

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 1, 2024 at 9:00 a.m.

1. <u>22-20503-E-13</u>	TEQUILA WHARTON	MOTION TO DISMISS CASE
<u>DPC-1</u>	Mark Shmorgon	3-8-24 <u>[24]</u>

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 8, 2024. By the court’s calculation, 54 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.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Tequila Wharton (“Debtor”), is delinquent \$922 in plan payments. Debtor will need to have paid \$1,844 to become current by the hearing date. Docket 24 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 26.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on March 18, 2024. Dockets 29, 30. Debtor states the delinquency will be cured prior to the hearing date. Decl., Docket 30 ¶ 3.

DISCUSSION

Delinquent

Debtor is \$922 delinquent in plan payments, which represents multiple months of the \$461 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).

However, Debtor has submitted testimony that the default will be cured. As of the court's review of the Docket on April 23, 2024, no evidence of a cure has been submitted to the court. 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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 8, 2024. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

1. The debtor, Monica Lynn Maria (“Debtor”), is delinquent \$2,050 in plan payments. Debtor will need to have paid \$2,650 to become current by the hearing date. Docket 138 ¶ 1.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 140.

DISCUSSION

Delinquent

Debtor is \$2,050 delinquent in plan payments, which represents multiple months of the \$600 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.

3. [22-20947-E-13](#) **JACOB ALMAGUER** **MOTION TO DISMISS CASE**
[DPC-1](#) **Gabriel Liberman** **3-8-24 [24]**

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 March 8, 2024. By the court’s calculation, 54 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.
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Jacob Anthony Almaguer (“Debtor”), is delinquent \$1,685.30 in plan payments. Debtor will need to have paid \$5,055.90 to become current by the hearing date. Docket 24 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 26.

DEBTOR'S RESPONSE

Debtor filed a Response on April 17, 2024. Docket 28. Debtor requests the case not be dismissed, stating he has actually cured the delinquency. There is no evidence submitted in support of any such cure.

DISCUSSION

Delinquent

Debtor is \$1,685.30 delinquent in plan payments, which represents one month of the 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 filed a Response, without supporting evidence, stating the delinquency has been cured. 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 ~~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, and Office of the United States Trustee on March 8, 2024. By the court’s calculation, 54 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is denied without prejudice.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Graciela Martinez (“Debtor”), is delinquent \$854 in plan payments. Debtor will need to have paid \$1,704 to become current by the hearing date.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 45.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on March 17, 2024. Dockets 47, 48. Debtor informs the court that, due to medical reasons and being placed on light duty at work, she became delinquent in plan payments. Decl., Docket 48 ¶ 4. She also testifies she has made the delinquent payments and has become current. *Id.* at ¶ 5.

DISCUSSION

Debtor has submitted testimony that the basis for this Motion, delinquency, has been cured. 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.

5. [23-22666-E-13](#) **MANUEL MARAVILLA** **MOTION TO DISMISS CASE**
[DPC-2](#) **Chad Johnson** **4-5-24 [45]**

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 5, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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, Manuel Maravilla (“Debtor”), is delinquent \$3,362 in plan payments. Docket 45 ¶ 1.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 47.

DEBTOR'S RESPONSE

Debtor filed a Response and supporting Declaration on April 17, 2024. Dockets 52, 53. Debtor states the delinquency will be cured prior to the hearing date. Decl., Docket 53 p. 1:20-23.

DISCUSSION

Delinquent

Debtor is \$3,362 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another two 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 submitted testimony that he intends to cure the default. A review of the Docket on April 24, 2024 reveals no evidence of a cure has yet been entered. 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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 5, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

1. The debtor, Alton William Kirkland (“Debtor”), is delinquent \$9,673 in plan payments. Docket 19 ¶ 1.

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

DISCUSSION

Delinquent

Debtor is \$9,673 delinquent in plan payments, which represents multiple months of the \$2,500 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.

7. [20-20173-E-13](#) **GERALD JOHNSON** **MOTION TO DISMISS CASE**
[DPC-4](#) Gary Fraley 4-8-24 [\[73\]](#)

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 8, 2024. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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, Gerald William Johnson (“Debtor”), is delinquent \$9,508.68 in plan payments. Docket 73 ¶ 1.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 75.

DISCUSSION

Delinquent

Debtor is \$9,508.68 delinquent in plan payments, which represents multiple months of the \$2,085.57 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, and Office of the United States Trustee on April 1, 2024. 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 xxxxxxx.

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

1. The debtor, Denae Bennett ("Debtor"), has no new Plan pending after this court sustained Trustee's Objection to the prior Plan on January 23, 2024 at Docket 75. Docket 79 ¶ 1.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 81.

DEBTOR'S RESPONSE

Debtor filed a Response on April 17, 2024. Docket 84. Debtor states:

1. Debtor will file Amended Schedules A, B, and C to include community property interest and value of real property prior to the hearing.
2. Debtor will file an Amended Statement of Financial Affairs to remove a grievance.
3. Debtor will also file a Motion to Confirm First Modified Plan prior to the hearing date.

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 January 23, 2024. A review of the Docket on April 23, 2024 shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, Debtor has informed the court that a Modified Plan will be filed along with Amended Schedules and Statement of Financial Affairs. The court notes the Plan would be Amended, not Modified, as there has not yet been a confirmed Plan in the case.

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, and Office of the United States Trustee on March 19, 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, Richard Ravalli and Lisa Ravalli (“Debtor”), has no new Plan pending after this court sustained Trustee’s Objection to the prior Plan on January 9, 2024 at Docket 927. Docket 79 ¶ 1.

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

DEBTOR’S RESPONSE

Debtor filed a Response on April 17, 2024. Docket 34. Debtor informs the court that there will be an Amended Plan on file before this Hearing, and that Debtor’s attorney may be bouncing between courtrooms during the Hearing on this Motion as he has other hearings scheduled at 10:00 a.m.

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 January 9, 2024. A review of the Docket on April 23, 2024 shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, Debtor has informed the court that an Amended Plan will be filed before this hearing date.

At the hearing, **XXXXXXX**

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**.

10. [24-20313-E-13](#)

KEANNA ALMEDA
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
4-1-24 [48]

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 April 1, 2024. The court computes that 30 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 March 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: \$78.

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.

11. [23-20614-E-13](#) **HAYDEN/MANDY COIT** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mikalah Liviakis** **4-5-24 [45]**

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 5, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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, Hayden Scott Coit and Mandy Erin Coit (“Debtor”), is delinquent \$20,186.71 in plan payments. Docket 45 ¶ 1.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 47.

