

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

June 19, 2019 at 10:00 a.m.

1. [17-26935-E-13](#) **CARLOS/YOLANDA PEREZ** **MOTION TO DISMISS CASE**
[DPC-1](#) **Gary Fraley** **5-17-19 [20]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 17, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<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 the debtors, Carlos Antonio Perez's and Yolanda Perez's ("Debtor"), Chapter 13 Plan will complete in more than 60 months. The Trustee asserts that the plan payments would need to be increased by \$700.00 a month to have the plan complete on time.

DEBTOR'S RESPONSE

Debtor filed a Response to the Motion on May 30, 2019. Dckt. 24. The Response states Debtor has "agreed" to increase the Plan payment to \$700.00.

DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in 67 months. Declaration, Dckt. 22. Section 1.03 of the Chapter 13 Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

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

Debtor's response, argued by counsel for which no evidence is provided, does not explain where the "extra" \$700 a month will be found to fund the Plan. On Schedule I Debtor states under penalty of perjury that Debtor's monthly income is \$5,101.04 (after some withholding for taxes and Social Security). Dckt. 1 at 35-36.

On Schedule J, Debtor states under penalty of perjury that the reasonable and necessary monthly expenses for their family unit of six persons (the two debtors and four grandchildren, including one adult grandchild) are (\$4,458.04) a month. *Id.*, at 37-38. That leaves only \$643 in monthly net income to be the projected disposable income upon which the current plan is based.

Under the current Chapter 13 Plan that Debtor funds with the \$643.00 in projected disposable income, the persons to be paid are:

- A. Debtor's Counsel.....\$3,500.....(\$ 58.34) per month
- B. Class 1 Claim
 - 1. Franklin Credit Management
 - a. Arrearage.....(\$19,263)..(\$320.60) per month
 - b. Post-Petition Installments.....(\$238.48) per month
- C. Class 4 Direct Payment
 - 1. Carrington Mortgage.....(\$1,256.78)
- D. Class 7 General Unsecured Claims
 - 1. (\$12,081.99).....\$0.00 Dividend.

The Plan actually front loads the attorney's fees to get them paid in the first ten months of the plan. The Plan then delays beginning the arrearage payments until month 10 of the Plan.

No Supplemental Schedules I and J have been filed by Debtor. Looking at the financial information provided under penalty of perjury on Schedules I and J, there is not a readily identifiable source of \$700 a month to fund this 0.00% dividend unsecured claim Plan.

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxxxxx

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

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

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

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

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

2. [19-20238-E-13](#) **MANUEL SAUCEDO-GONZALEZ** **MOTION TO DISMISS CASE**
[DPC-1](#) **AND REGINA SAUCEDO** **5-22-19 [28]**
Chad Johnson

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 22, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Manuel Saucedo-Gonzalez and Regina Saucedo (“Debtor”), are delinquent \$6,559.05 in plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on June 5, 2019. Dckt. 32. Debtor states a modified plan will be filed prior to the hearing date.

DISCUSSION

Debtor is \$6,559.05 delinquent in plan payments, which represents multiple months of the \$3,275.35 plan payment. Declaration, Dckt. 30. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Motion for Relief From Stay

Creditor PennyMac Loan Services, LLC, has filed a motion for relief from the automatic stay. Dckt. 36. Relief is sought pursuant to 11 U.S.C. § 362(d)(1) and (2). No relief is sought pursuant to 11 U.S.C. § 362(d)(4).

Ruling

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

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

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

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

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

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

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 22, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, John Andrew Stahlecker ("Debtor"), is delinquent \$4,052.58 in Plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 5, 2019. Dckt. 61. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Debtor is \$4,052.58 delinquent in plan payments, which represents one month of the \$2,926.29 plan payment. Declaration, Dckt. 59. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

4. [14-28961](#)-E-13 **RODEL MAULINO AND MIMSY** **CONTINUED MOTION TO DISMISS**
[DPC-5](#) **ABARA-MAULINO** **CASE**
 Mitchell Abdallah **3-26-19 [112]**

