

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 1, 2020 at 10:00 a.m.

1.	<u>18-26906</u>-E-13 <u>DPC-2</u>	OLIVERIO PADILLA Richard Jare	MOTION TO DISMISS CASE 6-1-20 [44]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 1, 2020. 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, Oliverio Padilla Padilla ("Debtor"), is in material default as the plan will not complete within 60 months.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 49. Debtor states he has been furloughed from his job due to the COVID-19 pandemic, that he is current on "trustee payments," and has no confirmation as to when he will be able to return to work. Declaration, Dckt. 51. Debtor will extend his plan under the CARES Act and requests additional time to modify his plan, such as "late this year," namely November, when there might be more stability as to his financial situation. *Id.*

In the Opposition, Debtor first argues the Plan should be completed within 64 months if the

Trustee's commission is 4.5%. However, the current rate set by the U.S. Trustee is 10%, which Debtor suggests is temporary due to the COVID-19 emergency.

Debtor's counsel then makes reference to a "vague recollection" about how decades ago a trustee's commission was not computed on mortgage payments if the mortgage payment was not made through the Trustee. Debtor's counsel's ramblings discussed the court adopting a "Back East Mortgage Payment option" plan. Opposition, p. 2:2-10; Dckt. 49.

While asserting that Debtor is current on plan payments, Debtor admits in the Opposition that his income is in "flux." *Id.*, p. 2:14. Debtor further admits that his budget "is going to be invalid" before there can be any hearing on a motion to confirm a modified plan. *Id.*, p. 2:15-16. Further, that due to the COVID-19 pandemic Debtor's finances are "unstable." *Id.*, p. 2:18.

The Opposition then does not state why Debtor has defaulted in Plan payments, but offers only an equivocating statement of "Presumably Debtors stopped paying the trustee due to distress, the [Chapter 13 trustee] compensation rate soared." *Id.*, p. 2:22-23.

Debtor then makes a confusing reference to a "Class 1 debtor" making payments to creditors holding unsecured claims. *Id.*, p. 2:24-25. The court does not understand what or who is a "Class 1 debtor."

Though admitting that Debtor stopped making payments to the Trustee, Debtor then makes the contradictory statement that he is current on plan payments. *Id.*, p. 3:5.

Debtor's Opposition then proceeds to attack the Chapter 13 Trustee over some prior proceedings in which the Debtor provided proof of identity only five minutes before some prior unidentified hearing. *Id.*, p. 3 (incorrectly numbered as "Page 1").

Debtor then disputes the Trustee's assertion that it will take 77 months to perform the plan, arguing that it will be only 71 months. The Opposition does not provide any calculation information. *Id.*, p. 4:12-28.

The Opposition then asserts that Debtor should not have to address this issue now, but wait almost six months before being burdened with complying with the Bankruptcy Code.

Debtor's Declaration

Debtor provides his testimony under penalty of perjury in opposition to the present Motion to Dismiss. Dckt. 51. He begins by testifying to a prior objection and the Chapter 13 Trustee asserting that the Debtor's name could not be the Debtor's name. He questions how the Chapter 13 Trustee could have been "stumped" as to the Debtor's name. Declaration ¶ 3; Dckt. 51.

Debtor then testifies that due to the COVID-19 emergency and being laid off, the amount of his unemployment compensation is uncertain as it has not been established that the COVID-19 enhancement to unemployment benefits will be extended.

Debtor then provides his personal knowledge (Fed. R. Evid. 601, 602) testimony as to the complex COVID-19 legislation passed by Congress, the amendments to the Bankruptcy Code in that complex legislation, and how the Bankruptcy Code, as amended, would apply in this case. Debtor provides

no basis for why or how he could have such legislative and legal expertise. *Id.*, ¶ 5.

Debtor then elects to voluntarily disclosed his attorney-client communications about his plan in this case and the legal advice being given to him by his attorney in what would otherwise appear to have been privileged attorney-client communications (which Debtor has now voluntarily presented to the court). *Id.*

Debtor then testifies to information provided to him by his attorney about how the attorney computes the plan and payments to be made thereunder. The court cannot identify why the Debtor is providing testimony amount what he heard his attorney say in what would have been an attorney-client privileged communication if the Debtor had not elected to waive the privilege and testify what he heard his attorney say.

Debtor closes, stating that he “feels” like the Chapter 13 Trustee is attacking the Debtor at a time when the Debtor is “weak.” *Id.*, ¶ 6.

DISCUSSION

Material Default for Exceeding Sixty Months

Debtor is in material default under Section 6.04 of the Plan because according to Trustee’s calculations, the Plan will complete in 77 months as opposed to the 60 months proposed. Excluding the Class 1 monthly contract installment, approximately \$35,500.00 remains to be paid through the plan. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor indicates that he has been directly affected by COVID-19 as he was furloughed from his job as a baker at the Sheraton Hotel, and when he will be returning to work is still uncertain. Debtor however, argues that he rather file a new plan later, specifically some time in November.

