UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 19, 2022 at 1:30 p.m.

1.	**18-90030-E-11** **FWP-2**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN** **12-9-21 [522]**

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, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Order in Aid of Execution of the Plan 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Entry of Order in Aid of Execution of the Plan is xxxxxxxxxxx

Continuance of the February 17, 2022 hearing.

At the February 15, 2022 hearing in another related matter, the Plan Administrator and other

parties in attendance reported that this matter should be continued to allow for the parties to complete their substantive work that would result in this matter being resolved.

REVIEW OF MOTION

Focus Management Group USA, Inc., the Plan Administrator in the Jeffery Arambel Chapter 11 Case, moves the court for an entry of an order in aid of execution of the First Amended Plan of Reorganization, dated January 10, 2019, in this Chapter 11 case. Dckt. 398. The Motion is supported by the Declarations of Juanita Schwartzkopf, Jay Crom, and Jason E. Rios. Dckts. 524, 525.

The Plan Administrator seeks an order compelling Jeffrey Arambel, the sole shareholder and Representative of Reorganized Debtor Filbin Land & Cattle Co., Inc. ("Reorganized Debtor"), to transfer the remaining property to the Arambel Estate subject to the senior rights of SBN V Ag I LLC ("Summit") as provided by the Reorganized Debtor's Plan and as represented by the Reorganized Debtor to the Internal Revenue Service in Federal Tax Returns filed on behalf of both FLCC and the Arambel Estate.

Reorganized Debtor's Opposition

On December 30, 2021, Reorganized Debtor filed an opposition. Dckt. 531. Reorganized Debtor opposes the Motion on the following grounds:

1. The Plan requires Reorganized Debtor exercise its discretion to dissolve, and Reorganized Debtor has not exercised such discretion.

2. Mr. Arambel was not aware the tax returns implied Reorganized Debtor would be dissolved.

3. Reorganized Debtor is working to sell the remaining property to pay toward the Class 4 Claim.

Reorganized Debtor states that based on the provisions of the Plan, transferring their assets is contingent on their Dissolution. Mr. Arambel does not intend to dissolve Reorganized Debtor.

Plan Administrator's Reply

The Plan Administrator filed a reply on January 6, 2022. Dckt. 535. The Plan Administrator states Mr. Arambel's statements regarding dissolution are not credible. Plan Administrator states this is evidenced by:

A. Testimony of the Professional Tax Advisor, Mr. Crom, employed by Reorganized Debtor and the Arambel Estate. In paragraphs 3-4 of Mr. Crom's Declaration, he details Mr. Arambel's election to dissolve the to "preserve and capture certain tax benefits for the Arambel estate." Dckt. 526.

B. The federal tax returns signed and filed by Mr. Arambel. The 2019 tax return for the fiscal year ending on November 30, 2019 is filed as

Exhibit A. Dckt. 527.

C. The statements of Reorganized Debtor's former counsel, Mr. St. James. Reorganized Debtor's Counsel, Michael St. James, told Mr. Rios, Plan Administrator's Counsel, that it had elected to dissolve to realize certain tax benefits. Declaration of Jason E. Rios, Dckt. 525.

D. The reorganized Debtor's own conduct in turning over $500,389.95 in furtherance of the dissolution. In furtherance of dissolution, Reorganized Debtor transferred its remaining cash of $500,389.95 on March 15, 2021, subject to Summit's senior rights and consent. Declaration of Juanita Schwartzkopf, Dckt. 524.

Applicable Law

Congress provides in 11 U.S.C. § 1142 the statutory basis for the bankruptcy court addressing issues concerning performance under the confirmed Chapter 11 plan:

> § 1142. Implementation of plan
>
> (a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.
>
> (b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

This section focuses on the debtor or other party performing the plan. Collier on Bankruptcy provides an discussion of this provision.