DISCUSSION

Delinquent

Debtor is \$20,186.71 delinquent in plan payments, which represents multiple months of the \$7,326.71 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 who have filed a Request for Notice and Office of the United States Trustee on September 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.

May 1, 2024 Hearing

The court continued this Hearing to afford Debtor and Debtor's counsel the opportunity to promptly resolve the amount of the claim of U.S. Bank Trust National Association, as Trustee, the Creditor whose claim is at issue, or commence and prosecute any objections to that claim and/or Notice of Mortgage Payment Change (or other proceedings) as appropriate. A review of the Docket on April 23, 2024, reveals that nothing new has been filed with the court.

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, James Roy Johnson ("Debtor"), is delinquent \$110,370.72 in Plan payments to the Trustee.
2. There is \$21,575.00 in non-exempt equity in the assets listed on Schedules A/B, and therefore the Trustee does not believe a conversion to a Chapter 7 is in the best interest of the creditors or the estate.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 4, 2023. Dckt. 49.

1. The Debtor notes that he has been in this Chapter 13 Plan since April, 2022.
2. At the time the Debtor his Chapter 13 petition, there was a pending foreclosure sale.
3. However, during the COVID-19 pandemic, the Debtor received notices from his mortgage company that he could request a forbearance with respect to his mortgage payments. The Debtor tried to modify his loan with the mortgage company but was unsuccessful. Declaration, Dckt. 50.
4. The Debtor's mortgage company started foreclosure proceedings, and the Debtor believed the only way to save the equity he had in the home was to sell the residence. The residence was listed for sale and the Debtor had a potential buyer.
5. Due to the pending foreclosure date, the Debtor had filed for a Chapter 13 Bankruptcy to allow some time to sell the property. After some time, however, the Debtor instead decided to look into a reverse mortgage so that he could stay in his home. Due to the mortgage arrearages, liens, and other debts, the Debtor was unable to qualify for a reverse mortgage.
6. The Debtor learned about and applied for mortgage assistance with the CA Mortgage Relief Program that is currently under review. Declaration, Dckt. 50.
7. The Debtor asks the Court for the opportunity to stay in his Chapter 13 Plan and pay off his Plan. If the Debtor receives the mortgage assistance, he will immediately apply for a reverse mortgage and file a motion to modify his Chapter 13 Plan. If the Debtor's application for mortgage assistance is not granted, the Debtor will file the appropriate motions to engage a realtor and file a motion to sell the property.
8. The Debtor can continue to pay \$2,567.00 for his Chapter 13 Plan payment, but is unable to pay the increased amount of \$2,833.00. The Debtor has been told that he should have a decision by the end of October, 2023 regarding his request for mortgage assistance.
9. The Debtor requests that the Trustee's Motion to Dismiss be continued so that he may find out the decision of the mortgage assistance. At that time, the Debtor will know which course of action that he will need to take and will do so immediately. Declaration, Dckt. 50.

DISCUSSION

Delinquent

Debtor is \$110,370.72 delinquent in plan payments, which represents the lump sum that the Debtor was to pay in month 15 after selling his real property to complete the Plan at 100% for all creditors. 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 pay is not evidence that resolves the Motion.

Debtor has now been in this case for nineteen months and has not moved forward with a sale, though being bound by the confirmed Chapter 13 Plan to market and sell the Property in a commercially reasonable manner in the fifth month of the Plan. Plan; Dckt. 3. Then, in October 2022 (a year ago), Debtor modified the Plan to switch from a sale to obtain a reverse mortgage and have the secured claim paid in full by month fifteen of the Plan. Modified Plan, Dckt. 33; Order, Dckt. 42.

Though having a year to obtain the reverse mortgage as promised, as opposed to selling the Property as originally promised, Debtor has not yet obtained the reverse mortgage.

The current Opposition is little more than Debtor failing to comply with his second promise, and now propose a third reason for delaying in performing the Plan. Though the Debtor asserts that he should know by the end of October 2023, that is just more delay.

The court notes that while Debtor says that he learned he did not qualify for a reverse mortgage, Debtor does not say when he learned of that. Debtor does not say when he learned of that and why he has not been diligently prosecuting this case. It appears that only because the Trustee filed the present Motion that Debtor is taking any action.

At the October 18, 2023 hearing, counsel for the Debtor advocated that this is an unusual case and set of facts. Debtor is an 82 year old gentleman and is working with his daughter trying to find a way to stay in the home.

The Debtor and his daughter tried to get a reverse mortgage from three separate companies. The IRS tax claim, which has now been amended, impaired this process. The Debtor and his daughter tried with two other companies, but did not like the terms (interest and fees).

The Trustee agreed to a short continuance to allow Debtor and counsel to provide information about the Debtor's efforts to obtain mortgage arrearage cure benefits from the State or move forward with a sale of the Property.

November 29, 2023 Hearing

As of the court's November 27, 2023 review of the Docket, no further pleadings have been filed by Debtor. At the hearing, counsel for the Debtor stated that the Supplemental Pleadings were uploaded to the court on November 24, 2023. These were posted on the Docket after the court's November 27, 2023 review of the Docket.

Debtor's counsel explained, as it outlined in the Supplemental Pleadings, that a dispute has arisen as to the amount of the arrearage to be cured on the mortgage default. Debtor has applied for funds from the California Mortgage Relief Program ("CMRP"), but has been advised by the CMRP that the mortgage loan servicer Selene Finance, providing such services for the Creditor U.S. Bank Trust National Association, Trustee, has stated an arrearage cure amount greater than the amount stated in Prof of Claim 4-1, and which amount exceeds the funding that may be provided by CMRP.

Debtor's counsel reported the "challenges" in attempting to communicate with Selene Finance and the inconsistency in the arrearage numbers provided.

The Trustee concurred with the Debtor's request for a continuance to afford Debtor and Debtor's counsel to get to the bottom of the discrepancies and ascertain the correct cure amount.

January 17, 2024 Hearing

No further pleadings had been filed as of the court's January 12, 2024 review of the Docket. In the Debtor's prior Supplemental Pleading (Dckt. 56), the challenges in attempting to communicate with Creditor Selene Finance were discussed in appropriate detail.

At the hearing, counsel for the Debtor reported that creditor's counsel reported that he is still (as of January 15, 2024) attempting to get confirmation on the amount of creditor's claim.