The CARES act provides protection to Chapter 13 debtors to extend a plan if the Debtor shows that he has been directly or indirectly affected by the current health crisis. Though the Act does not provide an exact time line for when a Debtor may take advantage of this relief, a debtor does not avoid his or her duty to diligently prosecute a bankruptcy case. A promise to file a modified plan five months from now is not evidence that resolves the Motion.

The Opposition to the Motion to Dismiss could have been very clearly presented, addressing the COVID-19 issues, and presenting the court with a constructive solution consistent with the Bankruptcy Code. Debtor’s counsel could have structured a modification of the plan to address the immediate situation, sought to have it approved by ex parte motion, and have it foreshadow a further modification when we all are in the post-COVID-19 pandemic period.

Unfortunately, Debtor and Debtor’s counsel did not choose this path, but instead chose to make arguments about the Chapter 13 Trustee attacking this poor Debtor and rambling arguments, concluding that

Debtor should be given a six month reprieve from having to comply with Federal Law.

The court notes that Debtor's counsel expresses much angst over the decades long standing provision for a secured claim in which there is a pre-petition default must be cured through the plan, with both the current monthly payment and the required arrearage payment to be paid by the trustee through the plan. This decades long plan provision comes from a recognition that a debtor who has found it necessary to default on payment of a debt secured by a substantial asset (usually the debtor's home) prior to the case being filed is likely to be able to justify in skipping a post-petition payment, believing that it can be "made up later." Under such old provisions, many debtors dug deep post-petition holes and surprised their bankruptcy attorney when they neared the end of the sixty month plan and the creditor with the secured claim sought relief to foreclose with there being an additional multiple years of default.

Debtor's Opposition, the arguments made by Debtor's Counsel, the Debtor's declaration providing his "legal opinion" testimony, and Debtor testifying (and his attorney letting him testify as part of the opposition) that the Chapter 13 trustee properly raising Debtor's failure to comply with the Bankruptcy Code as an "attack on the Debtor" indicate to the court that Debtor cannot perform a plan in this case. Debtor providing his "personal knowledge legal opinion testimony" under penalty of perjury, without providing the court with any foundation for having such personal knowledge puts the credibility of Debtor for any testimony in question.

Debtor currently has a plan that does not comply with the Bankruptcy Code. Though Debtor could seek to modify the Plan, Debtor has folded his arms and refuses to, asking for a six month hiatus on complying with Federal Law. This indicates that Debtor knows that he cannot comply with the Bankruptcy Code in this case, and that a dismissal is inevitable and Debtor will need to start over.

If Debtor in good faith intended to modify the Plan, it could have been easily and simply done. Debtor's Counsel states that he has already done the math. But Debtor and his attorney refuse to act.

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 June 3, 2020. 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, Paul Wayne Roberts and Pamela Lee Roberts ("Debtor"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 55. Debtor's counsel states Debtor will file a modified plan and corresponding motion to confirm prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$13,500.00 delinquent in plan payments, which represents multiple months of the \$2,900.00 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).

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.

3. 20-20308-E-13 **RICHARD DE ROSA** **MOTION TO DISMISS CASE**
 DPC-2 Steven Shumway 6-17-20 [39]

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 June 17, 2020. 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 -----.

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, Richard Lee De Rosa (“Debtor”), is delinquent in plan payments.

2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$14,200.00 delinquent in plan payments, which represents multiple months of the \$6,850.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 2, 2020. 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.

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.

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 June 1, 2020. 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 XXXXX.

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

1. The debtor, Wanda Collier-Abbott ("Debtor"), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 18, 2020. Dckt. 229. Debtor notes the ability of Debtor's counsel to represent Debtor has been impacted by the COVID-19 pandemic. Declaration, Dckt. 230.

Debtor argues that she is current in plan payments and "screen shots" of payment have been filed as an exhibit (Dckt. 232) in support. *Id.*

Further, Debtor states setting a plan for confirmation has been delayed due to a secured claim of a creditor holding a second deed of trust, which the court valued to be \$157,410.62 on May 27, 2020. Dckt. 222. Debtor requests for the hearing to be continued to August 5, 2020 so that Debtor may explore options, including conversion to a Chapter 11 case. Dckt. 229.

Debtor's Declaration

Debtor provides testimony under penalty of perjury in her Declaration filed in opposition to the present Motion to Dismiss. Dckt. 230. Debtor begins her personal knowledge testimony (Fed. R. Evid. 601, 602) under penalty of perjury that she heard her attorney tell her that the Trustee's records show that Debtor

has paid \$33,524.00 in this case. Declaration ¶ 1; Dckt. 230. It appears that Debtor has no knowledge of what Debtor has paid, and is only capable of stating what she heard her attorney say from his attorney reading what the Trustee's records say.

Debtor then in her declaration attacks the Chapter 13 Trustee, contending that if statements are made under penalty of perjury, that the Trustee's attorney stating that the Trustee's records show the Debtor having paid only \$30,362 as of June 1, 2020 is inaccurate, and "If accuracy under penalty of perjury isn't important, then at the very least I am being slighted." Declaration *Id.*, ¶ 1. A curious statement made by the Debtor, who in her own declaration seeks to "testify" based on what she heard her attorney say about what her attorney read (heard) the Trustee's records say.