> ¶ 1142.03 Authority of Court to Direct Compliance with a Confirmed Plan; § 1142(b)
>
> Section 1142(b) empowers the court to direct any necessary party, including the debtor, to perform acts necessary for consummation of the plan. The statute effectively streamlines the substantive and procedural requirements that might otherwise constrain a plan proponent from obtaining affirmative injunctions, as may be necessary to cause plan implementation. For example, courts can order specific performance of plan provisions under section 1142 without having to weigh the adequacy of monetary damages.
>
> [1] Broad Scope of Section 1142(b); Authority of Court to Issue Orders Necessary for Plan Implementation

Section 1142(b) grants courts authority to compel parties to take actions considerably broader than merely ministerial acts. Pursuant to section 1142(b), the court may issue any order necessary for the implementation of the plan.

Compliance orders that may be issued under section 1142(b) include those compelling:

> (1) lenders to execute and deliver loan documents required under the plan, clarify provisions of loan documents in accordance with the terms of the plan and supply commercially reasonable terms and conditions to loan documents where such terms were not otherwise addressed;
>
> (2) execution of documents extinguishing a lien that is released by the plan;
>
> (3) an investor to advance committed funds necessary to consummate the plan;
>
> (4) a change in corporate control or governance;
>
> (5) distributions on claims as required by the plan;
>
> (6) principals of the debtor to submit to examinations under Bankruptcy Rule 2004 to determine the extent to which they have acted in conformance with the plan; and
>
> (7) execution of instruments enabling asset transfers, enforcement mechanics or other agreements contemplated by the plan.

In addition to directing parties to take actions, the court may order parties to refrain from taking actions if those actions interfere with implementation of the plan.

[2] Limitations on Court's Authority to Issue Orders under Section 1142(b)

While phrased broadly, section 1142(b) has limits. Courts should not use section 1142(b) to authorize the debtor to avoid a law or regulatory requirement regarding public health and safety. Courts also should refrain from issuing orders directing or authorizing third parties to take action unless the action specifically is called for by the terms of the plan or is necessary to implement the plan. For example, the U.S. Bankruptcy Court for the Southern District of New York recognized that section 1142(b) does not operate on a stand-alone basis or confer any substantive rights beyond what is provided for in a plan. Accordingly, the court ruled that section 1142(b) did not permit a plan administrator to retroactively issue preferred stock where the plan did not expressly authorize it and the terms of the debtor's amended charter and amended bylaws, which prohibited the issuance of securities, were incorporated into the plan. Additionally, section 1142(b) does not authorize a court to order parties to execute an agreement where there is no agreement on

the terms or if the terms are uncertain.

> The authority of the court to act under 1142(b) also is constrained by limitations periods. Although section 1142(b) does not specify a limitations period, the Supreme Court has recognized that, "courts do not ordinarily assume that Congress intended that there be no time limit on actions at all" and so must borrow "the most suitable statute or other rule of timeliness from some other source." In considering the correct limitations period for an action under section 1142, the Bankruptcy Court for the Southern District of Florida concluded that while a confirmed chapter 11 plan often is compared to a state law contract, it is "a creature of the Bankruptcy Code, a comprehensive federal statute" and so obligations arising under a confirmed plan "are necessarily federal in nature."

8 Collier on Bankruptcy P 1142.03 (16th 2020). The term "judgment" as used in the Bankruptcy Rules is defined to mean "any appealable order." Fed. R. Bankr. P. 9001. See also Federal Rule of Bankruptcy Procedure 7054, which incorporates Federal Rule of Civil Procedure 54(a) that defines the word "judgment" to include "[a] decree and any order from which an appeal lies" for adversary proceeding.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(d) that notwithstanding the entry of the order of confirmation, the bankruptcy court may issue any order necessary to administer the estate.

In Federal Rule of Bankruptcy Procedure 7001, the Supreme Court specifies the types of relief that must be requested through an adversary proceeding, which include (identified by paragraph number used in Rule 7001):

> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
> . . .
> (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
> . . .

Confirmation of the Chapter 11 plans works as a modification of the pre-petition obligations of the parties, binding the debtor and creditors to such modified terms. 11 U.S.C. § 1141(a).