Trustee's counsel discussed the need for Debtor and Debtor's counsel to now press the point, and if the creditor and its loan servicer were failing to provide non-conflicting information, then Debtor would need to prosecute an objection to the Notice of Proposed Mortgage Payment Change or the Claim filed in this Bankruptcy Case.

The court addressed while reference has been made to the loan servicer, it is U.S. Bank Trust National Association, as Trustee, who is the creditor to be made the party to such objection (which may also include the loan servicer).

To afford Debtor's counsel time to send a professional "fish or cut bait" letter to creditor's counsel, and then file and proceed with the prosecution of such objection(s), which may include discovery, Trustee's counsel requested that the hearing be continued to late April 2024.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. May 1, 2024 (there being no regular Chapter 13 dismissal calendar in April 2024).

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

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

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

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 19, 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.

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

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

1. The debtor, April Bryant (“Debtor”), is delinquent \$424 in plan payments. Debtor will need to have paid \$840 to become current by the hearing date.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 94.

DISCUSSION

Delinquent

Debtor is \$424 delinquent in plan payments, which represents multiple months of the \$208 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has filed an opposition that it is her intention to have the default cured by the May 1, 2024 hearing. Dckt. 96.

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
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May 1, 2024 Hearing

In light of some of the very extraordinary facts of this case, the substantial Plan payments made by the Debtor, and Debtor's efforts to complete the final plan funding, the Trustee concurred with the request for a final continuance.

As of the court's review on April 28, 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, 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, Debtor's counsel reported that Debtor is in process of obtaining relief from the California Home Mortgage Program and requests a continuance.

In light of some of the very extraordinary facts of this case, the substantial Plan payments made by the Debtor, and Debtor's efforts to complete the final plan funding, the Trustee concurred with the request for a final 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 **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 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). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is xxxxxxx

May 1, 2024 Hearing

At the prior hearing, counsel for the Debtor reported that due to changes in counsel work location, this was mis-calendared by counsel, and responses were late filed. Counsel for the Chapter 13 Trustee concurred with the request for a continuance in light of the facts and circumstances in this Case.

In the March 15, 2024 Response, Debtor admits to the delinquency but states a Modified Plan is anticipated to address the delinquency. Docket 88 ¶ 2. As of the court’s review on April 25, 2024, no Modified Plan or other 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, 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).

Counsel for the Debtor reported that due to changes in counsel work location, this was mis-calendared by counsel, and responses were late filed.

Counsel for the Chapter 13 Trustee concurred with the request for a continuance in light of the facts and circumstances in this Case.

The Hearing on the Motion to Dismiss is continued to 9:00 a.m. on May 1, 2024.

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

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

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

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 April 5, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing

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

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

1. The debtor, Jesse Farley (“Debtor”), is \$5,040.00 delinquent in plan payments. Motion, Docket 70, ¶ 1. Debtor’s next scheduled payment in the amount of \$1,045.00 is due April 25, 2024 (not July 25, 2023 as Trustee states). *Id.*

Trustee submits the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 72.

DEBTOR’S RESPONSE

Debtor did not file a Response to the Trustee’s Motion.

DISCUSSION

Delinquent

Debtor is \$5,040.00 delinquent in plan payments, which represents multiple months of the \$1,045.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, **XXXXXXX**

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

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

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

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

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

17. [21-23539-E-13](#)
[DPC-3](#)

DEREK WOLF
Peter Macaluso

MOTION TO DISMISS CASE
3-8-24 [280]

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 March 8, 2024. By the court’s calculation, 54 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 Bankruptcy Case is dismissed.
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REVIEW OF MOTION

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

1. The debtor, Derek Wolf (“Debtor”), is delinquent \$34,082.09 in plan payments. Debtor will need to have paid \$38,598.23 to become current by the hearing date. Docket 280 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 282.

DEBTOR’S OPPOSITION

Debtor filed an Opposition and supporting Declaration on April 18, 2024. Dockets 294, 295. Debtor informs the court that he has set and served a Second Modified Plan for the court’s May 21, 2024 calendar. Docket 294 ¶ 3. Debtor testifies that he is not actually delinquent because creditors in his case were paid directly by two government grants outside the bankruptcy. Decl., Docket 295 ¶ 2. Debtor requests his case not be dismissed.

DISCUSSION

Delinquent

Trustee reports Debtor is \$34,082.09 delinquent in plan payments, which would represent a substantial delinquency. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). However, Debtor testifies, without submitting any corroborating evidence, that he is not delinquent and as the creditors have been paid outside of bankruptcy through government grants.

Review of Proposed Modified Plan

On April 10, 2024, facing this Motion to Dismiss this Bankruptcy Case Debtor filed a Proposed Second Modified Plan. Dckt. 291. Creditor’s Claim is placed in Class 1 of the Plan, with Debtor to make the regular post-petition monthly payments and as stated in Class 1 and the arrearage payments as stated in the Additional Provisions. Proposed Second Modified Plan, Paragraph 3.07 and Additional Provisions; Dckt. 291.

The Additional Provisions relating to Creditor’s Claim provide a historical statement of the loan transaction, a historical statement of some plan payments, an affirmative current statement that Debtor disputes Creditor’s Claim, and allegations of how Debtor would “correctly” compute Creditor’s Claim. These Non-Standard Provisions state:

1. Debtor & Creditor's Predecessor-In-Interest entered into a Loan Modification Agreement, in 2014 which had a variable interest rate which has increased to 4.125% at the time of this bankruptcy filing.
2. The "New" Principle Balance became \$208,994.25.

3. Of the "New" Principle Balance \$36,400.00 was deferred "Deferred Principle Balance" is non-interest bearing, and remains as an outstanding principle due, and the "Interest Bearing Principle" was \$172,594.25.
4. As of November 1, 2023, Debtor's Post-Petition Mortgage Payment, subject to change pursuant to the terms of the Note and Deed of Trust, is \$792.89, which sum includes escrow of \$419.06, and principle and interest of \$373.83 at the rate of 4.25%.
5. Creditor took possession of Grant Monies Debtor received from the Ca. Housing Relief Fund ("Grant"), which were applied to Debtor's account in August of 2022.
6. As of November 1, 2023, the "Interest Bearing Principle Balance" was \$78,096.20, which is DISPUTED by the Debtor at this time.
7. Debtor's first Plan payment was due November 2021 through March 2024, or (29) twenty-nine months, due for a total of \$22,993.81 in Post-Petition Payments Due thru March of 2024.
8. While the Creditor returned \$8,893.66 of the "Grant", these funds were reissued in late 2023, and applied to (6) six monthly post-petition payments totaling \$7,572.48, and \$1,063.84, and \$257.34 corporate advances.
9. Of the \$22,993.81 that has come due, less the \$7,572.48 applied equals \$15,421.33.
10. Of the \$15,421.33 Post-Petition Payments Due, the Trustee has disbursed \$17,628.83 since November of 2021, to the Class 1 Creditor, US Bank, N.A.(1st Deed of Trust), and has \$1,976.57 "On-Hand" pending disbursement, for a total of \$19,605.40 Post-Petition Arrears.
11. As such, the Trustee has disbursed \$17, 628.83, on a \$15,421.33 class 1, which is \$2,207.50 such that the Debtor's next Post-Petition Class 1 Payment is due for May 25, 2024.