Debtor then provides her personal knowledge testimony that the hearing should be continued until August 2020, because he heard her attorney say that the attorney would like to be in the courthouse for the hearing. Further, she heard her attorney say that his effectiveness for making telephonic appearances is impaired by his bad teeth. *Id.*, ¶ 2. Debtor has also heard her attorney say that he is having dental surgery on July 1, 2020. *Id.* Debtor's attorney does not provide any testimony about limitations on his ability to represent the Debtor or any health issues in his Declaration. Dckt. 231.

In her Declaration, Debtor continues to testify under penalty of perjury as to what she heard her attorney say concerning her legal rights and their strategy in prosecuting this Chapter 13 case. Declaration, ¶ 3; Dckt. 230. Debtor then discussed that "accommodations" from the holder of the second mortgage are needed in order to confirm a plan in this case. *Id.*

DISCUSSION

Delinquent

Debtor is \$2,888.00 delinquent in plan payments, which represents slightly more than one month of the \$2,850.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 5, 2020. A review of the docket 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).

The COVID-19 pandemic has significantly disrupted attorney work and access to clients. However, Debtor and counsel must provide the court with a strategy of how they are diligently prosecuting the case.

This bankruptcy case was filed on March 1, 2019. In the fifteen months since this case was filed, Debtor and her counsel have been incapable of confirming a Chapter 13 plan. In reviewing the Civil Minutes from prior hearings in which the court denied confirmation of plans being advanced by the Debtor, the following was addressed by the court.

Debtor failed to provide proof of identity (Declaration¶3, Dckt. 31) and thus

constructively did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Furthermore, a review of the docket shows Debtor failed to appear at the continued Meeting of Creditors on May 9, 2019. Appearance is mandatory. See 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

...

Debtor's six months of profit and loss statements from September 2018 through February 2019 indicate gross receipts of "\$0.00." Declaration ¶7, Dckt. 31. The Monthly Plan payment of \$2,100.00 (Plan, Dckt. 3) relies on Debtor's disposable income being \$2,100.00 as stated on Schedules I and J. Dckt. 23. Based on the six months of profit and loss statements, the plan does not appear feasible. 11 U.S.C. § 1325(a)(6).

...

On Amended Schedule I Debtor states having monthly income of: (1) \$939 gross wages, (2) \$2,000 net business income, (3) \$2,004 in temporary employment income, (4) \$660 in additional temporary employment income, (5) \$460 as a transaction coordinator, and (6) \$1,000 contribution from a roommate. Dckt. 28 at 10-11. On Schedule I there is only \$80 a month for taxes and withholding. Though self-employed, no provision is made on Schedule J for any self-employment taxes or income taxes. *Id.* at 13-15.

Civil Minutes, Dckt. 68.

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The court will review the concerns regarding whether Debtor will be able to make plan payments.

Debtor lacks sufficient income to Support Proposed Plan Payments. According to Debtor's Schedule J, Debtor has monthly disposable income of \$2,100.00. Yet, her proposed plan payment is \$2,850.00.

...

The Plan is too speculative. Whether Debtor can make the Plan depends on the sale of real estate property or refinancing by "no later than month 36" of the Plan. Yet, Debtor fails to explain why the delay of three years to sell the property which unduly prejudices creditors. This is not the first time the court and parties involved have raised this particular concern. The Civil Minutes for January 28, 2020, the hearing on the Second Modified Plan, note the following:

Trustee contends that the Plan is not feasible because the Plan proposes the refinance or sale of the Property. Further arguing that this sale or refinance appears speculative or as a delay, as the Plan fails to provide an actual time frame in which any of these actions

will take place or why it should take 36 months to sell or refinance.

Civil Minutes at 7. Dckt. 166.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Civil Minutes, Dckt. 219.

After fifteen months in bankruptcy, if the Debtor could confirm a plan, then Debtor and her counsel would have confirmed a plan.

As to the asserted default in the plan which was denied confirmation previously and for which no new amended plan has been filed, the evidence of a \$2,888.00 is the testimony of the Trustee's employee attorney Dckt. 227.

To counter that, Debtor has provided the court with a screen shot of the Trustee's financial information web page for this case. Exhibit, Dckt. 232. The court reads this exhibit to state:

- a. Last Payment Received From Debtor.....\$3,162.00
 - i. Received May 27, 2020.
- b. Total paid by Debtor to Trustee.....\$33,524.00
- c. Total Disbursed by Trustee.....(\$30,306.45)
- d. Balance of Monies Held by Trustee.....\$3,217.55

It appears that the \$30,306.45 amount is close to the \$30,362.00 amount stated in the Trustee's employee attorney Declaration. The evidence presented by Debtor indicates that there was not a default based upon the amount that the Trustee states was to be paid as of June 1, 2020.