Federal Rule of Bankruptcy Procedure 9014 makes the enforcement of judgments provisions of the Federal Rules of Civil Procedure incorporated into the Federal Rules of Bankruptcy Procedure, including:

A. Fed. R. Civ. P. 70, Fed. R. Bankr. P. 7070; Judgment for Specific Acts; Vesting Title, including:

1. Judgment Divesting a Party of Title to Property;

2. Ordering Another Person to Perform the Specific Acts of a Party that Fails to Comply Within the Time Period to Complete a Specific Act;

3. Issue a Writ of Assistance; and

4. Holding the Disobedient Party in Contempt (for which the civil sanctions issued by the bankruptcy judge include incarceration until there is compliance with the Order.

Review of Evidence Presented

In review of the Plan Administer's Motion and supporting pleadings, the Reorganized Debtor's Opposition, and the Plan Administrator's Reply, there exists a disputed material fact as to whether Mr. Arambel intends to dissolve the Reorganized Debtor. From the evidence presented from the Plan Administer, the Plan Administrator asserts there are serious doubts as to Mr. Arambel's credibility.

The Declaration from Juanita Schwartzkopf, the Senior Managing Director of the Plan Administrator declares under penalty of perjury that Mr. Arambel elected to dissolve the Reorganized Debtor and filed a tax return pursuant to such election. Declaration at ¶ 4, Dckt. 524. Additionally, Ms. Schwartzkop declared under penalty of perjury that the Plan Administrator received consent from Summit for the dissolution and the Reorganized Debtor transferred its remaining cash in the amount of $500,389.95 in furtherance of this dissolution.

The Declaration of Jason E. Rios, attorney for the Plan Administrator, states under penalty of perjury that Counsel for the Reorganized Debtor, Mr. St. James, indicated that Reorganized Debtor was dissolving and distributing the remaining property to the Arambel Estate to "realize certain tax benefits." Additionally, Mr. St. James stated Mr. Arambel signed a deed of trust transferring the remaining property to the Arambel Estate, but Mr. Arambel would not record the deed until receiving Summit's consent. Mr. Rios stated Summit provided its consent in August of 2021 to the dissolution of Reorganized Debtor. Summit signed a proposed Stipulation evidencing this "winding up," however, Reorganized Debtor's attorney failed to sign. Exhibit C, Dckt. 527.

Mr. Crom, the Arambel Bankruptcy Estate's and the Reorganized Debtor's public accountant, who was employed by Mr. Arambel when he was the debtor in possession in his case and as the responsible representative for the debtor in possession in the Filbin case, testified that Mr. Arambel elected to dissolve the Reorganized Debtor to preserve and capture certain tax benefits. Declaration at ¶ 3, Dckt. 526. This led to the Arambel Estate receiving benefits in the amount of $680,000.00. Mr. Crom declares under penalty of perjury that if the remaining property is not transferred to the Arambel estate as represented in the 2019 tax returns, there could be a cost to the Arambel Estate of approximately $680,000.00 to $850,000.00.

Jeffery Arambel, as representative for Reorganized Debtor, states under penalty of perjury that Reorganized Debtor has not made an election to dissolve. Declaration at ¶ 2, Dckt. 532. Mr. Arambel also does not understand how the tax returns indicate Reorganized Debtor has been or will be dissolved. Mr. Arambel states the tax returns should be corrected to show Reorganized Debtor is not and will not be dissolving.

Exhibit A filed by the Plan Administrator is identified as a copy of the Arambel Bankruptcy Estate Fiscal Year 2019 Tax Return. Dckt. 527. On the first page, it states that $1,348,000 in estimated tax payments were made, but only $176,941 was owed, resulting in a $1,171,059 overpayment. Tax Return, lines 25, 22, 30; *Id*. at 3.

On Schedule D for the 2018 Arambel Bankruptcy Estate Return, it is stated that there was a ($4,340,311) loss (line 10) and that the total Net long-term capital gain was $6,239,899 (line 15), after applying the ($4,340,311) to the $10,580,210 long term gain (line 11) for 2018. *Id*. at 4.

The Arambel Bankruptcy Estate lists the ($4,340,311) loss as relating to the asset identified as "Filbin Land & Cattle Co, Inc.," stating that it was disposed on November 30, 2019 (stated to be the end of the Arambel Bankruptcy Estate fiscal year). *Id*. at 5.

