three cases were filed, and dismissed, in 2023, less than one year before filing the current case which was filed on December 8, 2023. These cases are identified are identified as follows:
 - A. 23-20185 filed 1/23/23 dismissed 2/3/23;
 - B. 23-20423 filed 2/10/23 dismissed 2/21/23; and
 - C. 23-20540 filed 2/22/23 dismissed 6/29/23.

The Debtor has not explained why this case will work when the prior cases were not successful, especially in light of the Debtor’s failure to commence plan payments in this case, amongst the other issues. *Id.* at 4:9-16.

Trustee submits the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 27.

DISCUSSION

No Plan Payments Made

Debtor did not commence making plan payments and is \$1,000.00 delinquent in plan payments, which represents one month of the \$1,000.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Meeting of Creditors Not Held

Debtor did not provide Trustee with verification of both his Social Security and identification as required by Fed. R. Bankr. P. 4002(b)(1) prior to the First Meeting of Creditors held pursuant to 11 U.S.C. § 341. Thus, Trustee was unable to conduct the Meeting of Creditors on January 18, 2024, at 11:00 a.m. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 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).

Wrong Plan Form Used

Debtor's Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1. Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Delay of Confirmation

Debtor filed an Amended Plan on January 23, 2024. Debtor has not filed 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).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor indicates that their expenses exceed their income, resulting in a net monthly income of negative \$185.00. Debtor is unable to fund any Chapter 13 Plan without a source of income. Chapter 13 bankruptcy requires that the plan shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan. 11 U.S.C. § 1322(a)(1). Here, there are no future earnings or other future income, and thus Debtor is unable to satisfy the requirements of a Chapter 13 Plan.

Inaccurate or Missing Information

Debtor's Schedules A and B, I and J, Statement of financial Affairs, and Forms 122C-1 and 122C-2 contain outdated or inaccurate information. Without an accurate picture of debtor's financial reality, the court is unable to determine if the Plan is confirmable. *See* 11 U.S.C. § 1325(a)(6).

Furthermore, Debtor indicated that their forms were prepared by Nailah Murphy, who has not filed Official Form 119. Debtor has not accurately represented the median income for dependents in calculating median income.

Undisclosed Bankruptcy Filings Within Prior Eight Years

Trustee reports that Debtor failed to disclose on the petition the following 8 prior bankruptcy cases:

- A. Case No. 17-25126
 - 1. Date Filed: August 2, 2017
 - 2. Chapter: 7
 - 3. Date Dismissed: August 21, 2017

- B. Case No. 17-25599
 - 1. Date Filed: August 23, 2017
 - 2. Chapter: 7
 - 3. Date Dismissed: September 5, 2017

- C. Case No. 18-26941
 - 1. Date Filed: November 2, 2018
 - 2. Chapter: 7
 - 3. Date Dismissed: March 1, 2019
 - 4. Reason for Dismissal: Order Granting Trustee's Motion to Dismiss for Failure to Appear at Sec. 341(a) Meeting of Creditors

- D. Case No. 19-24122
 - 1. Date Filed: June 28, 2019
 - 2. Chapter: 7
 - 3. Discharge Entered: October 8, 2019

- E. Case No. 22-21241
 - 1. Date Filed: May 16, 2022
 - 2. Chapter: 13
 - 3. Date Dismissed: September 8, 2022
 - 4. Reason for Dismissal: Order to Show Cause—Failure to Pay Fees

- F. Case No. 23-20185
 - 1. Date Filed: January 23, 2023
 - 2. Chapter: 7
 - 3. Date Dismissed: February 3, 2023
 - 4. Reason for Dismissal: Order Dismissing Case for Failure to Timely File Documents

- G. Case No. 23-20423
 - 1. Date Filed: February 10, 2023
 - 2. Chapter: 7
 - 3. Date Dismissed: February 21, 2023

4. Reason for Dismissal: Order Dismissing Case for Failure to Timely File Documents

- H. Case No. 23-20540
1. Date Filed: February 22, 2023
 2. Chapter: 7
 3. Date Dismissed: June 29, 2023
 4. Reason for Dismissal: Order Granting Trustee's Motion to Dismiss for Failure to Appear at Sec. 341(a) Meeting of Creditors

The court is aware of the additional following cases that are beyond the eight year date-back reporting requirement:

- A. Case No. 02-33465
1. Date Filed: December 6, 2002
 2. Chapter: 7
 3. Date Dismissed: January 21, 2003
- B. Case No. 03-23578
1. Date Filed: April 1, 2003
 2. Chapter: 13
 3. Date Dismissed: August 8, 2003

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, part 2, line 9, Docket. 1. Debtor reported that no bankruptcy cases had been filed previously. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor's bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

Issues Re Competency of Debtor

In reviewing this file in connection with the court issued Order to Shown Cause why they case should not be dismissed due to Debtor's failure to pay the required filing fee installment, the court made the following points which are incorporated herein.

Looking at the Chapter 13 Plan, Debtor, in pro se, does not use the required Eastern District of California Plan. Dckt. 13. Debtor states that the term of the Plan shall be 72 month (in excess of the maximum 60 months provided in 11 U.S.C. § 1322(a)(4). As filed, the Plan provides that the Debtor is to make 36 monthly payments of \$472.50 and then 36 monthly payments of \$2,400. Dckt. 13 at 1.

Then, in ¶ 3.1 of the Plan Debtor provides that the claim secured by Debtor's residence will be paid \$2,872.50 a month. Even if Debtor's intention is to pay \$2,872.50 per month, it fails to provide for the statutory Chapter 13 Trustee fees and does not provide for paying creditor claims in full.

Looking at the court's files, this Debtor has filed and had dismissed a number of prior cases in the recent past. In the past two years, these cases are:

- A. Chapter 7 Case 23-20540.....Case Dismissed June 29, 2023.
 - 1. In *Pro Se*.
- B. Chapter 7 Case 23-20423.....Case Dismissed February 21, 2023.
 - 1. In *Pro Se*.
- C. Chapter 7 Case 23-20185.....Case Dismissed February 3, 2023.
 - 1. In *Pro Se*.
- D. Chapter 13 Case 22-21241.....Case Dismissed September 8, 2022.
 - 1. Represented by Counsel
 - 2. Case 22-21241 was dismissed due to Debtor failing to make a filing fee installment payment. 22-21241; Civil Minutes, Dckt. 42.

It appears this is a case where the Debtor, who is retired, and a home with a \$300,000+ homestead exemption. With Debtor's residence being in Elk Grove, California, it may well be that the median sales price in the prior year may be greater than the standard minimum homestead exemption.

In the prior recent *pro se* cases, it appears that they have been dismissed due to the Debtor in *pro se* failing to file the basic documents to prosecute a Chapter 7 case.

It appears on its face that Debtor has a property with a very valuable homestead exemption that should be protected from foreclosure. However, after filing nine bankruptcy cases since August 2017, Debtor appears unable to utilize the bankruptcy rights and remedies Congress has created in the Bankruptcy Code.

It may be that this property is one that Debtor cannot emotionally bring himself to sell, even if it causes him, and his family, to lose more than \$350,000 in exempt cash that the Debtor and his family could use for his "fresh start" going forward.

Before dismissing this case, the court will conduct a Status Conference on the legal competency of Debtor (who while socially competent, may be unable to fulfill the legal duties and obligations in a federal court bankruptcy case). While making multiple efforts, Debtor's efforts have been unsuccessful and are putting him at the edge of a substantial financial loss.

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 **XXXXXXX**.

2. [23-24387-E-13](#)

JERRY HARDEMAN
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
2-12-24 [\[23\]](#)

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.

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 13, 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: \$79.00 due on February 5, 2024.

The Order to Show Cause is **XXXXXXX .**

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: \$79.00.

Debtor’s Petition was filed on December 7, 2023. Dckt. 1. The Clerk of the Court filed a Notice of incomplete filings. Dckt. 3. The missing Documents include the Chapter 13 Plan, the Schedules, and the Statement of Financial Affairs. On December 21, 2023, Debtor filed the missing documents, including the Chapter 13 Plan. Dckt. 12, 13. On Schedule A/B Debtor lists owning a real property of substantial value and substantial exempt equity.

Looking at the Chapter 13 Plan, Debtor, in pro se, does not use the required Eastern District of California Plan. Dckt. 13. Debtor states that the term of the Plan shall be 72 month (in excess of the maximum 60 months provided in 11 U.S.C. § 1322(a)(4)). As filed, the Plan provides that the Debtor is to make 36 monthly payments of \$472.50 and then 36 monthly payments of \$2,400. Dckt. 13 at 1.

Then, in ¶ 3.1 of the Plan Debtor provides that the claim secured by Debtor's residence will be paid \$2,872.50 a month. Even if Debtor's intention is to pay \$2,872.50 per month, it fails to provide for the statutory Chapter 13 Trustee fees and does not provide for paying creditor claims in full.

Looking at the court's files, this Debtor has filed and had dismissed a number of prior cases in the recent past. In the past two years, these cases are:

- A. Chapter 7 Case 23-20540.....Case Dismissed June 29, 2023.
 - 1. In Pro Se.
- B. Chapter 7 Case 23-20423.....Case Dismissed February 21, 2023.
 - 1. In Pro Se.
- C. Chapter 7 Case 23-20185.....Case Dismissed February 3, 2023.
 - 1. In Pro Se.
- D. Chapter 13 Case 22-21241.....Case Dismissed September 8, 2022.
 - 1. Represented by Counsel
 - 2. Case 22-21241 was dismissed due to Debtor failing to make a filing fee installment payment. 22-21241; Civil Minutes, Dckt. 42.

It appears this is a case where the Debtor, who is retired, has a home with a \$300,000+ homestead exemption. With Debtor's residence being in Elk Grove, California, it may well be that the median sales price in the prior year may be greater than the standard minimum homestead exemption.

In the prior recent *pro se* cases, it appears that they have been dismissed due to the Debtor in *pro se* failing to file the basic documents to prosecute a Chapter 7 case.

It appears on its face that Debtor has a property with a very valuable homestead exemption that should be protected from foreclosure. However, after filing nine bankruptcy cases since August 2017, Debtor appears unable to utilize the bankruptcy rights and remedies Congress has created in the Bankruptcy Code.

It may be that this property is one that Deb tor cannot emotionally bring himself to sell, even if it causes him, and his family, to lose more than \$350,000 in exempt cash that the Debtor and his family could use for his "fresh start" going forward.

Before dismissing this case, the court will conduct a Status Conference on the legal competency of Debtor (who while socially competent, may be unable to fulfill the legal duties and obligations in a federal court bankruptcy case). While making multiple efforts, Debtor's efforts have been unsuccessful and are putting him at the edge of a substantial financial loss.

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 **XXXXXX** .

3.	<u>20-24692-E-13</u>	SHIRLEAN MOORE-JORDAN	CONTINUED MOTION TO DISMISS
	<u>DPC-2</u>	Gabriel Liberman	CASE
			12-21-23 [49]

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.

March 20, 2024 Hearing

In light of Debtor’s efforts to cure the default, the Trustee concurred with the request for a continuance of the prior hearing to allow the Debtor to file modified plan, cure the delinquency, or convert the case.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a status report on March 5, 2024. Docket 62. Trustee informs the court that Debtor is now delinquent \$9,966.28, where Debtor was delinquent

\$6,957.94 when Trustee filed the Motion on December 21, 2023. *Id.* at p. 1:23-24. No payments are pending or are scheduled. *Id.* at p. 1:24-25. Debtor made a \$3,000 payment in January of 2024 and \$9,000 payment in February of 2024 where the payments are to be \$5,002.78 per month. Trustee recommends dismissal unless additional information is presented. *Id.* at p. 2:8.

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, 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.