Debtor filed Supplemental Schedules I and J for her current income and expenses. Dckt. 211. Debtor reports that her Mother is no longer a dependent, having passed away in January 2020. Supp. Schedule J, *Id.* at 3. Debtor states having four dependents, children ranging from 18 years old to 24 years old. *Id.* Debtor lists \$2,200 a month income from "roommates." Supp. Schedule I, *Id.* at 2. This does not state whether these "roommates" are the dependent children or other persons.

On Supplemental I Debtor states that in addition to the Roommate Contribution, Debtor has \$1,500 a month in income from "Real Estate Services Transaction Coordinator" and \$1,100 from rental property or operating a business. No statement of income and expenses is provided for either rental property or operating a business as required in Question 8 on Supplemental Schedule I.

On Supplemental Schedule I Debtor states that the "Business line" is "occasional real estate commission." *Id.* at 2.

Neither on Supplemental Schedule I nor on Supplemental J does the Debtor account for expenses and payment of self-employment and income taxes for the \$13,200 in rental/ business income and \$18,000 in Real Estate Services, for \$31,200 in annual net income. Not disclosing the expenses to generate \$31,200 in annual net income and failure to provide for the payment of any taxes is not credible, especially in light of the court flagging this gross deficiency in earlier rulings.

Debtor offers no credible reason for not being able to confirm a Plan in this case. It appears that one reason may be inaccurate financial information provided. Debtor has floundered in this case since March of 2019. While in the Opposition the word “COVID-19” is mouthed, no evidence or explanation is provided. It is stated that it is Debtor’s counsel who is unable to provide the legal services due to acreage he owns, rental property he owns, and his own complex financial affairs. Also, that COVID-19 has caused counsel a tidal wave of work.

If Debtor was diligently prosecuting this case, had a confirmed plan for which there was a default caused by the COVID-19 emergency, and that some additional time was required as part of the diligent prosecution in fifteen months in the case to modify the confirmed plan, grounds could exist to continue the hearing. But here, that is not shown.

Though the court has striven to continue hearings and give debtors and creditors more time when there was the slimmest of showing of good faith and prosecution of the bankruptcy case, Debtor and Debtor’s counsel have not provided the court with even a part of a slim reed of the Debtor working to properly prosecute this case.

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

With this dismissal, Debtor and her bankruptcy attorney for a future case can work to create accurate, facially credible income and expense statements. They can provide the required information. They can show the Debtor’s expenses. They can show that the Debtor pays her income and self-employment taxes from her businesses.

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Marco D. Pedraza ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 11, 2020. Dckt. 38. Debtor requests a continuance on this matter for sixty (60) days as Debtor was temporarily unemployed due to the COVID-19 pandemic. *Id.* Since his income reduction due to the closing of the restaurant where he worked, Debtor has been making partial payments in the amount of approximately \$1,000.00 to Trustee. Declaration, Dckt. 39. Debtor anticipates returning to work in approximately two weeks, and believes he can still complete the current Plan after his income stabilizes. *Id.* Debtor requests his case not be dismissed as he is paying 100% to his creditors and there is considerable equity in his house. *Id.*

DISCUSSION

Delinquent

Debtor is \$4,950.00 delinquent in plan payments, which represents multiple months of the \$2,650.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The COVID-19 pandemic has created unprecedented circumstances that require Debtor to navigate uncertainties and frequently changing health directives. Debtor states that he will continue making

as much as he can to the Trustee and needs more time to file a new plan.

A promise to file a new plan is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning his finances and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on August 5, 2020.**

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Linda Lee Graziadei ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 15, 2020. Dckt. 41. Debtor states the delinquency occurred because she was on temporary disability since January 2020, and Debtor did not receive her disability paychecks in April and May due to the COVID-19 pandemic. Declaration, Dckt. 43.

DISCUSSION

Delinquent

Debtor is \$6,890.15 delinquent in plan payments, with monthly plan payments of \$2,308.03. 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 COVID-19 pandemic has created unprecedented circumstances that require Debtor to navigate uncertainties and frequently changing health directives. Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal

knowledge testimony concerning her finances and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

Debtor and Debtor's Counsel explained at the hearing how they are diligently prosecuting the case.

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 continued to **9:00 a.m. on August 5, 2020.**

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 June 1, 2020. 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 hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, David De Vaughn Howerton ("Debtor"), is in material default as the plan will not complete within 60 months.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 16, 2020. Dckt. 43. Debtor's counsel states Debtor has recently deceased, with the Notice of Death being filed with the court on June 11, 2020. Dckt. 40. Successors-in-interest requests a continuance so as to meet with Debtor's counsel to discuss further administration of this case.

DISCUSSION

Material Default for Exceeding Sixty Months

Debtor is in material default under Section 6.04 the Plan because according to Trustee's calculations, the Plan will complete in 83 months as opposed to the 60 months proposed. The filed Class 1 mortgage arrearage was \$11,257.0018 greater than scheduled. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

The court continues the hearing to afford Debtor's successors in interest the time to consider the legal and financial issues relating to this case and whether it can be prosecuted by such successors.

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 continued to **9:00 a.m. on August 5, 2020.**

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.