Modified Plan, § 7 Docket 291.

Debtor then states that Creditor will be paid \$792.89 for its non-arrearage Post-Petition Monthly Payments.

Class 1 Claims

Debtor has placed Creditor's Claim in Class 1 under the Proposed Second Modified Plan. To be in Class 1 there must be a delinquency owing on the claim. As the first paragraph of Section C, Paragraph 3.07 in the Proposed Second Modified Plan states:

3.07. Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence.

Id. Placing Creditor's Claim in Class 1 is a statement by Debtor that an arrearage to be cured exists on Creditor's Claim.

If there is no delinquency or arrearage on Creditor's Claim, then it should properly be paid as a Class 4 Claim directly by the Debtor. Additionally, if there is no arrearage and the Claim is provided for in Class 4, then Debtor would not have to pay Chapter 13 Trustee's fees on those post-petition payments.

Debtor's Declaration in Support of Confirmation

Debtor states that he disputes Creditor's arrearage of \$78,096.20, but that can slide by in Bankruptcy because Debtor will be conducting in the future a "full R.E.S.P.A. accounting."

2. I am confident that I can make my payment of \$900.00 per month for the remaining 6 months. While I still am disputing how much is remaining on the "New Principle Balance" ("NPB") which is asserted to be approximately \$78,096.20, I understand that I must have a chapter 13 being prosecuted to allow me the time to conduct a full R.E.S.P.A. accounting of the NPB.

Dec., ¶ 2; Dckt. 290.

If Debtor and Debtor's Counsel wanted to promptly and diligently prosecute resolution of a dispute concerning Creditor's Claim, they have had two and one-half years in this Bankruptcy Case to get that promptly done and have it locked in by a final Federal Court order.

Debtor's Amended Schedules I and J

Debtor has also filed Amended, not Supplemental, Schedules I and J. Dckt. 293. Being Amended Schedules I and J, they related back to the October 12, 2021 filing of this case, correcting errors in the original Schedules which have been used by Debtor in prosecuting this Bankruptcy Case to date.

On Amended Schedule I, Debtor states that he is employed by Capital City Properties, but is paid nothing by that company. As testified to under penalty of perjury in his Declaration (Dckt. 290, ¶ 5) Debtor states that "Capital City Properties" is a mere marketing tool (not a "formal corporation") to operate "business both as a property manager, grounds keeper, maintenance man." It appears that "Capital City Properties" is a fictitious name used by Debtor to operate his sole proprietorship business.

On Amended Schedule I Debtor states that he has been receiving \$2,100 a month in net income from his business and an additional \$358.00 in pension or retirement. Dckt. 293; p. 4-5.

Debtor does not attach to Amended Schedule I the required statement showing gross receipts and the ordinary and necessary business expenses which go into computing the monthly net income from the business.

On Amended Schedule J Debtor lists \$35.00 a month for personal taxes. These have to include not only his state and federal income taxes, but his Social Security and Medicare self-employment taxes.

On taxable income of \$25,200 a year from his business, and the IRS Social Security, 12.4%, and the Medicare, 2.9%, requires that even before income taxes the Debtor has to pay 15.3% in these two federal

taxes. ^{FN.1.} With monthly net income of \$25,200, payment of these required non-income taxes at 15.3% totals \$3,855 a year. Divided by twelve months, this is \$321.30 a month.

Debtor's Amended Schedule J provides for only \$35.00 a month for personal taxes. That is (\$286.00) shy of just the Social Security and Medicare taxes Debtor is required to pay.

FN. 1.

<https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes>

Thus, it appears that Debtor's tax obligations are grossly underfunded.

Review of Creditor's Claim Filings

On August 8, 2022, Amended Proof of Claim 2-3 was filed for Creditor's Claim. It states that the amount of the Secured Claim is (\$164,860.13) and that the amount necessary to cure any default is (\$755.64).

An Amended Notice of Mortgage Payment Change was filed on December 1, 2023, stating Debtor's post-petition monthly payments is \$792.89. This reduction occurred because Debtor's monthly post-petition principal and interest payment was reduced from \$707.80 a month to \$373.83 a month.

In the Updated Status Report filed by Creditor on March 8, 2024, that a stipulation had been reached resolving the claim, amount of the deferred principal balance, and the application of payments. Under such Stipulation Debtor's current post-petition monthly payment is \$792.89. Status Report; Dckt. 278.

However, Creditor reports in that Updated Status Report that no stipulation has been signed by the Debtor and that Debtor is not communicating any disputes or additional time to execute the Stipulation. *Id.* The court's docket does not reflect any Stipulation filed with or approved by the court.

Prosecution of Current Bankruptcy Case

Debtor confirmed his First Amended Plan on April 8, 2022. Order; Dckt. 88. Debtor did file an Objection to Creditor's Claim on May 2, 2022 (Dckt. 95). On August 3, 2022, Debtor's Counsel reported that all issues with Creditor had been resolved and the Objection may be overruled. Civ. Min. and Order; Dckts. 133, 134.

On February 22, 2023, the Chapter 13 Trustee filed a Motion to Dismiss this case due to Debtor being \$13,345.14 in default in Plan Payments (which were \$2,258.07 per month). Mtn Dismiss; Dckt. 146. The Motion to Dismiss was itself dismissed at the request of the Chapter 13 Trustee based on the Debtor stating the terms of a proposed Modified Plan which Debtor was intending to file and Debtor being current under the terms of the proposed Modified Plan. Civ. Minutes and Orders; 181, 182, 210.

Debtor filed the Proposed Modified Plan on July 27, 2024, which was five months after stating such proposed plan and terms were stated to and relied on by the Chapter 13 Trustee in requesting the dismissal of the Trustee's Motion to Dismiss.