On Form 4797 for, Sales or Exchanges of Business Property, the Arambel Bankruptcy Estate lists property describe of as "Filbin Land & Cattle, Inc. (2019)" resulting in a gain of $10,580,210. *Id*. at 6. No information as to date of acquisition, sale, depreciation or other field for the Form 4797 are filled out. The identification of the property is marked with a "*" and the following information is provided as the bottom of the Form 4797, "* ENTIRE DISPOSITION OF ACTIVITY." (Emphasis in original).

In the Declaration of Jay Crom, he testifies that:

> 4. Thus, in coordination with the filing of the Arambel Estate's 2019 tax return, Mr. Arambel also signed and caused to be filed for FLCC a final corporate tax return for its dissolution showing the "real property distribution" of the Remaining Property to the Arambel Estate with a value of $2.5 million at Statement 10. This final return further shows the Remaining Property as "disposed" on Form 4797 at a "sale price" of $2.5 million based upon the value of the distribution to the Arambel Estate. This $2.5 million pass through gain triggered by the distribution of the Remaining Property to the Arambel Estate. The distribution left FLCC with no assets and the stock was rendered worthless. . . .

Declaration, ¶ 4; Dckt. 526. The asserted 2019 final corporate tax return for Filbin has not been provided as an exhibit in support of the Motion. Mr. Crom testifies that this dissolution and distribution of property generated approximately $680,000 in tax benefits for the Arambel Bankruptcy Estate. He further states that if the property is not transferred as stated on the final tax return for Filbin and tax benefit taken by the Arambel Bankruptcy Estate, for which both Mr. Arambel was the fiduciary serving as the responsible representative of the Filbin Debtor in Possession and as the fiduciary Debtor in Possession the Arambel bankruptcy case, the financial losses to the Arambel Bankruptcy Estate, and now Plan Estate could total $850,000.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that there are ongoing negotiations to try and resolve this matter. Plan Administrator states that the conditions. A continuance was requested. The court continues it one final time to afford the Parties time to, in good faith, reach an agreement resolving this matter. If not resolved, the court will set the deadlines and final hearing date.

April 12, 2022 Joint Status Report

On April 12, 2022, the Plan Administrator submitted a status report stating parties have continued to engage in meet and confer discussions but have yet to reach an agreement. The parties intend to continue evaluating whether they can resolve the matter by agreement. The parties intend to proceed as follows:

1. Parties to submit additional evidence no later than May 4, 2022

2. FLCC's counsel can conduct informal discovery of the tax professional, Jay Crom, by teleconference on April 27, 2022 at 1:30 pm

3. The parties request the court set an evidentiary hearing in May 2022 to allow FLCC time to cross-examine Mr. Crom.

4. Other evidence submitted shall be the written declarations and documents already submitted by the parties.

Dckt. 558.

April 19, 2022 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Order in Aid of Execution of the Plan filed by Focus Management Group USA, Inc. ("Plan Administrator") 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 for Entry of Order in Aid of Execution of the Plan is xxxxxxx

2. **19-22933-E-13 DPC-2** **MATTHEW RUBB** **Steele Lanphier** **CONTINUED MOTION TO DISMISS CASE** **12-22-21 [82]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2021. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Matthew Kent Rubb ("Debtor"), is delinquent in plan payments.

DISCUSSION

Debtor is $7,200.00 delinquent in plan payments, which represents multiple months of the $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).

Counsel for Debtor appeared at the hearing and provided an explanation on the record of the "ball being dropped" and several challenges in connection with this case. The Trustee concurred in the request to continue the hearing to allow Debtor and counsel to proceed with the diligent prosecution of this case.

Status of Case

Neither party has filed a status report or updated pleading regarding the status of the bankruptcy case. Additionally, Debtor has not filed a new Modified Plan since their previous Motion to Confirm Modified Plan was denied on January 27, 2022.

The court continues the hearing in light of reported disruption in Debtor's counsel's law office.

April 19, 2022 Hearing

Neither party has filed a status report in anticipation of the hearing. At the hearing, XXXXXXXXXX

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 xxxxxxxx

3. **17-27346-E-13 DPC-9** **KENNETH TABOR** **Scott Shumaker** **CONTINUED MOTION TO DISMISS CASE** **2-7-22 [245]**

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 7, 2022. By the court's calculation, 30 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 xxxxxxxxxxxxxxx

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

1. the debtor, Kenneth Roger Tabor ("Debtor"), is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on February 23, 2022. Dckt. 249. Debtor states the delinquency will be cured or a modified plan will be filed prior to the hearing date.