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 June 3, 2020. 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 ~~XXXXX~~.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Hector Arnaldo Cavazos ("Debtor"), is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 17, 2020. Dckt. 112. Debtor's counsel states he has been unable to meet with Debtor due to the COVID-19 pandemic and requests additional time to meet with Debtor.

DISCUSSION

Delinquent

Debtor is \$10,850.00 delinquent in plan payments, with a monthly plan payment of \$4,850.00. 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 understands that the COVID-19 pandemic has significantly disrupted attorney work and access to clients. Counsel requests additional time to meet with Debtor.

Debtor's counsel has filed an opposition identifying the COVID-19 issues that have impaired the ability of Debtor and counsel to consider possible modifications in this case for the confirmed plan. Given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), a continuance of this hearing is warranted.

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 continued to 9:00 a.m. on July 9, 2020.

9. [19-26520-E-13](#) **COURTNEY WILSON** **MOTION TO DISMISS CASE**
[DPC-3](#) **Scott Hughes** **6-9-20 [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.

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 June 3, 2020. 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).

<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 the debtor, Courtney Allyn Wilson (“Debtor”), is delinquent in plan payments.

DEBTOR’S RESPONSE

On June 10, 2020, Debtor’s counsel filed a Response noting that he has not heard from Debtor as of the filing date of the Response and does not know the reason for the delinquency. Dckt. 49. Counsel requests Debtor be given until the date of the hearing to be current with payments and/or continue the hearing if Debtor is able to become almost current. *Id.*

DISCUSSION

Delinquent

Debtor is \$17,994.56 delinquent in plan payments, with monthly plan payments of \$5,116.00. 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 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. 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 May 28, 2020. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 20, 2020.

<p>The Order to Show Cause is sustained, and the case is dismissed.</p>
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The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. 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).

<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, Darrell Kevin Rhym and Chuenta Lenise Rhym ("Debtor"), are delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 62. Debtor states the delinquency occurred because Debtor's income and expenses have been negatively impacted by the COVID-19 pandemic. Declaration, Dckt. 63. Debtor intends to file a modified plan and extend the plan term under the CARES Act prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$6,656.00 delinquent in plan payments, which represents multiple months of the \$1,666.00 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).

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Debtors state they have been negatively impacted by COVID-19 but no details are provided. Moreover, a promise to file a modified plan is not evidence that resolves the Motion.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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 June 3, 2020. 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).

<p>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Bethany Elaine Sanders-Johnson (“Debtor”), is delinquent in plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on June 17, 2020. Dckt. 76. Debtor’s counsel states he has been unable to meet with Debtor due to the COVID-19 pandemic and requests additional time to meet with Debtor.

DISCUSSION

Delinquent

Debtor is \$6,730.00 delinquent in plan payments, with monthly plan payments of \$2,389.01. 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 understands that the COVID-19 pandemic has significantly disrupted attorney work and access to clients. Counsel requests additional time to meet with Debtor.

Given the Debtor’s prosecution of this case (there being a confirmed plan that now needs to be modified) and the limitations on counsel meeting with Debtor, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on August 5, 2020.**

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 June 3, 2020. 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).

<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 the debtors, Robert DeCelle, III and Donna Marie DeCelle ("Debtor"), are delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 121. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,692.04.00 delinquent in plan payments, with monthly plan payments of \$2,603.52. 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.

14. [19-20026-E-13](#) **THOMAS IVERS** **MOTION TO DISMISS CASE**
[DPC-4](#) **Pro Se** **6-1-20 [189]**

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 June 1, 2020. 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 (*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, Thomas Ivers, (“Debtor”) is deceased.
2. Debtor is delinquent in plan payments.
3. Debtor has failed to file a new plan.

DISCUSSION

Deceased

Debtor is deceased, and Trustee has not been provided with a certificate of death.

Delinquent

Debtor is \$608,300.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 1, 2019. 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).

The court extended every courtesy and consideration to the late Debtor and his Daughter so they could prosecute this case. Debtor became convinced that his former attorney was part of a great conspiracy against him. Debtor and his Daughter failed to obtain replacement counsel. Though Debtor's Daughter was given copies of notices and orders during this case, and was purported to have a large, junior secured claim for which there was value in the collateral, she failed to take any action to protect her secured claim or to assist her father in the prosecution of this case. With the passing of the debtor, the Daughter has not sought to substitute into this case as the successor to the Debtor.

The court referred this Debtor to adult protective services, it appearing that this elder Debtor was incapable of prosecuting his rights and recovering the value of his assets. Adult Protective Service reported that there was nothing they could do.

Debtor having failed to prosecute this case and now Debtor's Daughter failing to substitute into this case, grounds exist to order it dismissed.

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 June 3, 2020. 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, David Matthew Windmiller and Donna Laura Windmiller (“Debtor”), are delinquent in plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on June 10, 2020. Dckt. 24. Debtor states a new plan will be filed before the hearing, and Debtor will be current under the proposed modified plan.

DISCUSSION

Delinquent

Debtor is \$6,582.09 delinquent in plan payments, which represents multiple months of the \$2,425.00 plan payment. A review of the Plan shows monthly plan payments of \$2,542.00 as opposed to \$2,194.03 as reported in Trustee’s Motion. 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.