Eight months later the court entered its order denying confirmation of the Proposed Modified Plan. Order; Dckt. 277. The grounds for denial included: (1) Debtor being in default on the plan payments, (2) inconsistencies regarding Debtor's income as shown on Schedule I, and (3) Debtor's failure to prosecute the Objection to Creditor's Claim. The court's Findings and Conclusions in denying confirmation of the Proposed Modified Plan include:

Creditor further states that as of February 20, 2024 Debtor has not provided a signed stipulation reflecting this agreement and has not requested any revisions to the proposed agreement. Id. at 2:18-19. Creditor states that the Court has provided multiple continuances to allow Debtor time to execute the stipulation, and Debtor still has not done so, and Debtor has not articulated any factual basis as to why he believes any funds were improperly applied. Id. at 3:1-4.

As noted above, it appears that Debtor and Debtor's counsel are asserting that there is no agreement and that Debtor intends to proceed full speed to prosecute the Objection to Notice of Mortgage Payment Change.

At this juncture, it appears that the proposed Modified Chapter 13 cannot be confirmed, there being a huge claim objection proceeding to be prosecuted diligently by Debtor and Debtor's counsel.

At the hearing, the Trustee reported that the debtor is now in default for two months of Plan payments. From the reaction in the courtroom, it appears that Debtor did not advise his counsel of such defaults and work to see how such would be addressed. Debtor's counsel surmised that this may have resulted from the Debtor having direct communications with some of creditor's loan servicing representative and Debtor determining what payments he should be making, even though they were not consistent with the Plan.

The court noted at the hearing that the Debtor has done this before, and the court has made it expressly clear to Debtor that he must communicate with his counsel, rather than third-parties, and not determine on his own what he thinks is "right," without regard to the Bankruptcy Laws.

What appears to be presented to the court is not a Proposed Second Modified Chapter 13 Plan to provide for payment of creditor claims. The court, recognizing some family matters the Debtor was and is addressing, has been exceedingly generous to both Debtor and Debtor's Counsel, giving them multiple opportunities to rectify their inaction and seeming nonproductive delays, avoid dismissal, and get this Bankruptcy Case, a Plan, and any claim objection (or settlement relating thereto) diligently prosecuted.

This case has existed for two and one-half years under Plans that were not being performed. Debtor and Debtor's Counsel want this court to confirm a Proposed Second Modified Chapter 13 Plan which does not appear to provide for Creditor's Claim, but to just "let it slide" because Debtor will get to objecting to it at some later date.

It further appears that Debtor has been unable to prosecute a Chapter 13 Plan or an objection to Creditors' Claim over the past two and one-half years, and cannot prosecute to completion a Plan in this Bankruptcy Case. Debtor appears to need a new full five years of an actively prosecuted and performed Plan to address his financial obligations, and disputes, in an effort to save his home for himself and his family

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 this Bankruptcy Case is dismissed.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 8, 2023. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is XXXXXXX.

May 1, 2024 Hearing

The court continued this hearing to the March 26, 2024 calendar to be heard in conjunction with Debtor's Motion to Modify after the court granted Debtor's Motion to Obtain a Reverse Mortgage. Order, Docket 218.

The court continued the hearing further to April 24, 2024 because, though agreeing to confirmation of the Plan, the Trustee requested that this hearing be continued pending Debtor's performance of the Plan and making the required lump sum payment. A review of the Docket on April 24, 2024 reveals that no new documents have been filed under this docket control number.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

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

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

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 7, 2023. Dckt. 167. Debtor states there are two adversary proceedings, Case No.'s 22-02087 and 22-02088, and they have motions for entry of default judgment for

both the adversaries. Debtor expects the default judgment will allow them to avoid two deeds of trust and obtain a reverse mortgage to pay off the Plan. Declaration, Dckt. 168.

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

DISCUSSION

Delinquent in Plan Payments

Debtor is \$4,172.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

REQUEST FOR CONTINUANCE

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

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

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

October 18, 2023 Hearing

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

November 29, 2023 Hearing

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

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

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

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

January 17, 2024 Hearing

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

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

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

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

February 21, 2024 Hearing

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

At the hearing, counsel for the Trustee concurred with the Debtor’s request for a further continuance to work out the final funding of this Plan.

March 26, 2024 Hearing

The court continued this hearing to be heard in conjunction with Debtor’s Motion to Modify after the court granted Debtor’s Motion to Obtain a Reverse Mortgage. Order, Docket 218. A review of the Docket on March 18, 2024 reveals that no new documents have been filed under this docket control number.

At the hearing, though agreeing to confirmation of the Plan, the Trustee requested that this hearing be continued pending Debtor’s performance of the Plan and making the required lump sum payment.

Counsel for the Debtor did not oppose the request for a continuance.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on May 1, 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**.

19. [20-21251-E-13](#)
[DPC-1](#)

NICHOLO OGOY
Mark Wolff

MOTION TO DISMISS CASE
4-8-24 [26]

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 8, 2024. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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, Nicholo Gomez Ogoy (“Debtor”), is delinquent \$1,630 in plan payments.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 28.

DISCUSSION

Delinquent

Debtor is \$1,630 delinquent in plan payments, which represents more than one month of the \$815 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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 8, 2024. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

1. The debtor, James Duncan Robertson and Noreen Helen Robertson (“Debtor”), is delinquent \$1,650 in plan payments. Motion, Docket 45 ¶ 1.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 47.

DISCUSSION

Delinquent

Debtor is \$1,650 delinquent in plan payments, which represents multiple months of the \$550 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

21. <u>19-26957</u> -E-13	MARK HAYNES	MOTION TO DISMISS CASE
<u>DPC</u> -6	Mark Shmorgon	4-8-24 <u>[174]</u>

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

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 8, 2024. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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, Mark Haynes (“Debtor”), is delinquent \$5,727 in plan payments. Docket 174 ¶ 1.
2. Trustee states this pattern of giving sporadic payments, followed by a series of Motions to Dismiss, “has become very burdensome on the Trustee’s office to have to continuously bring a motion to dismiss every few months to ‘remind’ the Debtor to comply with his duties to make the plan payments.” *Id.* at p. 2:24-28.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 176.

DISCUSSION

Delinquent

Debtor is again \$5,727 delinquent in plan payments, which represents multiple months of the \$1,909 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 continuously been delinquent throughout this Plan, not showing an ability to actually get the Plan timely completed while also putting added burden on the Chapter 13 Trustee’s office. There have been five prior Motions to Dismiss filed in this Bankruptcy Case by the Chapter 13 Trustee.