Supplemental Schedule I filed on April 7, 2022, (Dckt. 42) that Debtor’s income is \$6,935.05 a month. On Supplemental Schedule J also filed in April 7, 2022, (*Id.*) Debtor states that her Monthly Net Income from which she can fund a Plan is \$4,905.70.

Debtor’s First Modified Chapter 13 Plan requires that Debtor must make Plan payments of \$4,900 a month for the period April 2022 through October 2025. Mod. Plan, § 7.01; Dckt. 40.

Debtor offers no explanation as to how she can generate the additional \$9,966.28 to cure the default and make the \$4,900.00 regular Plan payment in March 2024. This would require the Debtor in one month to have \$14,866.28 to make cure the defaults and make the current Plan payment.

At the hearing, **XXXXXXX**

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

February 21, 2024 HEARING

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.

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 prior hearing, counsel for the Trustee reported that Debtor is still \$4,350 delinquent, with the last payment from Debtor having been received on February 13, 2024.

In light of Debtor's efforts to cure the default, the Trustee concurred with the request for a continuance to allow the Debtor to file modified plan, cure the delinquency, or convert the 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 that the Motion to Dismiss is granted, and the case is dismissed.

4 thru 5

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 21, 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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, Margarita Blanco ("Debtor"), has filed her Petition in the wrong venue. Motion, Docket 22, ¶ 1. Debtor resides in Contra Coast County which is located in the Northern District of California.
2. Debtor has insufficient income to make the payments called for in the Plan. *Id.* at ¶ 2. According to Debtor's Schedule J, Debtor has a net income of negative \$9,474.00. Schedules, Docket 15, p. 40:23.
3. Debtor did not use Form EDC 3-080 as required under Local Rule 3015-1(a) when filing a Chapter 13 Plan in the Eastern District of California. Motion, Docket 22, ¶ 3.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 24.

DEBTOR'S RESPONSE

Debtor did not file a Response to this Motion.

DISCUSSION

Wrong Venue

Debtor's Petition states that the address for where they live is located at 852 Volpaia Ct., Brentwood, CA, 94513 ("Brentwood Property"). Petition, Docket 1, p. 2:5. Brentwood is located in Contra Costa County, which belongs to the Northern District of California. 28 U.S.C. § 1408 (1) states that a bankruptcy case may be commenced by a debtor in the district court for the district,

[I]n which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district.

Debtor states in their Petition that the reason for choosing to file their Petition in the Eastern District of California as "close to where I am able to file". Petition, Docket 1, p. 2:6. This is not a valid reason for filing in this district under 28 U.S.C. § 1408 (1).

Upon review of all the documents filed by the Debtor, the only real property that the Debtor listed in their Schedule A/B was the Brentwood Property. Schedule, Docket 15, p. 3:1. When asked whether Debtor has lived anywhere else other than the Brentwood Property within the last three years in Official Form 107, Debtor stated "no". *Id.* at p. 41:2. This means that Debtor has resided in the Brentwood Property for the one hundred and eighty days proceeding the filing of their Petition. Debtor also stated in Schedule A/B that they do not have any legal or equitable interest in any business-related property. *Id.* at p. 10:37. Therefore it does not appear that Debtor either resides or has any assets located in the Northern District of California. Because the Debtor is unable to satisfy the venue requirements of 28 U.S.C. § 1408 (1), Debtor has improperly filed their Petition in the Eastern District of California.

At the hearing, **XXXXXXX**

Insufficient Income to Fund Plan

It does not appear that the Debtor is eligible under 11 U.S.C. § 109 (e) to file for a Chapter 13 because they do not have sufficient income to afford the plan payments. 11 U.S.C. § 109 (e) states that "Only an individual with regular income... may be a debtor under chapter 13 of this title." 11 U.S.C. § 101 (30) states "[t]he term 'individual with regular income' means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title."

Here, Debtor's Schedule I shows that their monthly income is \$889.00. Schedule, Docket 15, p. 37:12. Debtor's Schedule J calculates their monthly expenses to be \$10,363.00. *Id.* at p. 40:22. Thus, Debtor's monthly net income is negative \$9,474.00. *Id.* at p. 40:23c. In Debtor's Plan, they propose to pay \$600.00 per month in plan payments. Plan, Docket 13, § 2.1. Based on Debtor's Schedules I and J, it is unclear how Debtor will be able to afford a \$600.00 per month plan payment. Therefore, it appears that Debtor does not have a sufficiently stable and regular income to enable them to make the payments under their proposed Plan, which would not make them eligible to be a debtor under 11 U.S.C. § 109 (e).

Wrong Plan Form Used

Debtor's did not use the correct Chapter 13 Plan form required in the Eastern District of California. Local Rule 3015-1 (a) requires that Form EDC 3-080 be used when proposing a Chapter 13 Plan. Here, Debtor used Official Form 113, which is not used in the Eastern District of California. Using an incorrect form is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a 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.

5. <u>24-20092-E-13</u>	MARGARITA BLANCO Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-13-24 [20]
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Final Ruling: No appearance at the March 20, 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 February 15, 2024. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on February 8, 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 pursuant thereto.

6. [23-24590-E-13](#) **JON FENTON** **MOTION TO DISMISS CASE**
[DPC-1](#) **Randall Ensminger** **2-21-24 [30]**

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 February 21, 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.

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

1. The debtor, Jon Wesley Fenton (“Debtor”), is delinquent \$1,000.00 in plan payments. This case was filed on December 22, 2023, and Debtor has paid \$0.00 into this plan. Prior to the hearing in this matter, Debtor’s next scheduled payment of \$1,000.00 will come due. Motion, Docket 30, p. 1:21-28.

2. Debtor filed a Chapter 13 Plan on January 19, 2024. Plan, Docket 23. Debtor has failed to file a Motion to Confirm the Plan and set it for confirmation. Motion, Docket 30, p. 2:6-8.
3. Debtor has failed to provide documents requested by Trustee as required by the plan. The trustee seeks:
 - A. 2021 personal tax returns.
 - B. 2021 and 2022 business tax returns.
 - C. Four months of bank statements for Wells Fargo bank accounts #1879 and #4259.
 - D. 6 months financial statements for the Ultimate Voltage & Jon. W. Fenton Biz account.
 - E. Business income & expense statement.

Id. at 2:9-22.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 32.

DEBTOR'S REPLY

Debtor filed a Reply on March 6, 2024. Docket 38. Debtor states that they have cured the delinquency. Declaration, Docket 40, p.2: 5-6.

Debtor declares that they brought the plan current on February 23, 2024. *Id.* at 2:4-5. Debtor has submitted a cashier's check in the amount of \$1,000.00 addressed to Trustee, and dated February 23, 2024. Exhibit, Docket 39, Exhibit A. Due to the nature of Debtor's business and a slow holiday period, Debtor originally did not have the funds to bring the plan current. Declaration, Docket 40, p.2 at 2:3-5.

A Motion to Confirm Plan is in the final preparation stages and will be filed and served on all creditors before the Motion to Dismiss Hearing. *Id.* at 2:8-9.

The additional business documents such as 2021 personal tax returns, 2021 & 2022 business tax returns, 6 months of business bank statements, business income and expense statement, and 4 months of Wells Fargo Bank statements have been provided to Trustee. *Id.* at 2:10-15.

DISCUSSION

Delinquent

Debtor has submitted sufficient evidence that they have cured their delinquency.

No Pending Motion to Confirm Plan

Debtor filed a Chapter 13 Plan on January 19, 2024. Debtor has promised to file a Motion to Confirm Plan. Declaration, Docket 40, p. 2:8-9. A review of the docket on March 17 shows that Debtor has not yet filed 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).

At the hearing, **XXXXXXX** .

Business Records

Debtor testifies that the additional business documents such as 2021 personal tax returns, 2021 & 2022 business tax returns, 6 months of business bank statements, business income and expense statement, and 4 months of Wells Fargo Bank statements have now been provided to Trustee.

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 Bankruptcy Case is dismissed.~~

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

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 February 6, 2024. By the court’s calculation, 43 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). Therefore, the defaults of the respondent and other parties in interest are entered.

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, Timothy Munn (“Debtor”), is delinquent \$10,800 in plan payments. The case is currently in month 64 of a 60-month Plan, but the plan is currently overextended to 312 months. Debtor has paid \$159,300 to date.

Docket 30 ¶ 1. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 32.

DISCUSSION

Delinquent

Debtor is \$10,800 delinquent in plan payments, which represents multiple months of the \$2,700 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 has not filed any opposition to this Motion, indicating that Debtor is at the end of his “financial rope” and nothing can be done to save this case at the end of the 60 month Plan. The proposed

plan provided for curing defaults and make the current payments on secured claims and for a 0.00% dividend on \$4,000 of general unsecured claims. Dckt. 5. Looking at the Proofs of Claims filed, the general unsecured claims total approximately (\$12,500). No priority unsecured claims were filed.

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.

8. [23-23080-E-13](#) **ROMY OSTER** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mark Briden** **2-14-24 [50]**

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 February 14, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor 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 ~~XXXXXX~~.

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

1. The debtor, Romy Oster (“Debtor”), is delinquent \$2,506.73 in plan payments.
2. After the court sustained Trustee’s Objection to the First Amended Plan, Docket 49, Debtor has failed to file a Second Amended Plan.

Docket 50 ¶¶ 1-2. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 52.

DEBTOR’S RESPONSE

Debtor filed a Response on February 26, 2024. Dckt. 54. Debtor states the delinquency will be cured through a Second Amended Plan, which Debtor has set and served for April 23, 2024. *Id.* at ¶ 1.

DISCUSSION

Delinquent

Debtor is \$2,506.73 delinquent in plan payments, which represents one month of the 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).

Motion to Confirm Filed

Debtor has filed a Motion to Confirm Second Modified Plan on March 12, 2024 (Dckt. 56) to address the defaults. From the court’s preliminary review, it appears that the Motion states some grounds for confirmation of a Plan, but it does not appear to comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 that a motion state the grounds particularity upon which relief is based.

Debtor’s Declaration has been filed in support of the Motion to Confirm Second Modified Plan. Dckt. 52. The Declaration in states personal knowledge testimony in support of the Motion to Confirm.

However, as of the court’s March 14, 2024 review of the Docket, no Second Modified Plan had been filed by Debtor.

At the hearing, **XXXXXXX**

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

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

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

IT IS ORDERED that the Motion to Dismiss is **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—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 February 22, 2024. By the court’s calculation, 27 days’ notice was provided. 28 days’ notice is required. It appears that Trustee is one day late of the required notice period. At the hearing,

XXXXXXX

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). Therefore, the defaults of the respondent and other parties in interest are entered.

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, Mardi Clowdus (“Debtor”), has failed to file an Amended Plan after the court sustained Trustee’s Objection to the initial Plan on December 12, 2023. Failing to file an Amended Plan is unreasonable delay that is prejudicial to creditors.

Docket 33 ¶ 1. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 35.

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 December 12, 2023. Order, Docket 28. 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.

10. [21-23907-E-13](#) **MORGAN/FREDERICA REYES** **MOTION TO DISMISS CASE**
[DPC-3](#) **Jasmin Nguyen** **2-15-24 [75]**

WITHDRAWN BY M.P.

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 February 15, 2024. By the court’s calculation, 34 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 Morgan Reyes and Frederica Leyba Reyes (“Debtor”) is \$4,770.00 delinquent in plan payments, which

represents nearly three months of the \$1,680.00 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).

CURING OF DEFAULT

On February 15, 2024, Trustee filed the Motion to Dismiss. On March 6, 2024, Trustee filed an Ex Parte Notice of Dismissal of Motion to Dismiss, for which the grounds are stated to be, “[t]he debtor is current in plan payments to the Trustee under the confirmed plan.” Dckt. 79.