16. [19-22042-E-13](#) **DEMETRIUS BELLAMY** **MOTION TO DISMISS CASE**
[DPC-1](#) **George Burke** **6-3-20 [21]**

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

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 June 3, 2020. 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, Demetrius Bellamy (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 16, 2020. Dckt. 25. Debtor’s counsel states the delinquency occurred because Debtor lost his job in March 2020 due to the COVID-19 pandemic, but is now receiving unemployment benefits and stimulus funds. Debtor proposes to modify the Plan by extending the term by 24 months and adjust the monthly plan payments to \$2,600.00. *Id.* Furthermore, Debtor intends to restart making plan payments by June 25, 2020 in the amount of \$2,600.00.

DISCUSSION

Delinquent

Debtor is \$12,438.08 delinquent in plan payments, with monthly plan payments of \$2,659.32. 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).

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic. Debtor indicates that he will file a modified plan that extends the term and increase the monthly payments but fails to indicate a time frame for the filing. Furthermore, a promise to make payments does not resolve the Motion.

At the hearing, xxxxxxxxxxx

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Harry R. Nash and Josephine Ann Nash ("Debtor"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020 (Dckt. 113) and a supplement to the Opposition on June 24, 2020 (Dckt. 115). Debtor states the delinquency occurred because Ms. Nash's numerous jobs as an independent contractor have stopped since March 2020 due to the COVID-19 pandemic, and Mr. Nash has been unemployed since January 2019 after being laid off. Declaration, Dckt. 116. Furthermore, Debtor details a plumbing accident that "flooded the [first] story to the [second] story walls, ceiling and floors," which required Debtor to cover expenses that the insurance company did not. *Id.* Debtor requests the court issue an order granting Debtor sixty (60) days to file, serve, and be current under a modified plan.

DISCUSSION

Delinquent

Debtor is \$28,404.28 delinquent in plan payments, with monthly plan payments of \$8,351.07. 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).

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed

plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor shows that they have been affected by COVID-19. Debtor also explains additional unforeseen financial expenses. Debtor requests additional time to file a new plan, set it for hearing and become current under a modified plan. Debtor has paid a total of \$218,190.124.

The court understands the difficulties encountered by many debtors during the current pandemic. Debtor's request for a continuance is not unreasonable.

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 continued to **9:00 a.m. on August 5, 2020.**

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 June 3, 2020. 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).

<p>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Kenneth Roger Tabor ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 188. Debtor's counsel states the delinquency occurred because Debtor has not been able to collect a significant amount of money for work performed for customers due to delays caused by the COVID-19 pandemic. Dckt. 189. Debtor intends to cure the delinquency or propose a modified plan prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$13,201.10 delinquent in plan payments, with monthly plan payments of \$2,640.22. 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).

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

The COVID-19 pandemic has created unprecedented circumstances that require Debtor to

navigate uncertainties and frequently changing health directives. Here, it seems that Debtor has been affected by COVID-19.

At the hearing, xxxxxxxxxxxxxxxx.

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 continued to **9:00 a.m. on August 5, 2020.**

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Leanne Lynn Boger ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 41. Debtor states she has been offered a loan modification pending court approval on July 14, 2020 that will significantly help Debtor propose a feasible modified plan.

DISCUSSION

Delinquent

Debtor is \$13,569.63 delinquent in plan payments, with monthly plan payments of \$3,133.79. 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 is attempting to prosecute a loan modification which will be the basis for a modified plan. The Trustee has filed an opposition to the loan modification motion (Dckt. 43).

The court continues the hearing to afford the Debtor this last attempt in prosecuting this case.

DISCUSSION

Delinquent

Debtor is \$4,598.83 delinquent in plan payments, which represents multiple months of the \$2,226.21 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).

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor testifies that she has been adversely affected by COVID-19. Debtor has lost her job. Debtor also explains additional unforeseen circumstances currently affecting her. Debtor has been in this Chapter 13 since 2018, and has paid a total of \$46,604.00.

Debtor has been prosecuting this case, has confirmed a plan, and now must modify that plan. The court continues the hearing to afford Debtor the opportunity to turn representations of action into action.

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 continued to **9:00 a.m. on August 5, 2020.**

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.

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 June 3, 2020. 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, Robbie Allan Holcomb and Christi Anna Holcomb ("Debtor"), are delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 17, 2020. Dckt. 106. Debtor states the delinquency occurred because Mr. Holcomb was laid off by his employer on March 13, 2020 due to the COVID-19 pandemic. Declaration, Dckt. 107. Mr. Holcomb expects to resume employment in August 2020. *Id.* Debtor is working with counsel to file a modified plan before the hearing date. *Id.*

DISCUSSION

Delinquent

Debtor is \$7,455.00 delinquent in plan payments, which represents multiple months of the \$1,065.00 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor testifies to being affected by the current health pandemic. However, a promise to file said modified plan is not evidence that resolves the Motion.

At the hearing, xxxxxxxxxxxx

~~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.