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, and Office of the United States Trustee on February 16, 2024. By the court's calculation, 75 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 .
--

This Motion was originally set to be heard by Judge Clement on his March 26, 2024 dismissal calendar. Judge Clement issued a Notice Rescheduling Hearing to this court's May 1, 2024 dismissal calendar on March 1, 2024. Docket 31.

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

1. The debtor, Marc David Garcia and Rebecca Elias Garcia ("Debtor"), is delinquent \$7,000 in plan payments. Debtor will need to have paid \$14,000 to become current by the original hearing date of March 26, 2024. Docket 23 p. 1:17-23.

Trustee submitted 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 February 29, 2024. Dockets 27, 28. Debtor testifies the delinquency will be cured prior to the hearing date. Decl., Docket 28 ¶ 2. Debtor states the delinquency arose as their son, who was paying \$300 a month in rent, lost his job and was unable to contribute that income. *Id.* at ¶ 3. Debtor intends to use 401k funds and employment income to cure the delinquency. *Id.* at ¶ 4.

DISCUSSION

Debtor has presented testimony that the default has been cured. 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.

23. 23-24065 -E-13	MICHAEL MASTROMATTEO Helga White	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 4-15-24 [77]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Matrix Financial Services Corporation, Daniel Singer, Esq., Debtor, Debtor's Attorney, creditors and all parties in interest, and Chapter 13 Trustee as stated on the Certificate of Service on April 15, 2024. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Daniel Singer, Esq.'s and Matrix Financial Services Corporation's failure to pay the required fees in this case: \$28 due on April 1, 2024.

The Order to Show Cause is sustained, and the court orders Daniel Singer, Esq. and Matrix Financial Services, Corporation, and each of them, pay a corrective sanction in the amount of \$1,028.

The court's docket reflects that the default in payment by Matrix Financial Services Corporation and Daniel Singer, Esq., counsel for Matrix Financial Services Corporation filing the pleading, that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by creditor Matrix Financial Services Corporation : \$28. Pursuant to Fed. R. Bankr. P. 9011(c), this court orders creditor Matrix Financial Services Corporation and Daniel Singer, Esq., and each of them, to remit the sum of \$1,028 to the clerk of the court as a corrective sanction for failing to pay the filing fee.

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, and the court orders Matrix Financial Services Corporation and Daniel Singer, Esq., and each of them, pay corrective sanctions in the amount of \$1,028.00 to the Clerk of the United States Bankruptcy Court on or before May 30, 2024, with such funds to be then disbursed to the United States Treasury for deposited into the United States General Funds.

IT IS FURTHER ORDERED that in addition to all other methods to enforce the payment of this Sanction, the Clerk of the Court may use the services of a collection attorney or collection agency, who is paid a contingent fee, and shall recover, in addition to the \$1,028.00, reasonable attorney's fees, collection contingent fee, and costs if a collection attorney or collection agency is used.

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 5, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

1. The debtor, James Melvin Slan and Susan Sy Yang-Slan (“Debtor”), is delinquent \$5,250 in plan payments. Docket 64 ¶ 1. Trustee, states, in this Motion and a few others, that the next payment will be due on July 25, 2023. The court assumes this to be a clerical error.

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

DISCUSSION

Delinquent

Debtor is \$5,250 delinquent in plan payments, which represents multiple months of the \$1,500 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.

25. [23-24568-E-13](#) **SUNDREA GORDON-HACKLEY** **MOTION TO DISMISS CASE**
[DPC-1](#) **Carl Gustafson** **3-19-24 [46]**

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 March 19, 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, Sundrea Gordon-Hackley (“Debtor”), is delinquent \$13,200 in plan payments. Docket 46 ¶ 1.
2. After the court sustained Roger E. Larsen and Elizabeth E. Larsen, Trustees of the Larsen Family Trust and Mark Belotz and Silvia Belotz’s objection to the prior Plan on February 27, 2024 at Docket 33, Debtor has not filed a new Plan. *Id.* at ¶ 2.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 48.

DEBTOR’S RESPONSE

Debtor filed a Response on April 17, 2024. Docket 77. Debtor has filed an Amended Plan that includes selling off her home to pay all creditors. This court granted that Motion to Sell by Order on April 23, 2024. Docket 86.

DISCUSSION

Debtor has a new Plan on file at Docket 60, resolving this issue of the Trustee. Debtor has also been granted authority to sell her home and realize a 100% dividend to all creditors in the case. 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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

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 April 5, 2024. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

1. The debtor, Thomas Meadows (“Debtor”), filed the instant Chapter 13 case while he has an open Chapter 7 case ongoing (case no. 23-24350). That case was a Chapter 13 case and was converted to one under Chapter 7. If Debtor was serious about reorganizing, Debtor could have prosecuted case no. 23-24350. Docket 21 ¶ 1.
2. Debtor has filed a Form 101A “Initial Statement of Eviction Judgment” at Docket 16, but Debtor likely committed perjury when he submitted this document as the information submitted was untrue or incorrect. *Id.* at ¶ 2.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 23.

DISCUSSION

As the court noted, this instant case (no. 24-21070) was filed on March 19, 2024, while Debtor's Chapter 7 case is still open and ongoing (no. 23-24350). The instant case appears it was filed without any attempt by Debtor to prosecute in good faith. There are no Schedules or a Plan filed at all in the current Chapter 13 Case. The Chapter 13 Trustee has filed this Motion to Dismiss, stating Debtor should have prosecuted case no. 23-24350 if Debtor was serious about obtaining legitimate relief in bankruptcy. Docket 21 ¶ 1. This fact is further evidenced by there being a Motion to Dismiss also in case no. 23-24350, Debtor failing to appear at the 341 Meeting. Case no. 23-24350, Docket 80. The instant filing appears to be a nothing more than tool to halt the eviction judgment, which is an abuse of the bankruptcy system.

The court found nothing in the Bankruptcy Code or Fed. R. Bankr. P. that either permitted or prohibited two simultaneous pending voluntary bankruptcy cases concerning the exact same Debtor. *See In re Giles*, 641 B.R. 255, 258 (S.D. Fla. 2022). Bankruptcy courts have developed case law on what is called the "single estate rule." *Id.* at p. 259; *In re Grimes*, 117 B.R. 531, 536 (B.A.P. 9th Cir. 1990) (holding that "a debtor who has been granted a discharge under one chapter under Title 11 may file a subsequent petition under another chapter even though the first case remains open, as long as the debtor meets the requirements for filing the second petition."). The single estate rule establishes that when property is already a part of one bankruptcy estate, a second, simultaneous case involving the same debtor would violate the single estate rule because property of the first estate cannot also be property of the second bankruptcy estate. However, the single estate rule is not implicated if a discharge has been entered in the first case. *Grimes*, 117 B.R. at 536.