While the court generally is pleased to see a debtor being able to address financial bumps in the road and get a Chapter 13 plan back on track, this “cure” raises some concerns for the court. Debtor’s plan provides that plan payments will be due on the 25th day of each month. Plan, Docket 3, ¶ 2.01. Thus, between the date the Trustee filed the Motion to Dismiss and their Notice of Dismissal of Motion to Dismiss, one plan payment came due.

Including this sum, Debtor has been able to pay the Chapter 13 Trustee \$6,450.00 in less than one month. *Id.*

Under the confirmed Plan in this case, Debtor has only \$1,680.00 per month to fund the Plan. Order, Dckt. 61; Plan, Dckt. 3, ¶7.02. The confirmed Plan provides that Debtor has only enough monthly projected disposable income to provide for a 0.0% dividend to creditors holding general unsecured claims.

In confirming the Plan, the court, Chapter 13 Trustee, creditors, and other parties in interest relied upon the financial information provided by Debtor under penalty of perjury in the Schedules I and J filed on November 16, 2021, that there is only \$1,325.83 in projected disposable income. Dckt. 1, Schedule J, line 23(c). Debtor’s Plan submitted \$1,326.00 to the supervision and control of Trustee for the first five months of the plan, then scheduled payments of \$1,680.00 for the remaining 55 months. Plan, Dckt. 3, ¶7.02.

It appears, based on the financial information provided under penalty of perjury, a financial impossibility that Debtor could provide \$6,450.00 in less than one month to fund the Plan.

At the hearing, **XXXXXXX**.

RULING

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 February 14, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor 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 ~~XXXXXX~~

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

1. The debtor, Francisco Segura and Denise E. Segura ("Debtor"), is delinquent \$4,337.26 in plan payments. The last payment was received on December 18, 2023. Debtor's monthly payment is \$1,737.69. Prior to the hearing in this matter, another payment of \$1,737.69 will come due. Motion, Docket 88, p. 1:17-22.
2. Debtor will need to pay \$6,074.95 to bring this plan current by the date of the hearing. *Id.* at 1:21-23.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 90.

DEBTOR'S RESPONSE

Debtor filed a Response on March 5, 2024. Docket. 92. Debtor states the delinquency will be cured prior to the hearing date. Declaration, Docket 93, p.1:25-2:7.

Debtor declares that they have struggled to make all the monthly payments as agreed in their Plan, but have made a total of 46 payments, including the payments through February 29, 2024. *Id.* at 1:22-24. Debtor missed a payment in August that they have only recently be able to repay. *Id.* at 1:24-26. Debtor

believes that as of their most recent payment of \$1,880.00 on March 9, 2024, the Plan is current. *Id.* at 1:25-28.

Debtor will make another payment on March 16, 2024 for the month of March. *Id.* at 2:4-6. Debtor further testifies that at that time, their Chapter 13 Plan will continue to be current. *Id.* at 2:5-7. Debtor has overcome many of the problems raised in their Original Plan that have been corrected, and will continue to work very hard to complete their Chapter 13 Plan. *Id.* at 2:7-9.

DISCUSSION

Delinquent

Trustee asserts that Debtor is \$4,337.226 delinquent in plan payments, which represents approximately two and a half months of the \$1,737.69 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).

Debtors declare that have brought their payments current. Debtors state that they have made all Plan payments through February, and only missed a payment in August which was recently paid. They further declare that they have made a total of 46 payments, and that they believe their plan is current.

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 **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 February 16, 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 granted, and the case is dismissed.~~

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

1. Trustee's objection to confirmation of Debtor's original Plan was sustained at hearing on December 12, 2023. Motion, Docket 25, at 1:23-26.
2. The debtor, Darrell Lamonte Keith and Elizabeth Tapia Keith ("Debtor"), have failed to file an amended Plan and set it for confirmation. *Id.* at 25-26.

Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 27.

DEBTOR'S REPLY

Debtor's attorney filed a Reply on March 6, 2024. Docket. 29. Debtor's attorney has been out on long term medical absence, but is back in the office on a somewhat limited basis. *Id.* at 1:16-17. Debtor's attorney has prepared the Notice, Motion, Declaration, and Amended Plan for Debtors, and is waiting on signatures. *Id.* at 16-18. Debtor's attorney is planning to file by March 8, 2024. *Id.* at 1:17-18.

Debtor's attorney further asserts that he will file the Motion to Strip the lien of US Bank by Tuesday, March 12, 2024, to be on file to be heard on April 23, 2024 along with the Amended Plan motion. *Id.* at 1:18-20. Debtor's attorney finally asserts that the balance of Documents the Trustee has requested will be provided to the Trustee by March 15, 2024.

Debtor has not submitted a declaration authenticating the facts alleged, but instead Debtor's attorney has signed the reply.

DISCUSSION

Plan and Motion to Confirm Filed

On March 13, 2024, an Amended Plan (Dckt. 32) and Motion to Confirm and supporting pleadings (Dckts. 30, 31, 33, 34, 35) were filed. 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. 33) states personal knowledge testimony in support of the Motion to Confirm.

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

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

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

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

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

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 February 15, 2024. By the court's calculation, 34 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, Willie Jean Norman ("Debtor"), is delinquent \$1,322.50 in plan payments. Motion, Docket 74, p. 1:19-20. The last payment was received on February 8, 2024. *Id.* at 1:18-19. Debtor's monthly payment is \$475.00. *Id.* at 1:20-21. Prior to the hearing in this matter, another payment of \$475.00 will come due. *Id.* at 1:20-22.
2. As a result, Debtor will need to pay \$1,797.50 in order to bring this plan current by the date of hearing. *Id.* at 1:21-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 76.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 6, 2024. Docket 78. Debtor states the delinquency will be cured prior to the hearing date. Declaration, Docket 79, p. 1:27-2:1. Debtor has made his Chapter 13 payment each month, albeit a reduced amount, which caused Debtor to become delinquent over time. *Id.* at 1:24-27. Debtor had unexpected car repairs that made it difficult for him to make a full payment. *Id.* at 1:25-27. Debtor has made a \$600.00 payment on March 1 via MoneyGram. *Id.* At 1:27-28. Debtor will make the remaining payment prior to the hearing. *Id.* at 1:27-2:1.

DISCUSSION

Delinquent

Debtor is \$1,322.50 delinquent in plan payments, which represents nearly three months of the \$475.00 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).

Debtor declares that \$600.00 has been paid through MoneyGram, and that the remaining balance will be paid prior to the hearing. As of the court's review, no evidence of such payment has been filed.

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 February 9, 2024. By the court's calculation, 40 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, Angela Moench ("Debtor"), is \$1,991.13 delinquent in plan payments.
2. Debtor has no Plan pending after the court sustained Trustee's previous Objection on December 12, 2023 at Docket 27.

Docket 32 ¶¶ 1-2. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 34.

DEBTOR'S RESPONSE

Debtor filed a Response on February 26, 2024. Dckt. 36. Debtor's counsel argues in the Response that the delinquency has been cured prior to the hearing date, but offers no evidence in support. Debtor also states an Amended Plan and Motion to Confirm will be filed before the March 20th hearing date. *Id.* at ¶ 2. As of March 14, 2024, no such documents have been filed.

DISCUSSION

Delinquent

Debtor is \$1,991.13 delinquent in plan payments, which represents one month of the 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 12, 2023. Order, Docket 27. 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.

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 March 1, 2024. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on February 26, 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: \$79.

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, 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 granted, and the case is dismissed.

March 12, 2024 Hearing

On March 5, 2024, the Chapter 13 Trustee, David Cusick ("Trustee") filed a Status Report updating the court. Docket 143. Trustee informs the court that since this Motion was filed on May 8, 2023 at Docket 115, \$16,854 was paid and \$21,920.67 has come due. *Id.* at p. 1:23-24. Debtor's total delinquency is now \$11,061.13. *Id.* Despite the court continuing this matter for almost a year in the hopes Debtor could become current under the Amended Plan (Plan, Docket 100; Order, Dockets 113, 114), Debtor has been unable to do so with the delinquency only growing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This Bankruptcy Case was filed on August 15, 2019 by the Debtor. On June 11, 2020, a Notice of Death of Debtor was filed. Dckt. 40. On September 9, 2020, the court entered its Order waiving some of the post-filing requirements for the deceased debtor and appointing Shaun Howerton as the Successor Representative for the deceased Debtor.

From reviewing the file, counsel for the deceased debtor has been filing pleadings in the name of the Deceased Debtor, naming the deceased Debtor as his client, and not as counsel for the Successor Representative. Some of the pleadings make reference to the Successor Representative, but do so such as the following:

3. **Debtor** through his successor in interest **has remitted the sum of \$3800.00** on October 4, 2021 to the Trustee and **requests a 30 day continuance** to cure the remaining delinquency.

Opposition to Motion to Dismiss, ¶ 3; Dckt. 93. The Debtor being deceased, he cannot make any payments, but it is the Successor Representative that has that duty. The Debtor being deceased is no longer a party in this Case, but his Successor Representative is the party to this Case. The Deceased Debtor cannot request a continuance, but it is the party in interest Successor Representative who would make such a request through the Successor Representative who must do so through his counsel.

As outlined in this Ruling, there have been multiple continuances of the hearing on this Motion. These prior hearings occurred on:

- A. June 21, 2023. Deceased Debtor filed an Opposition to the Motion and Debtor requested a continuance, not the Successor Representative, so that a new Plan could be filed.
- B. July 19, 2023. The Civil Minutes identified that counsel for the Successor Representative reported that the Successor Representative will now proceed with a refinance or liquidation of the Property to fund the Plan.
- C. September 12, 2023. The Civil Minutes identify as counsel for the Successor Representative reporting that the Successor Representative has cured some of the default and Debtor's counsel reported that there was only \$20,000 to completely fund the Plan.
- D. November 7, 2023. Nothing further was filed by the Successor Representative. The Trustee reported that the Debtor was still \$9,000 delinquent in payments.

The court addressed with the counsel for the Successor Representative (who is a fiduciary to the Bankruptcy Estate in this Case) that part of the problem appears to be that the Successor Representative has various members of Debtor's family living in the residence property rent free. The court noted, "This is not an opportunity for the successor representative, the fiduciary of the Bankruptcy Plan Estate, to live [in] the Plan Estate property and not pay their rent." Dckt. 132 at 3.

- E. January 14, 2024. The Trustee filed a Status Report (Dckt. 134) stating that the Plan payments were (\$11,193.95) in default as of the Status Report. At the hearing, counsel for the Successor Representative reported that a \$4,600 payment was sent to the Trustee, and that counsel for the Successor Representative would address the outstanding default balance of (\$6,593.95). Civ. Min.; Dckt. 138.

As referenced above, in his latest Status Report filed on March 5, 2024, the Trustee reports that the Plan is now (\$11,061.13) in default. 2ND Status Report, Dckt. 143.

No updated Status Report was provided by the Successor Representative.

It appears, that while represented by experienced consumer counsel, the Successor Representative and his counsel have been unable to address the continuing defaults and prosecute the Confirmed Plan. When this Motion to Dismiss was first filed, the Plan was in default for “only” (\$5,929.46) (not including the current monthly payment coming due later in May 2023). Motion; Dckt. 115.

Now, eight months later, the default has grown to (\$11,061.13). Trustee 2ND Status Report; Dckt. 143.

The monthly payments required by the Confirmed Plan are stated by the Trustee to be \$2,211.09. If there are four family members living in the house, that equals a monthly rent payment of \$552.77 to fund the Plan. In reviewing the Confirmed Second Modified Chapter 13 Plan -COVID 19 Plan (Dckt. 100), it provides in the additional provides that the monthly payments from December 25, 2021 and continuing for 45 months would be \$1,955.00. Dckt. 100 at 7. The term of this Plan is 84 months. *Id.*; ¶ 2.03.