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 26, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied, and the case is not dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Rodel Montevirgen Maulino and Mimsy Descallar Abara-Maulino (“Debtor”), is delinquent \$6,335.36 in plan payments, which is multiple months of the \$4,249.28 plan payment.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on April 10, 2019. Dckt. 116. Debtor states that \$166,526.36 has been paid into the Plan since the case was filed in 2014. Debtor argues the payment delinquency was caused by the ongoing payment to the Class 1 secured loan of U.S. Bank, N.A., which increased from

\$2,138.83 in 2014 to \$3,084.75 as of August 1, 2018. Debtor's Original Plan was set to increase the payment amount by \$521.52 in month 50 (November, 2018) of the Plan. Due to the increase in the Class 1 secured loan payment, Debtor no longer has an excess of \$521.52 to cover the increased Plan payment amount.

Debtor states a modified plan will be filed to address the delinquency by amending the Plan payment amount based on current income and expenses.

APRIL 24, 2019 HEARING

At the April 24, 2019 hearing, the Trustee reported that the delinquency has been reduced to about \$2,000.00 and the parties concurred that the hearing should be continued to allow a modified plan to be filed.

DISCUSSION

No status report or other pleadings have been filed since the prior hearing over a month before the present continued hearing.

A review of the docket shows that on June 11, 2019, the court denied without prejudice the Motion to Confirm Modified Plan (Dckt. 130) which was the basis for continuing this hearing. However, that Motion was largely denied due to procedural errors of counsel, and not over concerns with the plan itself.

The Trustee in his Opposition to confirmation of the modified plan stated Debtor was current under the Modified Plan. Dckt. 130.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

Based on the foregoing, cause does not exist to dismiss this case. The Motion is not granted, and the case is not dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied, and the case is not 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 17, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Plan will complete in 66 months as opposed to the 60 months proposed. Approximately \$53,054.00 remains to be paid through the plan, and as 43 months remain, the plan payment would need to increase to approximately \$1,235.00.

DEBTOR'S RESPONSE

Debtor filed a Response to the Motion on June 5, 2019 ^{FN.1.} Dckt. 50. Debtor states that the Plan payment, to complete within 60 months, would have to increase by approximately \$132.00, and proposes a change in the plan by stipulation.

FN.1. The Proof of Service filed with the Response states under penalty of perjury that the Response and Exhibit were served on January 5, 2019. Dckt. 52. Review of the docket shows that the documents were filed June 5, 2019. Dckts. 50-52. The reference to "January" was clearly a scrivener's error, and service was provided June 5, 2019.

DISCUSSION

Debtor is in material default under the Plan because the Confirmed Plan exceeds sixty months. *See* Declaration, Dckt. 48. Section 1.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for claims within the 60 day term puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

In Debtor's Response, Debtor proposes changes to the Confirmed Plan by Stipulation. No authority is provided indicating a debtor may modify a plan by stipulation.

The Bankruptcy Code provides for modifications to a confirmed plan as follows:

At any time after confirmation of the plan but before the completion of payments under such plan, **the plan may be modified, upon request** of the debtor, the trustee, or the holder of an allowed unsecured claim . . .

11 U.S.C. § 1329(a)(emphasis added). Federal Rule of Bankruptcy Procedure 3015(h) further clarifies:

A request to modify a plan under §1229 or §1329 of the Code shall identify the proponent and **shall be filed together with the proposed modification**. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Possibly Debtor's counsel was using the term "stipulation" to reference a joint *ex parte* motion with the Trustee which requested an order modifying the plan, the terms of which plan were the subject of a stipulation with the Trustee.

At the hearing, **xxxxxxxxxxxxxx**.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on May 7, 2019. 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

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

1. The debtor, Asha Nkenge King ("Debtor"), is \$1,500.00 delinquent in Plan payments and has paid \$0.00 into the Plan to date.
2. Debtor has not provided the Trustee with a tax transcript or copy of their Federal Income Tax Return.
3. Debtor has not provided Trustee pay advices for the 60 days preceding filing.
4. The Trustee's Objection to Confirmation was sustained by the court at the April 16, 2019 hearing, Dckt. 34. Debtor has failed to file an amended Plan.