Violation of the single estate rule has been a bad-faith grounds for dismissal in other Circuits that have explored the issue, with most Circuits citing to the Supreme Court case *Freshman v. Atkins*, 269 U.S. 121 (1925). *See In re Borg*, 105 B.R. 56, 58 (Bankr.D.Mont.1989); *In re Smith*, 85 B.R. 872, 874 (Bankr.W.D.Okla.1988); *In re Belmore*, 68 B.R. 889, 891 (Bankr.M.D.Pa.1987); *Prudential Ins. Co. of America v. Colony Square, Co.*, 40 B.R. 603, 605 (Bankr.N.D.Ga.1984); *In re Stahl, Asano, Shigetomi & Associates*, 7 B.R. 181, 186 (Bankr.D.Hawaii 1980).

Here, the court finds the instant filing to violate the single estate rule as Debtor has not received a discharge in the open Chapter 7 Case, no. 23-24350. It cannot be that assets of that bankruptcy estate can simultaneously be assets of this current Chapter 13 case, as *Grimes* instructs, without a discharge entered in the open Chapter 7. *See also In re Berg*, 45 B.R. 899, 903 (B.A.P. 9th Cir. 1984) (holding "[t]he [Bankruptcy] Act and [Bankruptcy] Code estates are two separate and distinct entities which are exclusive of one another. [Debtor's] property cannot be an asset of both estates simultaneously.").

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. [23-23473-E-13](#)
[DPC-3](#)

JOSE GARCIA
Peter Macaluso

MOTION TO DISMISS CASE
4-17-24 [62]

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 17, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

1. The debtor, Jose Antonia Garcia (“Debtor”), is delinquent \$5,400 in plan payments. Docket 62 ¶ 1.
2. Debtor has failed to provide trustee with tax returns for the year 2022. The record also indicates debtor has not filed tax returns with the state for the

years 2019, 2020, 2021, and 2022, or with the federal government for the years 2019, 2021 and 2022. *Id.* at ¶ 2.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 64.

DISCUSSION

Delinquent

Debtor is \$5,400 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).

Failure to File Tax Returns

According to the IRS's Proof of Claim 6-1, and Franchise Tax Board's Proof of Claim 5-1, it appears that Debtor has not filed tax returns with the state for the years 2019, 2020, 2021, and 2022, or with the federal government for the years 2019, 2021 and 2022. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e). Similarly, 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).

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

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on March 19, 2024. The court computes that 43 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: \$313 due on March 5, 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: \$313.

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on April 10, 2024. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$34 due on March 27, 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: \$34.

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on April 4, 2024. The court computes that 27 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 April 1, 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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 Office of the United States Trustee on April 16, 2024. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

1. The debtor, April Marie Marshall (“Debtor”), is delinquent \$375.81 in plan payments. Docket 28 ¶ 1.
2. Debtor did not appear at the 341 Meeting held on April 11, 2024. *Id.* at ¶ 2.
3. Debtor has not provided tax returns. *Id.* at ¶ 3.
4. Debtor failed to serve the plan and a motion to confirm as ordered by this court at Docket 14. *Id.* at ¶ 4.

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

DISCUSSION

Delinquent

Debtor is \$375.81 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another two plan payment will be due. Debtor has paid 0\$ into the Plan. Failure to make plan payments 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 Serve Plan and a Motion to Confirm

On March 19, 2024, this court ordered Debtor to serve the plan and an accompanying Motion to Confirm in compliance with Local Bankruptcy Rule 3015-1(c)(3). Docket 14. Debtor failed to do so. That is further 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, and Office of the United States Trustee on March 8, 2024. By the court’s calculation, 54 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, Derwin Darby and Gloria Ann Darby (“Debtor”), is delinquent \$3,350 in plan payments. Debtor will need to have paid \$10,050 to become current by the hearing date. Docket 57 p. 1:17-13.

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

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on April 17, 2024. Dockets 61, 62. Debtor testifies that they had a temporary reduction in income that caused the delinquency. Decl., Docket 62 ¶ 1. Debtor states they are doing their best to bring the Plan current by the hearing, but if they cannot, they will file a Modified Plan to address the delinquency. *Id.* at ¶¶ 6-7.

DISCUSSION

Delinquent

Debtor is \$3,350 delinquent in plan payments, which represents one month of the 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 testified that they have made payments of \$5,350 to become current, and are otherwise doing their best to bring the Plan current. Decl., Docket 62 ¶ 5. 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**.

33. [20-22499-E-13](#) **EDGAR/DULIAMARIA AGUILAR** **MOTION TO DISMISS CASE**
[DPC-4](#) **Paul Bains** **3-8-24 [88]**

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 March 8, 2024. By the court’s calculation, 54 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, Edgar Eduardo Aguilar and Duliarmaria Aguilar (“Debtor”), is delinquent \$9,309.99 in plan payments. Debtor will need to have paid \$18,620.21 to become current by the hearing date. Docket 88 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 90.

DEBTOR'S RESPONSE

Debtor filed a Response on April 17, 2024. Docket 92. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$9,309.99 delinquent in plan payments, which represents multiple months of the \$4,655.11 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has stated the delinquency will be cured prior to the Hearing. As of the court's review of the Docket on April 25, 2024, no such evidence of any cure has been submitted. 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**.

FINAL RULINGS

34. [19-26101-E-13](#)
[DPC-5](#)

JUDITH HART
Justin Kuney

MOTION TO DISMISS CASE
3-8-24 [\[149\]](#)

Final Ruling: No appearance at the May 1, 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 March 8, 2024. By the court's calculation, 54 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, Judith Hart ("Debtor"), is delinquent \$3,094.75 in plan payments. Debtor will need to have paid \$6,241.85 to become current by the hearing date. Docket 149 p. 1:17-23.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 151.

DISCUSSION

Delinquent

Debtor is \$3,094.75 delinquent in plan payments, which represents multiple months of the \$1,573.55 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

35. [24-20015](#)-E-13

NATHANAEL PALAFAX
Thomas Amberg

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
3-8-24 [20]

35 thru 36

Final Ruling: No appearance at the May 1, 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 March 8, 2024. The court computes that 54 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 March 4, 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.