The Successor Representative and the family members living in the house have had eleven months to cure the defaults and assemble the \$1,955.00 or the \$2,211.09 (as stated by the Trustee) monthly Plan payment. Unfortunately, they have not.

After now having continued the hearings on this Motion for eleven (11) months, the evidence before the court shows that the Successor Representative is unable to properly perform this Chapter 13 Plan. Notwithstanding all of the Successor Representative’s and his counsel’s (who files pleading stating that he is representing the Deceased Debtor) efforts to try and salvage this case, it appears to be financially impossible (at least for those two persons) to perform this Plan and diligently prosecute this Case.

Therefore, causes exists to dismiss this Chapter 13 Bankruptcy Case.

The Motion is granted and this Bankruptcy Case is dismissed.

REVIEW OF THE MOTION

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.

February 21, 2024 Hearing

No new documents have been filed with the court as of February 13, 2024. At the hearing, counsel for the Debtor appeared in court with a cashier's check for \$3,200.00 and he was ready to forward it to the Trustee.

In light of the progress being made, the Trustee agreed to a continuance to allow the cure payments to be delivered.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 20, 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 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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and persons having filed a Request for Notice on February 16, 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 has not filed opposition. If the Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **XXXXXX**

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, Jeffery and Misty Garcia (“Debtor”), are delinquent for having not paid net tax refunds over \$2,500.00 into the Plan. Motion, Docket 26, ¶ 1. Trustee records reflect that the delinquency is at least \$19,622.00. *Id.*

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

DEBTOR’S OPPOSITION

Debtor did not file an Opposition to this Motion.

DISCUSSION

Delinquent

Debtor is at least \$19,622.00 delinquent according to the Trustee’s records. Motion, Docket 26, ¶ 1. Debtor was ordered to pay any federal or state tax refunds that exceeded \$2,500.00 to the Trustee. Order, Docket 16, ¶ 5.

The Trustee has reviewed Debtor's 2019, 2020, and 2021 state and federal tax returns which show that there is \$19,622.00 due under the Plan. Decl., Docket 28, ¶ 7. Trustee still has not reviewed Debtor's 2022 and 2023 state and federal tax returns which could increase the amount due under the Plan. Motion, Docket 26, ¶ 1. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Here, Debtor did not file an Opposition to this Motion.

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 February 6, 2024. By the court's calculation, 43 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, Paul Ulbrich ("Debtor"), is delinquent \$10,452.47 in plan payments.
2. This case is currently in month 66 of a 60-month plan so the delinquent amount is the amount required to complete the case as of the date of this motion.
3. This case was filed on July 16, 2018. The Debtor has paid \$228,020.33 into the Plan to date

Docket 85 ¶ 1. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 87.

DEBTOR'S RESPONSE

Debtor filed a Response and accompanying Declaration on March 5, 2024. Dckts. 89, 90. Debtor states the delinquency will be cured prior to the hearing date by receiving help from the California Mortgage Relief Program. Decl., Docket 90 p. 1 21-25.

DISCUSSION

Delinquent

Debtor is \$10,452.47 delinquent in plan payments, and because the 60 month Plan is in month 66, Debtor must make this final payment to complete the Plan. Modification is not an option. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). However, Debtor has informed the court that he is seeking assistance to help pay his ongoing mortgage. 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 **XXXXXXX**.

19. [21-23929-E-13](#)
[DPC-1](#)

AUSTIN WINSTON
Mary Ellen Terranella

CONTINUED MOTION TO DISMISS
CASE
11-21-23 [20]

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).

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

March 20, 2024 Hearing

On March 5, 2024, The Chapter 13 Trustee, David Cusick (“Trustee”) filed a Status Report with the court (Docket 36). In his Report, Trustee informs the court this matter has been continued since January 17, 2024, to afford Debtor a chance to cure the delinquency. Debtor remains delinquent \$820. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Review of the Motion

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.

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, counsel for the Trustee reported that the Debtor is delinquent one payment, with another coming due next week. The prior payments brought the Debtor current through December 2023.

Counsel for the Trustee concurred with the Debtor’s request fo a continuance.

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.~~

20. [21-21036-E-13](#) **JEFFREY/YELENA MAYHEW** **MOTION TO DISMISS CASE**
[DPC-4](#) **Peter Macaluso** **2-14-24 [129]**

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 February 14, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor 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, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew (“Debtor”), is delinquent \$6,285 in plan payments. Debtor will need to

have paid \$11,270 by the hearing date to become current. Debtor has paid a total of \$127,292.34 into the Plan to date.

Docket 129 p. 1:16-22. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 131.

DEBTOR'S RESPONSE

Debtor filed a Response on March 6, 2024. Dckt. 133. Debtor acknowledges the delinquency but states Debtor will file a new Modified Plan before the March 20, 2024 Hearing. *Id.* at ¶ 3.

DISCUSSION

Delinquent

Debtor is \$6,285 delinquent in plan payments, which represents more than a month of the \$4,985 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 a modified plan is not evidence that resolves the Motion. A review of the Docket on March 12, 2024 reveals that no new modified plan has been filed. The Opposition (which is unsupported by any evidence) merely says that there is a default and that a modified plan will be filed. No information is provided as to what caused the default or where the more than \$10,000 of defaulted monies are being held or were spent by Debtor.

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 February 16, 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, Roy Lyn Brooks and Lenay Sherie Franks-Brooks (“Debtor”), is delinquent \$4,000 in plan payments. Debtor will need to have paid \$8,000 in order to bring this Plan current by the Hearing date.

Docket 21 p. 1:17-22. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 23.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on March 1, 2024. Dckts. 25, 26. Debtor states delinquency has now been cured. Decl., Docket 26 ¶¶ 5, 6. Debtor states they fell behind in plan payments due to incurring car repair costs in the amount of \$2,000 and fence repair costs in the amount of \$1,350. *Id.* at ¶ 4.

DISCUSSION

Delinquent

Debtor is \$4,000 delinquent in plan payments, which represents one month of the \$4,000 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).

However, Debtor has testified that the delinquency has been cured. The court has not been shown any receipts in the form of authenticated exhibits of such payments bringing the Plan current. At the hearing, **XXXXXX**

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.~~

22. [22-23247-E-13](#) **JERRY/SANDA RANKIN** **MOTION TO DISMISS CASE**
[DPC-1](#) **Julius Cherry** **2-15-24 [20]**

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 February 15, 2024. By the court’s calculation, 34 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, Jerry and Sanda Rankin (“Debtor”), are delinquent \$3,321.43 in plan payments. Motion, Docket 20, p. 1:17-23. Debtor will need to pay \$6,041.33 to bring the Plan current before the Hearing. *Id.*

Docket 20. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 22.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 4, 2024. Opposition, Docket 24. Debtor states the delinquency will be cured prior to the hearing date. *Id.* at ¶ 1.

Debtor did not file a declaration to authenticate the facts alleged in the Opposition.

DISCUSSION

Delinquent

Debtor is \$3,321.43 delinquent in plan payments, which represents multiple months of the \$2,719.90 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).

Here, Debtor states that the delinquency will be cured prior to the Hearing. Opposition, Docket 24, ¶ 1. As of March 12, 2024, Debtor has submitted no evidence to the court that shows that payment has been made and that Debtor is now current on their Plan.

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

~~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.~~

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

LACEY DEROCK

ORDER TO SHOW CAUSE - FAILURE

Pro Se

TO PAY FEES

23 thru 24

2-15-24 [\[33\]](#)

Final Ruling: No appearance at the March 20, 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 February 15, 2024. The court computes that 34 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 February 12, 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 21, 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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, Lacey DeRock ("Debtor"), is delinquent \$116.97 in plan payments. Motion, Docket 35, ¶ 1. Debtor will need to pay \$233.94 to bring the Plan current by the Hearing. *Id.*
2. Debtor failed to appear at the First Meeting of Creditors held on January 25, 2024. *Id.* at ¶ 2. The meeting has been continued to April 4, 2024 to give her an opportunity to appear. *Id.*
3. Debtor failed to submit proof of her social security number and a copy of a government issued picture identification to the Trustee. *Id.* at ¶ 3.
4. Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of her Petition and also failed to provide the Trustee with her tax returns. *Id.* at ¶ 4.

Docket 35. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 37.

DEBTOR'S RESPONSE

Debtor, in *pro se*, did not file a Response to this Motion.

DISCUSSION

No Plan Payments Made

Debtor did not commence making plan payments and is \$116.97 delinquent in plan payments, which represents one month of the \$116.97 plan payment. Decl., Docket 37, ¶ 6. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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 March 1, 2024. Order, Docket 44. 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).

Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 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 Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Government Issued Identification

Debtor has not provided Trustee with proof of a government issued picture identification. *See* 11 U.S.C. § 521(h)(1). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Social Security Number

Debtor has not provided Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). 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.

25. [19-21549-E-13](#) **PETRA/EDWARD CAMPOS** **MOTION TO DISMISS CASE**
[DPC-2](#) **Paul Bains** **2-6-24 [57]**

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 February 6, 2024. By the court’s calculation, 43 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, Petra Campos and Edward Campos (“Debtor”), are delinquent \$6,295.44 in plan payments. Motion, Docket 57, ¶ 1. Debtor will need to pay \$9,403.52 to bring the Plan current prior to the Hearing.

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

DEBTOR’S RESPONSE

Debtor filed a Response on March 6, 2024. Response, Docket 61. Debtor states that they are making all attempts to be current on the Plan by the Hearing. *Id.* at p. 1:19-23. Debtor relies on commission to cover the plan payments and the commission that was received over the past several months was less than usual, which is why Debtor has fallen behind on their plan payments. *Id.* Debtor states that \$3,100.00 has been paid since this Motion was filed. *Id.* Debtor made a \$2,000.00 payment on February 13, 2024, and a \$1,100.00 payment on February 28, 2024. *Id.*

Debtor submits the Declaration of Petra and Edward Campos to authenticate the facts alleged in the Response. Decl., Docket 62.

DISCUSSION

Delinquent

Debtor is \$6,295.44 delinquent in plan payments, which represents multiple months of the \$3,108.08 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).

Here, Debtor states that the commission that they received over the last several months was less than usual and that they are making all attempts to bring the Plan current by the Hearing. Response, Docket 61, p. 1:19-24. Debtor states that as of February 28, 2024, \$3,100.00 has been paid to the Trustee. *Id.* However, no evidence has been submitted to the court to show that these payments were made, nor has any evidence been presented that shows Debtor is now current in plan payments.

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 February 16, 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 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, Daniel Lockler and Sonia Lockler (“Debtor”), are \$5,849.88 delinquent in plan payments. Motion, Docket 24, p. 1:17-23. Debtor will need to pay \$10,552.78 to bring the Plan current prior to the Hearing. *Id.*

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 26.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 6, 2024. Opposition, Docket 28. Debtor states the delinquency will be cured prior to the hearing date. *Id.* at p. 1:21-28. Debtor submits their Declaration to explain that they fell behind on payments due to the death of Sonia’s mother and Sonia’s sister’s illness, but they will be making a payment to cure the delinquency. Decl., Docket 30 ¶¶ 3-4, 6.

DISCUSSION

Delinquent

Debtor is \$5,849.88 delinquent in plan payments, which represents over a month of the \$4,702.90 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).