DISCUSSION

Debtor did not commence making plan payments and is \$1,500.00 delinquent in plan payments, which represents multiple months of the \$750.00 plan payment. Declaration, Dckt. 45. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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); Declaration, Dckt. 45. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Declaration, Dckt. 45. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court issued an Order on April 17, 2019 denying Debtor's proposed Chapter 13 Plan. Order, Dckt. 40. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1)

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

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

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

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

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

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 20, 2019. 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 granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Cynthia A. Baker ("Debtor"), is delinquent \$1,170.00 in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 5, 2019. Dckt. 72. Debtor states Debtor will meet with counsel on June 5, 2019 to draft a modified Chapter 13 Plan.

DISCUSSION

Debtor is \$2,340.00 delinquent in plan payments, which represents multiple months of the \$1,170.00 plan payment. Declaration, Dckt. 69. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

8. [18-22497](#)-E-13 **ROBERT MAC BRIDE** **MOTION TO DISMISS CASE**
[DPC-4](#) **Pro Se** **5-22-19 [148]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on May 22, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Robert Stuart Mac Bride (“Debtor”), is delinquent \$3,644.64 in plan payments.

DISCUSSION

Debtor is \$3,644.64 delinquent in plan payments, which represents multiple months of the \$911.16 plan payment. Declaration, Dckt. 150. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

9. [19-22169](#)-E-13 ELENA PEREZ GONZALEZ MOTION TO VACATE DISMISSAL OF
Pro Se CASE
5-9-19 [16]

**APPEARANCE OF ELENA PEREZ GONZALEZ IS REQUIRED – NO
TELEPHONIC APPEARANCE PERMITTED**

No 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)(3) Motion—Hearing Required.

The Debtor (*pro se*) filed what the court construed to be an *ex parte* motion on May 9, 2019. Dckt. 16. The court issued an Interim Order setting the hearing for June 19, 2019. Dckt. 21.

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Vacate is XXXXXXXXXXXX.

The debtor (*pro se*), Elena Perez Gonzalez (“Debtor”), filed the instant case on April 8, 2019. Dckt. 1.

The court filed a Notice of Incomplete Filing on April 10, 2019 due to Debtor’s failure to file a Chapter 13 Plan and Form 122C-1. Dckt. 8. On April 26, 2019, the court issued an Order dismissing the case for failure to timely file documents. Dckt. 14.

Debtor filed what the court construed to be an *ex parte* motion on May 9, 2019. Dckt. 16. Debtor argues her Form 122C-1 was filed timely with the wrong case number, resulting in the document being filed in her previously dismissed case, No. 18-27543.

Debtor seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b).

TRUSTEE’S OPPOSITION

On May 10, 2019, the Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition to the Motion. Dckt. 18.

Trustee notes that it is not clear who put the wrong case number on the Form 122C-1, and whether Debtor was assisted by a bankruptcy petition preparer. Debtor notes further a foreclosure was indicated on Debtor’s Statement of Financial Affairs, that 30 days have passed in this case (which was filed with another case dismissed within a year of filing this case), and that it is unclear Debtor can succeed without a bankruptcy attorney.

INTERIM ORDER VACATING DISMISSAL & SETTING HEARING

In reviewing the Motion and files of the case, the court issued an Interim Order on May 13, 2019, vacating dismissal of the case and ordering the Clerk of the Court to docket a copy of Debtor’s Form 122C-1 (filed in case number 18-27543; Docket Entry No. 45) in the current case (19-22169). Interim Order, Dckt. 21.

The court further ordered this Motion be set for hearing June 19, 2019 and that Debtor appear in person—no telephonic appearance permitted. *Id.*

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

The court has already vacated the Order dismissing the case because Debtor’s Form 122C-1 was filed timely, but mistakenly filed in Debtor’s previously dismissed case.

The Trustee reports that the Debtor appeared at the June 13, 2019, First Meeting of Creditors, and that such meeting was concluded. June 14, 2019, Trustee Docket Entry Report.