DISCUSSION

Delinquent

Debtor is $3,890.00 delinquent in plan payments, which represents multiple months of the $1,945.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

No Evidence For Factual Assertion

Unfortunately for Debtor, a promise to pay and/or file a modified plan is not evidence that resolves the Motion.

Counsel for the Debtor reported that there are postal money orders to cure all but $1,800, but has a promise from a customer to pay him sufficient monies today to cure.

In light of Debtor's efforts, the Trustee agreed to a continuance of the hearing.

April 19, 2022 Hearing

Neither party has filed a status report in anticipation of the hearing. At the hearing, XXXXXXXXXX

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 xxxxxxxx

4. **16-25089-E-13 DPC-6** **MARK/JENNIFER GALISATUS** **Daniel Davis** **CONTINUED MOTION TO DISMISS CASE**
2-8-22 [142]

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 8, 2022. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Mark Timothy Galisatus and Jennifer Ellen Galisatus ("Debtor"), is delinquent in Plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 23, 2022. Dckt. 146. Debtor states there are discrepancies between the amount Trustee states Debtor owes and the amount that Debtor believes they owe. Debtor believes the current delinquent amount should be $5,100.00 as opposed to Trustee's assertion that Delinquent is $13,304.00 delinquent in Plan payments.

Debtor explains that the $5,100.00 figure comes from Debtor's payments of $3,252.00 for the months July, August, and September 2021. Those payments were each $1,700.00 less than what was required under the Second Amended Plan ($4,951.00) as confirmed by this court on October 18, 2021. See Order, Dckt. 141. Debtor also asserts that the total due to Trustee is $203,062.00 as opposed to Trustee's statement that the total due is $206,314.00. Further, Debtor states that Debtor's last payment was made to the Trustee on February 1, 2022. Dckt. 146 at 2:12. However, the payment chart detailed in Trustee's Motion to Dismiss indicates that the last payment Trustee received from Debtor was on December 28, 2021. Dckt. 142.

Furthermore, there appears to be another discrepancy in connection with the court's July 28,

2021 order and the court's October 18, 2021 order. According to Debtor, the July 28, 2021 order stated that Debtor's Plan would be for a 65-month term (see Dckt. 110) whereas the October 18, 2021 order states that Debtor's Plan would be for a 66-month term (see Dckt. 141).

Upon review of the order submitted by the Chapter 13 Trustee, the total length of the Plan is sixty-six months. Dckt. 141. Additionally, after review of the Trustee's Objection to the Motion to Modify (Dckt. 103) and the Civil Minutes from the hearing on the Motion to Modify (Dckt. 108) the total length of the Modified Plan is sixty-six (66) months. The court's conditional order amending to provide for a sixty-five (65) month term of the Plan entered on January 28, 2021 contained a typographical error. The proper length is sixty-six (66) months as detailed in the Order Modifying Plan entered on October 18, 2021. Dckt. 141.

At the hearing, counsel for Debtor reported that a payment of $4,952 by February 1, 2022, and an additional payment is in process.

The Trustee agreed to a continuance to allow Debtor to wrap up this case.

April 29, 2022 Hearing

No status reports have been filed in advance of the continued hearing. At the hearing, XXXXXXXXXX

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 xxxxxxxxxxxxx

FINAL RULINGS

5. **21-23479-E-13** **TRICIA ROJAS**
Peter Macaluso

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-7-22 [79]

DEBTOR DISMISSED: 3/23/2022

Final Ruling: No appearance at the April 19, 2022 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney as stated on the Certificate of Notice on February 9, 2022, and was served on the Chapter 13 Trustee as stated on the Certificate of Notice on February 8, 2022. The court computes that 28 and 29 days' notice has been provided, respectively.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $83.00 due on February 1, 2022.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on March 23, 2022 (Dckt. 101), 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, and no sanctions are ordered.