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 June 9, 2020. By the court’s calculation, 22 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 the debtors, Viliami Moahengi Fonua and Patricia Afu Fonua (“Debtor”), have failed to file a new plan.

DISCUSSION

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on December 10, 2019. 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.

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 June 12, 2020. By the court's calculation, 19 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, Sandra Anabel Avalos ("Debtor"), has not been examined at any of the Meeting of Creditors.
2. Debtor is delinquent in plan payments.
3. Debtor has failed to file a new plan.

DISCUSSION

No Examination of Debtor at Meeting of Creditors

Debtor has not been examined at the Meeting of Creditors pursuant to 11 U.S.C. § 343.

- A. Debtor failed to appear to the January 9, 2020 meeting. It was continued

to February 6, 2020,

- B. Debtor's counsel did not appear at the February 6, 2020 meeting. It was continued to March 5, 2020,
- C. On the March 5, 2020 meeting, Debtor's counsel did not appear. It was then continued to April 30, 2020.
- D. On the April 30, 2020 meeting, Debtor failed to appear. It was continued to May 21, 2020.
- E. Though the Debtor appeared at the May 21, 2020 meeting, Trustee was unable to conduct the meeting, and it was continued to June 11, 2020.
- F. Debtor and Debtor's counsel failed to appear at the June 11, 2020. It has been continued to July 9, 2020.

Failure to submit to examination 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).

Delinquent

Debtor is \$180.00 delinquent in plan payments, which represents slightly more than one month of the \$130.00 plan payment. 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 June 2, 2020. 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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Okharina O. Holmes ("Debtor"), is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 17, 2020. Dckt. 28. Debtor states on or about March 23, 2020, she was ordered to stay home from work for fourteen days due to another employee testing positive for COVID-19 as well as miss additional days to take care of her children who could not attend school because of the virus. Declaration, Dckt. 29. Furthermore, Debtor was not receiving her normal pay because she had recently returned from maternity leave. *Id.* Debtor further states she is resuming her normal work hours, and will file a modified plan before the hearing date. *Id.*

DISCUSSION

Delinquent

Debtor is \$6,834.31 delinquent in plan payments, with monthly plan payments of \$3,409.77. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to file a new plan is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified) and Debtor's clear, personal knowledge testimony concerning her finances and the economic factors Debtor

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

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,

July 1, 2020 at 10:00 a.m.
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care, has been in and out of the hospital over the last twelve months which has caused periodic income shortfalls. Declaration, Dckt. 154. Moreover, Debtor suffered health issues in January 2020 which led to a hospital stay. *Id.* She has since recovered and testifies that she has sent Trustee two payments in the last few weeks. *Id.* Filed as Exhibit 1 is an unauthenticated copy of a cashier's check for \$2,628.72. Dckt. 156. Debtor asserts she will be proposing a Modified Plan shortly. Opposition, Dckt. 153.

DISCUSSION

Delinquent

Debtor is \$4,989.50 delinquent in plan payments, with monthly plan payments in the amount of \$2,628.72. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to be current is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified) and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on August 5 2020.**

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 June 3, 2020. 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).

<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 the debtor, Diana Cueva Rubio ("Debtor"), is delinquent in Plan Payments.

DEBTOR'S REPLY

Debtor filed a Reply on June 17, 2020. Dckt. 37. Debtor states the delinquency will be cured prior to the hearing date and, in the event it is not, an amended Chapter 13 Plan will be filed and served on or before the hearing. Declaration, Dckt. 38.

DISCUSSION

Delinquent

Debtor is \$2,596.43 delinquent in plan payments, with monthly plan payments in the amount of \$874.67. 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 or file an amended 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.

27. [15-23769-E-13](#) **COREY LEE COLEMAN** **MOTION TO DISMISS CASE**
[DPC-4](#) **Peter Cianchetta** **6-3-20 [130]**

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 June 3, 2020. 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, Corey Lee Christopher Coleman (“Debtor”), is delinquent in plan payments.

DEBTOR’S REPLY

Debtor filed a Reply on June 17, 2020. Dckt. 134. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$5,720.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 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).

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.

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 June 12, 2020. By the court's calculation, 19 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 the debtor, Donald Wayne Lenihan and Kathleen Yvonne ("Debtor"), is unable to make payments and comply with the plan.

DISCUSSION

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Internal Revenue Service filed a secured claim in the amount of \$290,952.56, and the secured portion of the claim in the amount of \$284,092.57 is not provided for in the Plan or listed in Debtor's Schedule D. *See* Proof of Claim 1. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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.

29. [19-23073-E-13](#) **ROBERT MCGUCKIN** **MOTION TO DISMISS CASE**
[DPC-1](#) **Richard Jare** **6-3-20 [32]**

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 June 3, 2020. 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).