Here, Debtor states that the delinquency will be cured prior to the Hearing. Opposition, Docket 28, p. 1:21-28. As of March 14, 2024, the court has not received any evidence that shows that Debtor has cured the delinquency. 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.~~

27. [23-21552-E-13](#) **RONALD RATLIFF** **MOTION TO DISMISS CASE**
[DPC-2](#) **Rabin Pournazarian** **2-9-24 [75]**

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 February 9, 2024. By the court’s calculation, 40 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, Ronald Ratliff (“Debtor”), is \$7,678.01 delinquent in plan payments. Motion, Docket 75, ¶ 1. Debtor will need to pay \$13,278.01 to bring the Plan current prior to the Hearing. *Id.*

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

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 6, 2024. Opposition, Docket 79. Debtor states that he intends to make a payment to cure the delinquency shortly. *Id.* at p.1:16-25. Debtor fell behind in plan payments due to a delay in receiving a payment from a client and because he forgot that there was an increase in the plan payment. *Id.* Debtor also states that a Modified Plan and an Amended Schedule I and J will be filed with the court. *Id.* Debtor submits his own Declaration to authenticate the facts alleged in the Opposition. Decl., Docket 80.

DISCUSSION

Delinquent

Debtor is \$7,678.01 delinquent in plan payments, which represents more than a month of the \$5,600.00 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).

Here, Debtor states that he plans to make a payment which will cure the default. Opposition, Docket 79, p. 1:20-23. However, Debtor has not submitted any evidence to the court that shows that payment has been made to cure the default.

Debtor has filed a Modified Plan and a Motion to Confirm Modified Plan which will be heard on April 23, 2024. Motion, Docket 84.

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.~~

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 February 15, 2024. By the court’s calculation, 34 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, Emilia and Rodrigo Dones (“Debtor”), are delinquent \$3,276.89 in plan payments. Motion, Docket 51, p. 1:18-23. Debtor will need to pay \$6,530.42 to bring the Plan current prior to the Hearing. *Id.*

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 53.

DEBTOR’S REPLY

Debtor filed a Reply on March 6, 2024. Reply, Docket 55. Debtor states that they were unaware that their plan payment had increased, which is the reason for the delinquency. *Id.* at p. 1:22-25. Debtor intends to file a Modified Plan prior to the Hearing which will resolve the Plan delinquency. *Id.* at p. 1:26-27. Debtor submits their own Declaration in support of the Reply, authenticating the facts alleged in the Reply. Decl., Docket 56.

DISCUSSION

Delinquent

Debtor is \$3,276.89 delinquent in plan payments. Before the hearing, another plan payment in the amount of \$3,253.53 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 filed a Reply stating that they did not realize their plan payment had increased and that they intend to file a Modified Plan which will cure the delinquency. Reply, Docket 55, p.1:21-27.

Plan and Motion to Confirm Filed

On March 6, 2024, Debtor filed a Modified Plan and a Motion to Confirm Modified Plan which will be heard on April 23, 2024. Motion, Docket 58.

Debtor has filed a First Modified Plan (Dckt. 60) and Motion to Confirm (Dckt. 58) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with detailed particularity upon which relief is based. The Declaration in support (Dckt. 61) states detailed personal knowledge testimony in support of the Motion to Confirm.

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

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

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

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

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

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.

March 20, 2024 Hearing

The court continued this matter as one of the debtors in this case, Dolores Pence, passed away, so Debtor’s counsel reported that they were working with the Trustee’s office about a possible hardship discharge or possibly converting the case. Trustee concurred with the continuance. A review of the Docket on March 12, 2024 reveals that no new documents have been filed with the court, apart from a Change of Address Form 2-085 filed by Debtor’s attorney.

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.

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, counsel for Debtor reports that they are working with the Trustee's office about a possible hardship discharge or convert the case. The Trustee concurred with the request for a continuance to allow the Successor Representative to work with counsel on how this case will proceed.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 20, 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**.

30. [23-23859-E-13](#)
[DPC-2](#)

ALLEN GAMBLE
Peter Macaluso

MOTION TO DISMISS CASE
2-21-24 [59]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on February 22, 2024. By the court’s calculation, 27 days’ notice was provided. 28 days’ notice is required. It appears that Trustee is one day late of the required notice period. At the hearing, **XXXXXXX**

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). Therefore, the defaults of the respondent and other parties in interest are entered.

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, Allen Dontony Gamble (“Debtor”), is delinquent \$19,003.08 in plan payments.
2. Trustee objected to the original Plan which was sustained at the hearing on January 9, 2024 at Docket 47. There is no Amended Plan on file.
3. The Debtor failed to submit proof of his social security number and a copy of a government issued picture identification to the Trustee before the First Meeting of Creditors held on December 7, 2023, as required pursuant to

Fed. R. Bankr. P. 4002(b)(1)(A) and (B). The meeting was continued to March 14, 2024, at 2:00 p.m., to give the Debtor sufficient time to provide the verification document to the Trustee's office.

Docket 59 ¶¶ 1-3. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 61.

DISCUSSION

Delinquent

Debtor is \$19,003.08 delinquent in plan payments, which represents multiple months of the \$6,334.36 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. Docket 46. 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).

No Photo Identification Provided

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) states:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Debtor did not provide Trustee with evidence of his social security number or proper photo identification ahead of the scheduled Meeting of Creditors.

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.

31. [20-21562-E-13](#)
[DPC-3](#)

SALLY MUNGWA
Ronald Holland

CONTINUED MOTION TO DISMISS
CASE
12-21-23 [71]

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.

March 20, 2024 Hearing

The court continued this hearing to allow Debtor to cure the delinquency. The Chapter 13 Trustee, David Cusick (“Trustee”) filed a Status Report on March 5, 2024, informing the court that the delinquency has grown from \$2,446.64 to \$4,293.27. *Id.* at p. 1:23-24. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, **XXXXXXX**

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

REVIEW OF THE MOTION

Trustee seeks dismissal of the case on the basis that:

1. The debtor, Sally Laura Mungwa (“Debtor”), is currently delinquent \$2,446.64 in plan 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).

February 21, 2024 Hearing

At the hearing, Counsel for the Debtor states that a cashier's check was issued on February 16, 2024. Counsel for the Trustee reported that a \$1,950 check was received from the Debtor, but it was a personal check, which has been returned to the Debtor.

The Trustee requested the court to continue the hearing.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 20, 2024.

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 granted, and the case is dismissed.

March 20, 2024 Hearing

The court continued this Motion to allow Debtor to cure the \$1,385 delinquency or convert to a case under Chapter 7. On March 5, 2024 the Chapter 13 Trustee, David Cusick (“Trustee”) filed a Status Report with the court. Docket 160. Trustee informs the court that the Debtor is still delinquent \$585, and the case has not yet been converted. *Id.* at ¶¶ 1-2.

At the hearing, **XXXXXXX**

Cause exists to dismiss this Bankruptcy Case, and the Motion is granted.

Review of the Motion

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.

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, counsel for Trustee reported that Debtors are delinquent \$1,385.00 in payments. Counsel for the Trustee concurred with the request to continue the matter to allow the Debtor to further address the curing of the default. The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 20, 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 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 February 15, 2024. By the court’s calculation, 34 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, Bethany Elaine Johnson (“Debtor”), is delinquent \$4,527.55 in plan payments. Debtor will need to have paid \$7,293.06 to become current by the hearing date.

Docket 61 p. 1:17-22. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 63.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on March 6, 2024. Dckts. 65, 66. Debtor states that she has recently been diagnosed with stage 4 cancer. Decl., Docket 66 ¶ 3. She states she has been “released for radiation treatment for the next (3) weeks, and then [she] pray[s] to return to work for the remainder of the plan.” *Id.* Debtor requests time to consider conversion, requesting a continuance. Motion, Docket 65 p. 2:7-8.

DISCUSSION

Delinquent

Debtor is \$4,527.77 delinquent in plan payments, which represents more than a month of the \$2,765.51 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).

However, Debtor has presented the court with testimony of real life issues that explain the delinquency and debtor’s hopes of being able to remain in bankruptcy.

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 **XXXXXXX**.

34. [23-23465-E-13](#) **JOI GONZALEZ** **MOTION TO DISMISS CASE**
[DPC-1](#) **Michael Hays** **2-21-24 [66]**

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—Insufficient Notice Period.

Sufficient Notice not 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 February 22, 2024. By the court’s calculation, 27 days’ notice was provided. 28 days’ notice is required. Movant is one day late of the required notice period. At the hearing, **XXXXXXX**

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.

IMPROPERLY REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused Docket Control Number DPC-1 which had been previously used for the Trustee's Objection to Confirmation . That is not correct (thereby demonstrating that the Chapter 13 Trustee and his staff are human). The court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

The Motion

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

1. The debtor, Joi Gonzalez ("Debtor"), is delinquent \$892 in plan payments.

Docket 66 ¶ 1. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 68.

DISCUSSION

Delinquent

Debtor is \$892 delinquent in plan payments, which represents more than a month of the \$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).

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 February 15, 2024. By the court’s calculation, 34 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, Tanya Michelle Norfles (“Debtor”), is delinquent \$730 in plan payments. Debtor will need to have paid \$1,095 by the hearing date to become current.

Docket 162 p. 1:17-22. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 164.

DEBTOR’S RESPONSE

Debtor filed an Opposition and supporting Declaration on March 5, 2024. Dockets 166, 167. Debtor states she will be filing a Modified Plan to address and cure the delinquency. Decl., ¶ 41 Dckt. She explains that she became delinquent due to catching various illness that prevented her from working. *Id.* at ¶ 2. She is currently in month 54 of her 60 month Plan.

DISCUSSION

Delinquent

Debtor is \$730 delinquent in plan payments, which represents multiple months of the \$365 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).

Plan and Motion to Confirm Filed

Debtor has filed a Modified Plan (Dckt. 178) and Motion to Confirm (Dckt. 174) to address the defaults. From the court's preliminary review, the Motion states that Debtor caught COVID and another affliction and had to take time off from work. Debtor does not state the sick leave benefits, unemployment benefits, or COVID payments the Debtor may have received. The proposed Plan provides for all defaulted payments to be forgiven, with Plan payments of \$700 a month to begin again March 2024, and continue thereafter for the six remaining months of the Plan.

Debtor's Declaration (Dckt. 176) states that Debtor had COVID and another affliction, but does not address the financial consequences of such. Debtor provides no testimony as to how much in income she lost and what was not covered by sick leave, COVID Stimulus Payments, unemployment benefits, or other benefits Debtor may have received.

Amended Schedules I and J Filed with the Motion to Confirm

Debtor filed "Amended" Schedules I and J on March 13, 2024. Dckt. 180. By stating under penalty of perjury Debtor was filing "Amended" Schedules, these relate all the way back to the filing of this Bankruptcy Case on August 16, 2019, and thereby causing all of the prior orders of this court to have been based on faulting, non-accurate income and expenses.

On Amended Schedule I Debtor states having monthly income after deductions of \$3,918.30. *Id.* at 5. Debtor lists having (\$800) in monthly deductions/withholding for travel expenses. Debtor does not state whether such expenses are reimbursed or not reimbursed, or why her employer who is paying her wages deducts travel expenses from her wages.

On Supplemental Schedule J Debtor lists having monthly expenses of \$3,217.81 for her family unit of one person. This includes a housing expense of \$1,081.00, and debtor having only (\$10) a month in home maintenance and repairs (clearing an unrealistic, unreasonably low amount). *Id.* at 6. Debtor includes self-employment taxes of (\$214) a month on Amended Schedule J. *Id.* at 7.

On Amended Schedule J Debtor states that she has \$700 a month in Net Income to fund a Plan.

Prior Schedules Filed

On the incorrect Original Schedule I, which Debtor has corrected with the Amended Schedule I, Debtor stated under penalty of perjury having income, after deductions, of \$2,225.00. Dckt. 1 at 41-42. This included \$1,060 in income from a "second job" for which no withholding is disclosed. *Id.* No provision is made on Original Schedule I for paying any taxes on that additional income.