36. [24-20015-E-13](#)

NATHANAEL PALAFAX
Thomas Amberg

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
4-8-24 [26]

Final Ruling: No appearance at the May 1, 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 April 8, 2024. The court computes that 23 days' notice has been provided.

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

DEBTOR DISMISSED: 04/08/24

Final Ruling: No appearance at the May 1, 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 April 4, 2024. The court computes that 27 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on April 8, 2024 (Docket 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, and no sanctions are ordered.

Final Ruling: No appearance at the May 1, 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 March 13, 2024. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

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

1. The debtor, William Pitts (“Debtor”), is delinquent \$838.00 in plan payments. Motion, Docket 47, p. 1:17-23. Debtor will need to pay \$1,676.00 prior to the Hearing in order to bring the Plan current. *Id.*

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

DEBTOR’S RESPONSE

Debtor filed a Response on April 16, 2024. Response, Docket 51. Debtor states that they will be filing an application to dismiss this case pursuant to 11 U.S.C. § 1307(b) prior to the Hearing. *Id.* at ¶ 1. Because the Debtor received a discharge on May 13, 2016 in a prior chapter 7 case, Debtor is not able to convert this case to chapter 7. *Id.* at ¶ 2.

DISCUSSION

Delinquent

Debtor is \$838.00 delinquent in plan payments, which represents multiple months of the \$419.00 plan payment. Before the hearing, another two 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 filed a Response not opposing the Trustee's Motion. Debtor states that they are going to be filing an application to dismiss this case pursuant to 11 U.S.C. § 1307(b) prior to the Hearing. *Id.* at ¶ 1. Debtor's Motion to Dismiss their case was entered at Docket 53 on April 23, 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.

39. 20-22036-E-13	RUDY/APRIL RAYA	MOTION TO DISMISS CASE
DPC-3	Scott Hughes	3-19-24 [41]

Final Ruling: No appearance at the May 1, 2024 Hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Motion on April 24, 2024, Docket 47; 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 Rudy Velentino Raya and April Michelle Raya ("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, Docket 47, 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.

40. 22-21037-E-13 DPC-2	SHANNON BUTLER Bert Vega	MOTION TO DISMISS CASE 4-3-24 [48]
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Final Ruling: No appearance at the May 1, 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 April 3, 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, Shannon Butler (“Debtor”), is delinquent \$511.00 in plan payments. Motion, Docket 48, ¶ 1. Debtor will need to pay \$1,022.00 to bring the Plan current prior to the Hearing. *Id.*
2. Debtor has failed to provide the Trustee copies for the tax years 2022 and 2023. *Id.* at ¶ 2.

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

DEBTOR’S RESPONSE

Debtor did not file a Response to the Trustee’s Motion.

DISCUSSION

Delinquent

Debtor is \$511.00 delinquent in plan payments, which represents one month of the \$511.00 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).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the 2022 and 2023 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).

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 May 1, 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 March 10, 2024. The court computes that 52 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on March 4, 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 May 1, 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 March 13, 2024. The court computes that 49 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$44.00 due on March 4, 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 subjection 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.

DEBTOR DISMISSED: 03/18/24

Final Ruling: No appearance at the May 1, 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 March 12, 2024. The court computes that 50 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to xxxx.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on March 18, 2024 (Docket 13), 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.

Final Ruling: No appearance at the May 1, 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 April 24, 2024, Docket 128; 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 Bryan Gary Gallinger (“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, Docket 128, 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 May 1, 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 April 4, 2024. The court computes that 27 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 April 1, 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.

DEBTOR DISMISSED: 03/22/24

Final Ruling: No appearance at the May 1, 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 March 18, 2024. The court computes that 44 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on March 22, 2024 (Docket 55), 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.

DEBTOR DISMISSED: 04/11/24

Final Ruling: No appearance at the May 1, 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 March 5, 2024. The court computes that xx days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on April 12, 2024 (Docket 69), 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.

Final Ruling: No appearance at the May 1, 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 April 2, 2024. The court computes that 29 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 March 28, 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 May 1, 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 March 19, 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.

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

1. The debtor, Tammy Marie Andrews (“Debtor”), is delinquent \$3,249.36 in plan payments. Docket 36 ¶ 1.
2. After the court sustained Trustee’s Objection to Confirmation of the prior Plan on January 23, 2024 at Docket 26, Debtor has not filed an Amended Plan. *Id.* at ¶ 2.

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

DISCUSSION

Delinquent

Debtor is \$3,249.36 delinquent in plan payments, which represents multiple months of the \$1,567.34 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).

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 23, 2024 at Docket 26. 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.

50. [24-20173](#)-E-13

LISA O'GUINN
Thomas Amberg

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-22-24 [\[25\]](#)**

Final Ruling: No appearance at the May 1, 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 March 22, 2024. The court computes that 40 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 March 18, 2024.

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

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

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

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

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

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

51. [19-22878-E-13](#) **JOHN RUBALCADA AND LISA** **MOTION TO DISMISS CASE**
[DPC-1](#) **RODRIGUEZ** **3-13-24 [22]**
 Mikalah Liviakis

Final Ruling: No appearance at the May 1, 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 April 24, 2024, Docket 29; 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 John Albert Rubalcada and Lisa Valeria Rodriguez ("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, Docket 29, 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.

52. [23-24485](#)-E-13
[DPC-1](#)

TIMOTHY MURRAY
Catherine King

**MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
3-27-24 [53]**

DEBTOR DISMISSED: 04/16/24

Final Ruling: No appearance at the May 1, 2024 Hearing is required.

The case having previously been dismissed, the Motion is denied as moot without prejudice. Order, Docket 62.

The Motion to Dismiss / Motion to Convert this Case to One Under Chapter 7 is denied as moot without prejudice, the case having been dismissed on April 16, 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 / Motion to Convert this Case to One Under Chapter 7, 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 as moot without prejudice, the case having been dismissed

CASE CONVERTED: 03/18/24

Final Ruling: No appearance at the May 1, 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 March 11, 2024. The court computes that 51 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 March 6, 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.

CASE CONVERTED: 04/10/24

Final Ruling: No appearance at the May 1, 2024 Hearing is required.

Local Rule 9014-1(f)(2) Motion.

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 April 5, 2024. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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 April 10, 2024. Docket 94.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks to dismiss Amanda Ashley Hill's ("Debtor") Chapter 13 case. Debtor filed a Notice of Conversion on April 10, 2024, however, converting the case to a proceeding under Chapter 7. Docket 94. 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 April 10, 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.