The Debtor’s Chapter 13 Plan filed in this case includes the following terms:

- A. Debtor Monthly Plan Payments.....\$1,420.00
- B. Duration of Plan Payments.....Unstated

- C. Class 1 Secured Claims
 - 1. Fay Servicing
 - a. \$25,200 Arrearage Claim.....\$0.00 Dividend
 - b. \$700 Current Monthly Payment.....\$700
- D. Class 2 Secured Claims.....None
- E. Class 3 Surrender Claims.....None
- F. Class 4 Direct Payment Secured Claims.....None
- G. Class 5 Priority Unsecured Claims.....\$2,696
 - 1. Monthly Dividend.....Not computed - No Plan Duration Stated
- H. Class 6 Special Treatment Unsecured Claims...None
- I. Class 7 General Unsecured.....None

Plan, Dckt. 12. On the Statement of Financial Affairs Debtor lists the self-employment as Lawn and Garden Care Services. *Id.* at 61.

On Schedule I Debtor states that she is self-employed and has monthly net income of \$852.00, Social Security Income of \$1,070, and retirement income of \$212.00. Dckt. 1 at 45-46. This provides the Debtor with monthly income of \$2,134.00. No provision for any self-employment or income taxes is made on Schedule I.

On Schedule J Debtor lists the following expenses as those that are reasonable and necessary which will be incurred during the term of this bankruptcy case:

- A. Current Mortgage Payment.....(\$699)
- B. Real Estate Taxes.....(\$100)
- C. Homeowner's Insurance.....\$0.00
- D. Home Maintenance/Repair.....(\$100)
- E. Electricity/Natural Gas/Heat.....(\$150)
- F. Water, Sewer, Garbage.....\$0.00
- G. Phone/Cable/Internet.....(\$ 89)

H.	Food/Housekeeping Supplies.....	(\$500)
I.	Clothing/Laundry.....	(\$150)
J.	Personal Care Products/Services.....	(\$ 25)
K.	Medical/Dental.....	\$0.00
L.	Transportation.....	(\$545)
M.	Entertainment.....	\$0.00
N.	Health Insurance.....	\$0.00
O.	Vehicle Insurance.....	(\$108)
P.	Taxes.....	\$0.00
Q.	Business Expenses.....	(\$300)

Dckt. 1 at 47-48. These expenses listed on Schedule J total (\$2,736.00) a month, which is greater (without any provision for self-employment and income taxes) than Debtor's stated income of \$2,134, yielding a negative monthly income calculation of (\$602).

Objection to Chapter 13 Plan

Citibank, N.A., as Trustee, ("Creditor") has filed an Objection to Confirmation of Debtor's Plan. Dckt. 30. The first basis of the Objection is that the pre-petition arrearage asserted by Creditor is \$44,118.70, not the \$25,200 stated by Debtor. Creditor has filed its proof of claim asserting such arrearage. Proof of Claim 1-1.

Creditor asserts that based on Debtor's financial information (Schedules I and J), there is no monthly income to fund a Chapter 13 Plan.

With an asserted per-petition arrearage of \$44,118.70, the monthly dividend over sixty-months would have to be \$735.31, just to cure the arrearage.

The Schedule J expenses include (\$699) a month for the current monthly mortgage payment. Moving that out of the budget would result in there being \$97 a month (without any provision made for self-employment or income taxes) of net income. That would not be enough to fund the arrearage payment and the Chapter 13 Trustee fees.

Ruling

Is unclear whether Debtor can proceed with a Chapter 13 successfully without knowledgeable bankruptcy counsel. As Trustee has already noted, the stay expired as to the Debtor 30 days after filing this case because it is Debtor's second case pending within a year, her prior case having been dismissed. *See* 11 U.S.C. § 362(c)(3).

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Vacate filed by Elena Perez Gonzalez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXX**.

FINAL RULINGS

10. [16-27083-E-13](#)
[DPC-2](#)

DANNY CLARKE
Peter Cianchetta

MOTION TO DISMISS CASE
5-17-19 [\[58\]](#)

Final Ruling: No appearance at the June 19, 2019 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 May 22, 2019. 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 the arrearage owing to Class 1 creditor Seterus, Inc., was \$6,155.00 greater than scheduled and therefore the plan will complete in 69 months.