With the March 13, 2024 Amended Schedule I, Debtor states under penalty of perjury that she actually had \$3,918.30 in monthly income after deductions – this is almost \$700 a month greater than Debtor stated at the filing of this case.

On incorrect Original Schedule J, which Debtor has corrected with the Amended Schedule J, Debtor stated under penalty of perjury that she never has any repair or maintenance expenses for her residence. *Id.* at 43. Debtor also states under penalty of perjury having only (\$210) a month in food and

housekeeping supplies a month. After allowing (\$40) a month for housekeeping supplies, that leaves only \$170 a month for food. Over a thirty (30) day month, with three (3) meals a day, Debtor stated having only \$1.89 to spend per meal. This is highly unrealistic.

However, with the income and expenses numbers used by Debtor, \$2,160 a month to fund a plan (Debtor's mortgage, property taxes, and insurance not included on Original Schedule J). The Original Plan (Dckt. 3) provided for monthly payments of (\$1,285.76) to be paid to the creditor having a lien on Debtor's residence. With a monthly plan payment of \$2,160, after deducting the secured claim payment, Debtor had \$874.24 for Debtor's counsel's fees (\$3,135.00), Trustee Fees, two vehicles loans ((\$484.00 a month), HOA arrearage (\$75.00 a month) and then payments to other creditors.

On several occasions since the filing of this Case Debtor filed several Amended/Supplemental Schedules I and J. Though stated to be both Amended and Supplemental under penalty of perjury, it is legally impossible to be both. These include:

- A. Amended/Supplemental Schedule J filed October 9, 2019 (two months after this case was filed). Dckt. 38. This states Debtor has only \$725 a month in Monthly Net Income to fund a Plan. Debtor did add (\$1,168.18) for her mortgage expense and (\$144.00) for HOA Dues.
- B. Amended/Supplemental Schedules I and J filed on January 14, 2020 (four and one-half months after this case was filed). Dckt. 62. By these Amended/Supplemental Schedule Debtor stating having take home monthly income of \$3,005.00, monthly expenses of (\$2,255.99), and Monthly Net Income of \$750.00 to fund a Plan.
- C. Supplemental Schedules I and J filed on February 15, 2021. Dckt. 101. Debtor reported on Supplemental Schedule I having monthly income of only \$3,570.30 after deductions, (\$3,046.99) in monthly expenses, and only \$520.31 of Monthly Income to fund the Plan.
- D. Amended/Supplemental Schedules I and J filed on December 29, 2022. Dckt. 140. Debtor reported her monthly income further reduced to \$3,916.20, monthly expenses of (\$3,918.30), and Monthly Net Income of only \$365.31 to fund a Plan.

As stated above, Debtor filed Amended Schedule I and J on March 13, 2024, providing financial information correcting the Original Schedules I and J, and providing the correct information for this case from filing to March 13, 2024. Dckt. 180. Debtor's monthly income was during this case \$3,918.30, after deductions, and (\$3,217.81) in expenses, resulting in \$700.49 in Monthly Net Income to fund the Plan since September 2019. That would \$700 a month for fifty-five (55) months, for a total of \$38,500.

In her Motion to Confirm another Modified Plan in this Case, Debtor states that she has only paid \$23,181.97 to fund the Plan as of March 2024. That is only sixty percent (60%) of the Monthly Net Income Debtor states under penalty of perjury in the Amended Schedules I and J (Dckt. 180).

On its face, it appears that Debtor is lacking the financial ability to make up all of the now disclosed under-funding of the Plan, and showing that a Plan in this Case cannot be completed.

At the hearing, **XXXXXXX**

~~Thus, cause has been shown for the dismissal of this Case. The Motion is granted and the case is dismissed.~~

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

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

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

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

36. [18-25370-E-13](#)
[DPC-10](#)

JESSE ORTIZ
Peter Macaluso

MOTION TO DISMISS CASE
2-16-24 [217]

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 February 16, 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, Jesse Soto Ortiz (“Debtor”), is delinquent \$16,077.39 in plan payments. Debtor will need to have paid \$24,218.19 to bring the plan current by the hearing date.

Docket 217 p. 1:17-22. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 219.

DEBTOR'S RESPONSE

Debtor filed a Response and accompanying Declaration on March 6, 2024. Dockets 221, 223. In her response, Debtor states that the delinquency will be cured by the hearing date. Decl., Docket 222 ¶ 3. Debtor explains that he is delinquent because many of his clients have not paid him on time, including two clients who have filed bankruptcies of their own. *Id.* at ¶ 2

DISCUSSION

Delinquent

Debtor is \$16,077.39 delinquent in plan payments, which represents multiple months of the \$8,140.80 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 has testified that the Plan will be brought current before the hearing date, but no corroborating evidence has been submitted showing the payments have been made.

The Trustee reports that Debtor has funded the Chapter 13 Plan to this point with \$503,062.52. Dec. ¶ 3; Dckt. 219. The \$16,07.39 default represents approximately three and one-tenths percent (3.10%) of the \$519,139.91 in Plan payments due as of the February 16, 2024, filing of this Motion.

The filing of this Motion is necessary and proper by the Trustee. The last payment made by Debtor was in November 2023. The Trustee did wait until February 16, 2024, to file this Motion to Dismiss, affording Debtor some first of the year time to address this matter.

The court recognizes the substantial Plan payments Debtor has made and the continuing efforts of Debtor's counsel to keep this Case on track to afford the opportunities to make over half a million dollars in Plan payments. This is quite extraordinary for a Chapter 13 Case, showing both the Debtor's and Debtor's counsel's hard work to try and keep the Plan performing.

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.~~

37. [23-23271-E-13](#)
[DPC-3](#)

TIFFANY MILLER
Seth Hanson

MOTION TO DISMISS CASE
2-16-24 [38]

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 February 16, 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 ~~XXXXXXX~~.

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

1. The debtor, Tiffany Renee Miller ("Debtor"), is delinquent \$4,969.18 in plan payments. Debtor will need to pay \$8,928.77 to bring the Plan current by the hearing date.

Docket 38 p. 1:17-22. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 40.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on March 5, 2024. Dckts. 42, 43. Debtor states the delinquency will be cured prior just after the hearing date on March 22, 2024. Decl., Docket 43 ¶¶ 5-6. Debtor states she became delinquent due to car repairs and having her hours cut at work. *Id.* at ¶ 3. Debtor requests a continuance to show that the default has been cured.

DISCUSSION

Delinquent

Debtor is \$4,969.18 delinquent in plan payments, which represents more than a month of the \$3,959.59 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 requests a continuance, stating that she will cure the default and become current by March 22, 2204.

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 **XXXXXXX**.

38. [24-20180-E-13](#)

GUY ARCHBOLD
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
2-21-24 [21]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. 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 February 21, 2024. The court computes that 28 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79.00 due on February 16, 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 subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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:

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.

The Motion to Dismiss is XXXXXXX.

March 20, 2024 Hearing

Trustee concurred with Debtor’s request at the prior hearing for a continuance in light of the information provided at the hearing by Debtor’s counsel regarding the Debtor now having the funds to cure the default.

As of the court’s review of the Docket on March 17, 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, 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).

Though an opposition was not filed, Debtor’s counsel stated that a payment was made on February 20, 2024, with additional funds being transmitted to the Debtor.

The Trustee concurred with Debtor’s request for a continuance in light of the information provided at the hearing by Debtor’s counsel regarding the Debtor now having the funds to cure the default.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on March 20, 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**.

FINAL RULINGS

40. [22-21990-E-13](#)
[DPC-1](#)

JOSHUA/MARISSA GOMEZ
Mikalah Liviakis

MOTION TO DISMISS CASE
2-16-24 [25]

Final Ruling: No appearance at the March 20, 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 February 16, 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.

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, Joshua Matthew Gomez and Marissa Nicole Gomez (“Debtor”), is delinquent \$3,855.00 in plan payments. The last payment was received on November 2, 2023. Debtor’s monthly payment is \$1,285.00. Prior to the hearing in this matter, another payment of \$1,285.00 will come due. Motion, Docket 25, p. 1:17-22.
2. Debtor will need to pay \$5,140.00 in order to bring this plan current by the date of the hearing. *Id.* at 1:21-23.

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

DISCUSSION

Delinquent

Debtor is \$3,855.00 delinquent in plan payments, which represents three months of the \$1,285.00 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.

41. [23-22495-E-13](#) **JAMES ROEHR** **MOTION TO DISMISS CASE**
[DPC-1](#) **David Foyil** **2-9-24 [50]**

Final Ruling: No appearance at the March 20, 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 March 14, 2024, Motion, Docket 63; 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 James Roehr (“Debtor”), Opposition, Docket 60; 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, Motion, Docket 63, 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.

Though the Court is Denying The Motion to Dismiss Without Prejudice Counsel for Debtor May Want to Review the Motion to Confirm and Consider Whether A Supplement to the Motion Stating All the Grounds Required Under 11 U.S.C. §§ 1322 and 1325 Are Stated With Particularity.

Final Ruling: No appearance at the March 20, 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 February 21, 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 denied without prejudice.

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

1. The debtor, Jared Goodreau (“Debtor”), has filed a Second Amended Plan, but has failed to set it for confirmation. Motion, Docket 38, ¶ 1. The court sustained the Trustee’s Objection to Confirmation of the Amended Plan on January 11, 2024. Order, Docket 25.

Docket 38. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 40.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 29, 2024. Opposition, Docket 52. Debtor states that he has filed a Motion to Confirm Second Amended Plan, which is set to be heard on April 9, 2024. *Id.* at ¶ 1. Debtor’s Second Amended Plan proposes to pay a 12% dividend to unsecured creditors. *Id.* at ¶ 2.

Debtor did not submit a Declaration to support the Opposition.

DISCUSSION

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on February 27, 2024. Dckts. 45, 48. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 47. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

The court shall issue 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.

Final Ruling: No appearance at the March 20, 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 February 14, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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, Brooks Gregory Parfitt (“Debtor”), is delinquent \$5,400.00 in plan payments. The last payment was received on January 11, 2024. Debtor’s monthly payment is \$5,378.99. Prior to the hearing in this matter, one payment of \$5,378.99 will come due. Motion, Docket 77, p.1:18-22.
2. Debtor will need to pay \$10,778.99 in order to bring this plan current by the date of the hearing. *Id.* at 1:21-23.

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

DEBTOR’S RESPONSE

Debtor filed a Response on March 5, 2024. Docket. 87. Debtor states that since the filing of Trustee’s Motion to Dismiss, Debtor has filed a modified plan and a declaration in support of the modified plan. *Id.* at ¶2. Debtor asserts that they are current under the modified plan. *Id.* at ¶3.

Debtor has not submitted a declaration or other evidence supporting the facts alleged in the Response.

DISCUSSION

Delinquent

Debtor is \$5,400.00 delinquent in plan payments, which represents slightly over one month of the \$4,378.99 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).

Here, Debtor asserts that the Debtor has filed a modified plan and a declaration in support of the modified plan. Response, Docket 87, p. 1:16-18. A review of the docket on March 12, 2024 shows that Debtor has filed a Modified Plan and a Motion to Modify Plan. Dockets 84, 81.

Local Rule 3015-1(g)(2) provides that a Debtor may avoid dismissal by making the delinquent plan payment(s) and all subsequent plan payment(s) that have fallen due, or by filing a Modified Plan and a Motion to Confirm the Modified plan.

Debtor filed a Modified Plan and a Motion to Confirm the Modified Plan on March 5, 2024. From the court's preliminary review, it appears that the Motion (Dckt. 81) states grounds with particularity upon which relief is based, and that the Declaration in support (Docket 83) states personal knowledge testimony in support of the Motion to Confirm.

The Debtor has funded the current Plan with a six figure amount of substantial monies and has a stable income. The Proposed Plan appears to address the default. The Debtor is now almost four years into this case.

The court finding that the 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.

Final Ruling: No appearance at the March 20, 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 February 9, 2024. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Michael Charles Clark and James David Ling (“Debtor”), are delinquent \$11,734.00 in plan payments. Debtor’s next monthly payment of \$5,869.00 will be due on February 25, 2024. Motion, Docket 66, p. 1:25-27.
2. Debtor has paid \$75,556.96 into the Plan to date. The case was filed on 7/31/2022. *Id.* at 1:27-2:2.

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

DISCUSSION

Delinquent

Debtor is \$11,734.00 delinquent in plan payments, which represents nearly two months of the \$5,869.00 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.

Final Ruling: No appearance at the March 20, 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 February 9, 2024. By the court’s calculation, 40 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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, Shirley Marea Cooper (“Debtor”), is delinquent \$3,627.27 in plan payments. Motion, Docket 38, p. 1:25-26. Debtor’s next scheduled payment of \$3,428.03 is due on February 25, 2024. *Id.* at 1:26-27.
2. The mortgage payment increased as of May 2023, which required the plan payment to increase to \$3,428.03, and Debtor has not made the increased payment. *Id.* at 2:3-5.

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 39.

DEBTOR’S RESPONSE

Debtor filed a Reply on February 27, 2024. Docket 42. Debtor states the delinquency will be cured by filing a modified plan and motion to modify the plan. Declaration, Docket 43, p. 2:1-2. Debtor states she was unaware her plan payments had increased due to a mortgage payment change, but has the ability to continue making her Chapter 13 plan payments. *Id.* at 1:25-28. Debtor apologizes for the default, and respectfully requests to be allowed to continue in her Chapter 13 case. *Id.* at 2:2-4.

DISCUSSION

Delinquent

Debtor is \$3,627.27 delinquent in plan payments, which represents slightly more than one month of the \$3,428.03 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).

Here, Debtor has promised the court the delinquency will be cured. Declaration, Docket 43, p. 2 ¶6. Debtor promised to file a modified plan and a motion to modify plan. A review of the docket on March 12, 2024 shows that Debtor has filed a Modified Plan and a Motion to Modify Plan. Dockets 46, 49.

Local Rule 3015-1(g)(2) provides that a Debtor may avoid dismissal by making the delinquent plan payment(s) and all subsequent plan payment(s) that have fallen due, or file a Modified Plan and a Motion to Confirm the Modified plan.

Debtor filed a Modified Plan and a Motion to Confirm the Modified Plan on February 28, 2024. From the court's preliminary review, it appears that the Motion (Dckt. 45) states grounds with particularity upon which relief is based, and that the Declaration in support (Docket 47) states personal knowledge testimony in support of the Motion to Confirm.

The court finding that the 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.

46. [18-23711-E-13](#)
[DPC-1](#)

JOSEPH/PAGASA OLIVO
Thomas Amberg

MOTION TO DISMISS CASE
2-6-24 [32]

Final Ruling: No appearance at the March 20, 2024 Hearing is required.

The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 (Docket 36), **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

47. [19-27811-E-13](#)
[DPC-2](#)

JOSE/ALICIA SANTANA
Mikalah Liviakis

MOTION TO DISMISS CASE
2-15-24 [48]

Final Ruling: No appearance at the March 20, 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 February 15, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Jose Santana and Alicia Martinez Santana (“Debtor”), are delinquent \$7,335.10 in plan payments. Motion, Docket 48, p. 1:19-20. The last payment was received on October 24, 2023, *Id.* at 1:18-19. Debtor’s monthly payment is \$2,505.77. *Id.* at 1:19-20. Prior to the hearing, another payment will come due, and as a result, Debtor will need to pay \$9,840.87 in order to bring this plan current by the date of the hearing. *Id.* at 1:21-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 50.

DISCUSSION

Delinquent

Debtor is \$7,335.10 delinquent in plan payments, which represents nearly three months of the \$2,505.77 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.

Final Ruling: No appearance at the March 20, 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 February 15, 2024. By the court’s calculation, 34 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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, James Robert Weldon Sr. and Irma Maria Weldon (“Debtor”), are delinquent \$10,940.00 in plan payments. Motion, Docket 30, p. 1:19-20. The last payment was received on December 4, 2023. *Id.* at 1:18-19. Debtor’s monthly plan payment is \$3,110.00. *Id.* at 1:20-21. Prior to the hearing in this matter, another payment of \$3,110.00 will come due. *Id.* at 20-22. As a result, Debtor will need to pay \$14,050.00 to bring this plan current by the date of the hearing. *Id.* at 1:21-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 32.

DEBTOR’S RESPONSE

Debtor filed a Response on March 5, 2024. Docket 34. Debtor states the delinquency will be cured prior to the hearing date. Declaration, Docket 35, p. 1:28-2:3. Debtor proposes to cure the default in the plan payments by filing a Modified Plan and Motion to Confirm Modified Plan prior to the hearing date. *Id.* Shortly after Debtor’s filing of Chapter 13, Debtor’s landlord advised them that they had to move. *Id.* at 1:22-24. Debtor found a house, but needed to pay a \$9,000.000 deposit. *Id.* at 1:25. Due to the costs associated and with one party losing her job, Debtor has struggled to make their Chapter

13 payment . *Id.* at 1:26-27. Debtor declares that since the filing of the Motion to Dismiss, Debtor has made a plan payment in the amount of \$3,110.00.

DISCUSSION

Delinquent

Debtor is \$10,940.00 delinquent in plan payments, which represents over three months of the \$3,110.00 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).

Debtor seeks to cure the delinquency by filing a Modified Plan and Motion to Confirm Modified Plan. Debtor filed a Modified Plan and a Motion to Confirm the Modified Plan on March 12, 2024. Dockets 39, 37. From the court's preliminary review, it appears that the Motion (Dckt. 37) states grounds with particularity upon which relief is based, and that the Declaration in support (Docket 41) states personal knowledge testimony in support of the Motion to Confirm.

The court finding that the 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.

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 February 21, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

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

1. The debtor, Christopher Brian Moore and Sharon Elaine Moore (“Debtor”), is in default with respect to the terms of their Plan. According to Debtor’s Order Confirming Plan at Docket 15, Debtor is required to pay into their Plan all combined tax refunds exceeds \$2,000. Trustee has requested the 2022 tax returns on three separate occasions to determine if refunds have been issued. Debtor has still failed to provide the tax returns.

Docket 23 ¶ 1. Trustee submits the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket25.

DISCUSSION

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the year 2022, so Trustee is unable to determine if tax returns were realized and must be contributed to the Plan. *See* FED. R. BANKR. P. 4002(b)(3). 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.

50. [24-20015-E-13](#)

NATHANAEL PALAFAX
Thomas Amberg

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
2-7-24 [15]

Final Ruling: No appearance at the March 20, 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 February 7, 2024. The court computes that 42 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79 due on February 2, 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.

51. [23-20818-E-7](#)
[DPC-1](#)

FELICIA MYERS
Mo Mokarram

MOTION TO DISMISS CASE
2-16-24 [21]

CASE CONVERTED: 03/01/24

Final Ruling: No appearance at the March 20, 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 February 16, 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.

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 March 1, 2024. Docket 31.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Felicia Myers’ (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on March 1, 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 March 1, 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, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed her Notice of Conversion on March 1, 2024. Docket 31.

52. [20-25519-E-13](#)
[DPC-4](#)

ANDREW/RINA CARAGAN
Mark Shmorgon

CONTINUED MOTION TO DISMISS
CASE
12-21-23 [59]

Final Ruling: No appearance at the March 20, 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 March 5, 2024, Dckt. 69; 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 Andrew Caragan and Rina Caragan (“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. 69, 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.

53. [23-24326-E-13](#) ANGELA WATKINS MOTION TO DISMISS CASE
[DPC-1](#) Pro Se 1-26-24 [[23](#)]

DEBTOR DISMISSED: 02/23/24

Final Ruling: No appearance at the March 20, 2024 Hearing is required.

The case having previously been dismissed (Order, Docket x31), the Motion to Dismiss is denied as moot without prejudice.

The Motion to Dismiss is denied as moot without prejudice, the case having been dismissed on February 23, 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 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 March 20, 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 February 15, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Jack Jodoin and Maryanne Jodoin (“Debtor”), is delinquent \$2,166 in plan payments. Debtor’s monthly plan payment is \$250. Debtor will need to pay \$2,416 to bring the Plan current by the hearing date.

Docket 82 p. 1:17-22. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 84.

DISCUSSION

Delinquent

Debtor is \$2,166 delinquent in plan payments, which represents multiple months of the \$250 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.

55. 23-22330-E-13 DPC-3	DAVID KARLESKINT Lucas Garcia	CONTINUED MOTION TO DISMISS CASE 1-9-24 [41]
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Final Ruling: No appearance at the March 20, 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 9, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss is denied without prejudice, this Case having been converted to one under Chapter 7 (Dckt. 52).

REVIEW OF THE MOTION

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, counsel for the Debtor reported that due to health issues for counsel and the Debtor have disrupted their ability to get the case converted, and requested a continuance. The Trustee concurred with the request for continuance.

March 20, 2024 Hearing

At the February 21, 2024 Hearing, Debtor requested a continuance to allow him to convert the case to one under Chapter 7. See Civil Minutes, Docket 48 p. 2. A review of the Docket on March 12, 2024 reveals that the case has not been converted. That is unreasonable delay that is prejudicial to creditors and cause for dismissal. 11 U.S.C. § 1307(c)(1).

On March 5, 2024 the Chapter 13 Trustee, David Cusick ("Trustee") filed a status report with the court. Docket 50. Trustee informs the court no conversion documents have been filed, and any further continuance would be part of the unreasonable delay in this case that is prejudicial to creditors.

However, on March 12, 2024, Debtor also filed his Election to Convert this Case to one under Chapter 7. Dckt. 52. Nikki B. Farris has been appointed as the Interim Chapter 7 Trustee in this Case.

The court having been converted, 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, the Case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 20, 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 February 6, 2024. By the court’s calculation, 43 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, Sergey Zhuk (“Debtor”), is delinquent \$3,552 in plan payments.

Docket 33 ¶ 1. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 35.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on February 15, 2024. Dckts. 37 & 38. Debtor acknowledges the delinquency and has filed a First Modified Plan and Motion to Confirm on February 15, 2024, to address the delinquency. Dockets 42 & 45. Trustee has filed a statement of non-opposition to the Modified Plan at Docket 48, suggesting the Modified Plan cures the delinquency and is feasible.

DISCUSSION

Delinquent

Debtor is \$3,552 delinquent in plan payments, which represents multiple months of the \$888 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).

However, Debtor has filed a Modified Plan that appears to cure the delinquency. Trustee filed a statement of non-opposition to Debtor’s Motion to Confirm the Modified Plan. Docket 48. Therefore, the Debtor diligently prosecuting the Modified Plan to address delinquency, this 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.

57. 22-20838-E-13 DPC-1	MICHAEL/KIMBERLY OOSTERMAN Mikalah Liviakis	MOTION TO DISMISS CASE 2-16-24 [30]
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Final Ruling: No appearance at the March 20, 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 March 14, 2024, Dckt. 37; 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 Michael Edward Oosterman and Kimberly Leona (“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. 37, 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.

58. [22-23246-E-13](#) **TAMANY RESOVICH** **MOTION TO DISMISS CASE**
[DPC-3](#) **Matthew Gilbert** **2-9-24 [43]**

Final Ruling: No appearance at the March 20, 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 March 14, 2024, Dckt. 57; 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 Tamany Resovich (“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. 57, 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.