DISCUSSION

Debtor is in material default under the Plan because payments will exceed the sixty month maximum. Declaration, Dckt. 60. Section 1.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

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

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

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

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

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

11. [18-20489-E-13](#) **DAVID SWEENEY AND STACY** **MOTION TO DISMISS CASE**
[DPC-2](#) **ADER-SWEENEY** **5-22-19 [44]**
 August Bullock

Final Ruling: No appearance at the June 19, 2019 hearing is required.

<p>The Motion to Dismiss Case is dismissed without prejudice.</p>
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David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on June 7, 2019, Dckt. 52; 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 the debtors, David Eastman Sweeney and Stacy Dawn Ader-Sweeney (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss Case filed by the Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 52, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the June 19, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 21, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed a Notice of Dismissal which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on June 11, 2019, Dckt. 58; 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 Latanya Lavette Grey ("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 a minute order substantially in the following form holding that:

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 58, 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 June 19, 2016 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 May 22, 2019. 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 denied without prejudice as moot.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks to dismiss Keith Anthony Stewart and LaKeisha Michelle Stewart ("Debtor") Chapter 13 case. However, Debtor filed an Application To Convert on June 7, 2019. Dckt. 118. 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 June 10, 2019. *McFadden*, 37 B.R. at 521.

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

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

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

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

Final Ruling: No appearance at the June 19, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not 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 May 21, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Yvonne Vancini Escobar ("Debtor"), is delinquent \$173.80 in Plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 4, 2019. Dckt. 40. Debtor states she is current under the Amended Plan filed on June 4, 2019.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 4, 2019. Dckt. 31, 39. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 33. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

15.	<u>19-21435</u> -E-13	HORTENCIA NUNEZ Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-13-19 <u>[18]</u>
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Final Ruling: No appearance at the June 19, 2019 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 May 15, 2019. The court computes that 35 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on May 5, 2019.

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

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

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

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

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

16. [19-22537-E-13](#) **JERRY JORS**
Steele Lanphier

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-29-19 [\[15\]](#)**

Final Ruling: No appearance at the June 19, 2019 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 May 31, 2019. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on May 24, 2019.

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.

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

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 June 19, 2019 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Leonardo Merced Mercurio and Fely Duyanan Mercurio (“Debtor”), have not filed and set for confirmation hearing a new plan since the Trustee’s Objection To Confirmation was sustained December 4, 2018.

Debtor filed an Amended Plan and requests the court schedule a confirmation hearing after

the Trustee has had an opportunity to review the plan.

MARCH 20, 2019 HEARING

At the March 20, 2019 hearing the court reviewed the Debtor's Amended Plan, stating the following:

Debtor filed an Amended Plan on March 6, 2019. Dckt. 55. No motion was filed setting the Plan for confirmation hearing, and no evidence was filed with the Amended Plan.

The First Amended Plan steps up plan payments from \$641.67 to \$2,741.67. The plan further increases the unsecured dividend to 3 percent of the \$239,000.00 in unsecured claims. No changes to the Class 1 payments were made.

A review of the court's files reflect that this is Debtor's third recent bankruptcy case. A summary of the two prior cases follows:

A. Chapter 13 Case 18-25067, In *Pro Se*

1. Filed.....August 13, 2018
2. Dismissed.....September 12, 2018
 - a. Dismissed due to failure of Debtor to serve Chapter 13 Plan and set Motion to confirm for hearing. 18-25607;l Dckts. 21, 22.

B. Chapter 13 Case 16-27089, In *Pro Se*

1. Filed.....October 25, 2016
2. Dismissed.....February 1, 2017
 - a. Dismissed due to failure of Debtor to pay filing fees. 16-27089; Dckts. 44, 46.
3. Court sustained objection to confirmation filed by Wells Fargo Bank, N.A. based no failure of plan to provide for curing the arrearage on its secured claim. Dckts. 34, 37. Denial of confirmation was also based on multiple grounds advanced by the Chapter 13 Trustee. Dckts. 33, 38.

Civil Minutes, Dckt. 56.

The court continued the hearing on the Motion to allow Debtor to obtain bankruptcy counsel.