59. [23-21846-E-13](#)
[DPC-2](#)

JASON HAGBERG
Mark Briden

MOTION TO DISMISS CASE
2-16-24 [30]

Final Ruling: No appearance at the March 20, 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 filing a request for notice, and Office of the United States Trustee on February 16, 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.

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 his Notice of Conversion on March 11, 2024. Docket 40.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Jason Hagberg’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on March 11, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 40. 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 March 11, 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.

60. [20-25551-E-13](#) **MARVIN/WINIFRED JENKINS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Chad Johnson** **2-15-24 [55]**

Final Ruling: No appearance at the March 20, 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 February 15, 2024. By the court’s calculation, 34 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, Marvin and Winifred Jenkins (“Debtor”), are \$4,343.01 delinquent in plan payments. Motion, Docket 55, p. 1:18-23. Debtor will need to pay \$5,793.01 in order to bring the Plan current by the Hearing. *Id.*

Docket 55. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 57.

DEBTOR'S RESPONSE

Debtor filed a Response on March 6, 2024. Response, Docket 59. Debtor states that they have had a change in their budget which has caused them to fall behind on their plan payments. *Id.* at ¶ 2. Debtor intends to file a supplemental budget and modified plan with a motion to confirm prior to the Hearing. *Id.*

Debtor submits the Declaration of Marvin and Winifred Jenkins to authenticate the facts alleged in the Response. Decl., Docket 60.

DISCUSSION

Delinquent

Debtor is \$4,343.01 delinquent in plan payments, which represents multiple months of the \$1,450.00 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).

Here, Debtor states that there has been a change in their budget which has caused them to fall behind on their plan payments. Response, Docket 59, ¶ 2. Debtor states that a supplemental budget and a modified plan will be filed before the Hearing. On March 12, 2024, Debtor has filed the Supplemental Schedule I and J (Docket 68) as well as a Modified Plan (Docket 69) and Motion to Confirm (Docket 63).

Debtor's Modified Plan (Dckt. 69) provides for increasing the Monthly Plan Payment to \$910.00 for months 39 - 60. The Motion to Confirm (Dckt. 63) states grounds with particularity, as well as noting that the proposed Modified Plan will still provide for a 100% dividend for creditors holding general unsecured claims. Debtor's Declaration (Dckt. 66) states personal knowledge testimony in support of the Motion to Confirm. It includes specific testimony of why the default occurred and how those events are not likely to repeat.

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

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

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

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

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

Final Ruling: No appearance at the March 20, 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 February 16, 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.

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, Sarah and Tobin Mallery (“Debtor”), are delinquent \$3,468.92 in plan payments. Motion, Docket 27, p. 1:18-23. Debtor will need to pay \$7,028.38 in order to bring the Plan current prior to the Hearing. *Id.*

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

DEBTOR’S RESPONSE

Debtor did not file a Response to this Motion.

DISCUSSION

Delinquent

Debtor is \$3,468.92 delinquent in plan payments, which represents a portion of the \$3,559.46 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 did not file a Response to this Motion as required under Local Bankruptcy Rule 9014-1(f)(1)(B), which is considered to be a statement of nonopposition 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.

62. 20-21558-E-13 DPC-3	DANIEL CRAIN Mark Briden	CONTINUED MOTION TO DISMISS CASE 12-20-23 [113]
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Final Ruling: No appearance at the March 20, 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 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 denied without prejudice.

REVIEW OF THE MOTION

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.

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, counsel for the Trustee reports that the payment of \$3,580 had not been received. Counsel for the Debtor reported that they have the TFS payment was made on February 15,

2024. Counsel for the Trustee agreed to a continuance to allow the Debtor to complete the cure payments.

March 20, 2024 Hearing

The court continued this matter to allow Debtor to cure the default in plan payments.

On March 11, 2024 the Chapter 13 Trustee, David Cusick (“Trustee”), filed a Supplemental *Ex Parte* Motion to Dismiss Trustee’s Motion to Dismiss, stating Debtor has paid \$10,740 and cured the delinquency. Docket 125. While the court generally is pleased to see a debtor being able to address financial bumps in the road and get a Chapter 13 plan back on track, this “cure” raises some concerns for the court. Here, Debtor has been able to pay the Chapter 13 Trustee \$10,740 while Debtor’s most recent Schedule I and J state Debtor only has \$1,790 in monthly net income. Amended Schedule J, Docket 63 p. 8 line 23c. Debtor offers no explanation as to how he could afford to make payments in this amount.

Under the confirmed Modified Plan in this case, Debtor has only \$1,790 per month to fund the Plan. Modified Plan, Dckt. 74 ¶ 2.01. The confirmed Modified Plan provides that Debtor has only enough monthly projected disposable income to provide for a 4% dividend to creditors holding general unsecured claims. *Id.* at ¶ 3.14.

In confirming the Modified Plan, the court, Chapter 13 Trustee, creditors, and other parties in interest relied upon the financial information provided by Debtor under penalty of perjury in the amended Schedules I and J, filed on July 14, 2020, that there is only \$1,790 in projected disposable income. Dckt. 63 p. 8 line 23c.

It appears, based on the financial information provided under penalty of perjury, a financial impossibility that Debtor could provide \$10,740 to fund the Modified Plan.

However, this Plan is in the last year of performance. The Chapter 13 Trustee has sufficient “tools in his tool belt” to investigate the Debtor’s current income to determine if a modification to increase payments for the remainder of the Plan is warranted. The Trustee also can investigate whether there is income being hidden 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 the Motion to Dismiss is denied without prejudice.

DEBTOR DISMISSED: 02/26/24

Final Ruling: No appearance at the March 20, 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 February 21, 2024. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to the Chapter 13 Voluntary Petition filing fee.

The Order to Show Cause is discharged as moot, the case having been dismissed for failing to timely file documents on February 26, 2024.

The court having dismissed this bankruptcy case by prior order filed on February 26, 2024 (Dckt. 15), 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 good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed for failing to timely file documents on February 26, 2024, and no sanctions are ordered.

Final Ruling: No appearance at the March 20, 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 February 16, 2024. The court computes that 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 February 12, 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.

Final Ruling: No appearance at the March 20, 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 xxxx, 202x. 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.

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, Michael Gerrit Wilwerding and Erin Kimberly Wilwerding (“Debtor”), is delinquent \$5,460 in plan payments. Debtor will need to have paid \$8,190 to become current by the hearing date.

Docket 55 p. 1:17-22. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 57.

DISCUSSION

Delinquent

Debtor is \$5,460 delinquent in plan payments, which represents multiple months of the \$2,730 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.

66. [21-23564-E-13](#) **ALEXANDER/LIEZL ARZADON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mark Wolff** **2-9-24 [37]**

Final Ruling: No appearance at the March 20, 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 March 14, 2024, Dckt. 44; 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 Alexander Bala Arzadon and Liezl M. Arzadon (“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. 44, 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.

67. [23-21265-E-13](#) **RONALD/SABRINA** **MOTION TO DISMISS CASE**
[DPC-1](#) **ABERCROMBIE** **2-6-24 [43]**
 Mo Mokarram

Final Ruling: No appearance at the March 20, 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 February 6, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Ronald Samuel Abercrombie and Sabrina Marcell (“Debtor”), is delinquent \$11,110 in plan payments.

Docket 43 ¶ 1. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket xx.

DISCUSSION

Delinquent

Debtor is \$11,110 delinquent in plan payments, which represents multiple months of the \$2,800 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.

Final Ruling: No appearance at the March 20, 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 March 14, 2024, Dckt. 43; 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 William Buck Hubbard and Eliza Jane Hubbard (“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. 43, 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 March 20, 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 February 21, 2024. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on February 16, 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.

Final Ruling: No appearance at the March 20, 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 February 16, 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Dismiss is itself dismissed without prejudice, such dismissal having been requested by the Chapter 13 Trustee, and this Bankruptcy Case shall proceed in this Court.

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

1. The debtor, Janice Avery (“Debtor”), is delinquent \$500 in plan payments. Debtor will need to pay \$750 to bring the Plan current by the hearing date.

Docket 45 p. 1:17-22. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 47.

DEBTOR’S RESPONSE

Debtor filed a Response on March 6, 2024. Dckt. 49. Debtor states the delinquency has been cured and Debtor is current. Docket 49.

DISCUSSION

Delinquent

Debtor is \$500 delinquent in plan payments, which represents multiple months of the \$250 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).

On March 14, 2024, the Trustee filed his Supplemental *Ex Parte* Motion requesting that the court dismiss the Motion to Dismiss, the Debtor having cured the default. Dckt. 51.

The Motion itself is dismissed without prejudice and the Bankruptcy Case shall proceed in this 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 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 filed an *Ex Parte* Motion (Dckt. 51) to have the present Motion dismissed due to Debtor having cured the default, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is itself dismissed without prejudice, and the Bankruptcy Case shall proceed in this Court.

Final Ruling: No appearance at the March 20, 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 February 16, 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.

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, Lucia Lechuga Popovich (“Debtor”), is delinquent \$5,200 in plan payments. Debtor will need to have paid \$7,300 in order to become current by the hearing date.

Docket 30 p. 1:17-22. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 32.

DISCUSSION

Delinquent

Debtor is \$5,200 delinquent in plan payments, which represents multiple months of the \$2,100 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.

72. [22-21779-E-13](#)
[DPC-1](#)

NANCY NEIBARGER
Seth Hanson

MOTION TO DISMISS CASE
2-6-24 [23]

Final Ruling: No appearance at the March 20, 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 February 6, 2024. By the court’s calculation, 43 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 itself dismissed without prejudice as requested by the Chapter 13 Trustee, the default having been cured, and the Bankruptcy Case shall proceed in this Court.

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

1. The debtor, Nancy Ellen Neibarger (“Debtor”), is delinquent \$18,201.74 in plan payments.

Docket 23 ¶ 1. Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 25.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on March 6, 2024. Dckts. 27, 28. Debtor states the delinquency has been cured and Debtor is now current. Decl., Docket 28 ¶¶ 5-6.

DISCUSSION

Delinquent

Debtor is \$18,201.74 delinquent in plan payments, which represents multiple months of the \$9,729.70 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 Chapter 13 Trustee filed an Ex Parte Motion to have the Motion to Dismiss itself dismissed without prejudice, the Debtor having cured the default.

This Motion is dismissed without prejudice, and the Bankruptcy Case shall proceed in this 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 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 filed his Ex Parte Motion to Dismiss (Dckt. 30) the Motion to Dismiss the Debtor having cured the default, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is itself dismissed without prejudice as requested by the Chapter 13 Trustee, and this Bankruptcy Case shall proceed in this Court.

Final Ruling: No appearance at the March 20, 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 February 16, 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.

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, Candai Dain Bullard (“Debtor”), is delinquent \$1,350 in plan payments. Debtor will need to have paid \$2,025 in plan payments to bring the Plan current by the hearing date.

Docket 21 p. 1:17-22. Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 23.

DISCUSSION

Delinquent

Debtor is \$1,350 delinquent in plan payments, which represents multiple months of the \$675 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.

Final Ruling: No appearance at the March 20, 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 February 15, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Nikolaas Bos and Sarah Michel Best (“Debtor”), is delinquent \$7,950.00 in plan payments. The last payment was received on October 25, 2023. Debtor’s monthly payment is \$2,650.00. Prior to the hearing in this matter, another payment of \$2,650.00 will come due. Motion, Docket 40, p. 1:17-22.
2. Debtor will need to pay \$10,600.00 in order to bring this plan current by the date of the hearing. *Id.* at 1:21-23.

Trustee submits the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 42.

DISCUSSION

Delinquent

Debtor is \$7,950.00 delinquent in plan payments, which represents three months of the \$2,650.00 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.