DEBTOR'S RESPONSE

Debtor, through proposed counsel Chad Johnson, filed a Response on May 22, 2019. Dckt. 58. The Response states a Substitution of Attorney should be filed prior to the date of the hearing on this Motion seeking to employ the Bankruptcy Law Group, PC, as counsel of record in this case.

The Response states further that proposed counsel's opinion is that the current case can be salvaged, though the petition and many of the schedules will need to be amended in conjunction with the filing of an Amended Plan and Motion to Confirm.

Debtor requests the hearing on the Motion be continued to June 19, 2019 at 10:00 a.m. to allow the substitution of counsel and filing of amended documents.

MAY 29, 2019 HEARING

At the May 29, 2019 hearing the court continued the hearing on the Motion to allow Debtor to finalize retaining counsel and filing an Amended Plan and Motion To Confirm that plan. Civil Minutes, Dckt. 62.

FILING OF SECOND AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 4, 2019. Dckts. 64, 71. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 66-70. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

Final Ruling: No appearance at the June 19, 2019 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 May 21, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The hearing on 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 the debtor, Robert Skiff ("Debtor"), failed to attend the First Meeting of Creditors held on May 16, 2019. The Meeting has been continued to June 20, 2019 at 1:00 p.m.

Trustee notes that Debtor's first Plan payment of \$200.00 comes due May 25, 2019, prior to the hearing scheduled for June 19, 2019.

DISCUSSION

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).

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

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

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

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

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

19. [18-26455-E-13](#) **ROBERT/JUDY FROST** **MOTION TO DISMISS CASE**
[DPC-3](#) **Bruce Dwiggin** **5-21-19 [42]**

Final Ruling: No appearance at the June 19, 2019 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 May 21, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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 the debtors, Robert and Elizabeth Frost (“Debtors”), have failed to file an Amended Plan and set it for confirmation.

DISCUSSION

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 17, 2019. Order, Dckt. 23. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

20.	<u>19-20660-E-13</u>	DAVID MANNING	MOTION TO DISMISS CASE
	<u>DPC-2</u>	Peter Macaluso	5-7-19 [40]

Final Ruling: No appearance at the June 19, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 21, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, David Manning ("Debtor"), failed to file an Amended Plan and set it for confirmation. Additionally, Trustee notes he has not received verification of Debtor's social security number.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 7, 2019. Dckt. 61. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 57. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appears to be actively prosecuting this case; the Motion to Dismiss is denied without prejudice.

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

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

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

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

21. [18-27047-E-13](#) **MONNALISSA O'DELL**
[DPC-3](#) **Joseph Angelo**
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
5-22-19 [35]

Final Ruling: No appearance at the June 19, 2019 hearing is required.

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

22. [14-23652-E-13](#) **PHILIP/YVETTE HOLDEN** **CONTINUED MOTION TO DISMISS**
[DPC-5](#) **MaryEllen Terranella** **CASE**
4-3-19 [180]

Final Ruling: No appearance at the June 19, 2019 Hearing is required.

The Chapter 13 Trustee filed *ex parte* motion to dismiss the motion to dismiss without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041. Dckt. 189. The dismissal being consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the 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 7041 and 9014, Dckt. 189, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

23. [17-27338-E-13](#) **MARIETTA DECLARADOR** **MOTION TO DISMISS CASE**
[DPC-3](#) **Mohammad Mokarram** **5-17-19 [43]**

Final Ruling: No appearance at the June 19, 2019 Hearing is required.

The Chapter 13 Trustee("Movant") filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 a Notice of Dismissal of the pending Motion to Dismiss this Chapter 13 Case (Dckt. 52). The Motion having been dismissed without prejudice by Movant, **the hearing is removed from the calendar.**

24. [19-21161](#)-E-13 **RODERICK KENNEY**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-3-19 [42]**

Final Ruling: No appearance at the June 19, 2019, hearing is required.

The case having previously been dismissed, the Order To Show Cause is discharged as moot.

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

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

The Order To Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the documents filed in the case, and good cause appearing,

IT IS ORDERED that the Order To Show Cause is discharged as moot, the case having been dismissed.