<p>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Robert Ian McGuckin (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 36. Debtor states he is self-employed in the mobile home repair business and was unable to make payments due to business slowdown caused by COVID-19. Declaration, Dckt. 37. Debtor testifies that he made a payment to Trustee in the amount of \$2,225.00 on June 15, 2020, and is confident he will be able to cure the remaining delinquency by the

hearing date. *Id.* Filed as an exhibit in support of the Opposition was a properly authenticated copy of the “screen shot” of the TFS page reflecting Debtor’s alleged payment in the amount of \$2,225.00. Dckt. 38.

DISCUSSION

Delinquent

Debtor is \$3,337.64 delinquent in plan payments, with monthly plan payments in the amount of \$1,118.82. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor’s prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor’s clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on August 5 2020**.

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 June 3, 2020. 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).

<p>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Christopher Michael Modellas ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 16, 2020. Dckt. 43. Debtor states his income was reduced by COVID-19 halting his employment, but his work has resumed. Declaration, Dckt. 44. Debtor asks for a two-day extension to make the June payment and states he will cure the delinquency.

DISCUSSION

Delinquent

Debtor is \$4,900.00 delinquent in plan payments, which represents multiple months of the \$2,450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on August 5 2020.**

31.	<u>14-30877</u> -E-13 <u>DPC</u> -6	TROY HARDIN Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 7-18-19 [186]
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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.

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 July 18, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXX.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Troy Armean Hardin (“Debtor”), is \$2,700.00 delinquent in plan payments.

DEBTOR’S AUGUST 7, 2019 OPPOSITION

Debtor filed an Opposition on August 7, 2019. Dckt. 190. Debtor states he fell delinquent in plan payments because of an improper termination from his previous place of employment. Debtor asserts he will either be current in payment or file a modified plan by the hearing date.

DEBTOR'S NOVEMBER 12, 2019 OPPOSITION

Debtor filed an Opposition on November 12, 2019. Dckt. 194. Debtor states he fell delinquent in plan payments because of an improper termination from his previous place of employment. Debtor has since found new employment. He requests additional time to complete Chapter 13 Plan payments.

DISCUSSION

Debtor is \$2,700.00 delinquent in plan payments, which represents multiple months of the \$900.00 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).

The Trustee concurred with the Debtor's request for a continuance in light of the plan being near completion and Debtor having new employment by which funding of the plan should be possible.

Though continuing the hearing from November 20, 2020, the Debtor has not filed a modified plan or motion to confirm to address the defaults. Debtor has not filed a motion for a hardship discharge. Other than opposing the dismissal, there is nothing in the file indicating any action being taken by the Debtor in this now more than five year old Chapter 13 case.

At the March 4, 2020 hearing, Debtor's counsel argued that this is a 100% plan, with Debtor's payments being delayed due to an injury. Debtor has a Worker's Comp claim that is pending.

The Trustee agreed to a continuance.

July 1, 2020 Hearing

Debtor has not filed any supplemental pleadings updating the court as to the status of his situation.

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 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 ~~xxxxxx~~~~

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on September 23, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Eduardo M. Ortega and Marie E. Ortega ("Debtor"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 16, 2020 requesting that the court issue an order granting Debtor until October 1, 2020 to be current with delinquent and ongoing Chapter 13 plan payments. Dckt. 120. Debtor states they have encountered difficulties due to COVID-19 temporarily shutting down the business, and having trouble in the transition to working from home and being understaffed. Declaration, Dckt. 121. Debtor further states their business is resuming and they have been making as many partial payments to Trustee as they can, but need additional time to file a new plan. *Id.*

DISCUSSION

Delinquent

Debtor is \$25,160.00 delinquent in plan payments, which represents multiple months of the \$8,000.00 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13

debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor indicates that they have been affected by the COVID-19 pandemic. Their business has suffered some setbacks due to the related stay at home orders.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on September 23, 2020.**

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 June 3, 2020. 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).

<p>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on September 23, 2020.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jose Luis Hernandez ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020 indicating that he will file a proposed plan and become current under that plan before the hearing. Dckt. 39. Debtor states his delinquency is due to loss of income caused by COVID-19. Declaration, Dckt. 40. Debtor further states he has met with his attorney to prepare a new plan in which he will be able to make payments in full. *Id.*

DISCUSSION

Delinquent

Debtor is \$9,000.00 delinquent in plan payments, which represents multiple months of the \$3,000.00 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor indicates that they have been affected by COVID-19. Debtor indicates a loss of income due to unavailable city related services necessary for his projects. Declaration, Dckt. 40.

A promise to file a new plan is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on September 23, 2020**.

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.

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 June 3, 2020. 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).

<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 the debtor, Sandra Lyne Avila ("Debtor"), delinquent in Plan Payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 15, 2020. Dckt. 89. Debtor acknowledges the delinquency and alleges that plan payments in the form of money orders have been mailed. *Id.* Debtor requests a conditional order that the case not be dismissed if the payments are received on July 10, 2020. *Id.*

DISCUSSION

Delinquent

Debtor is \$1,150.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Counsel alleges that payments have been made but no evidence is offered. No explanation is provided as to why Debtor is delinquent in payments. Moreover, unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

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, and the case is dismissed.

35.	<u>20-20690</u> -E-13 35 thru 36	JUSTIN/ANGELA ROBINSON Scott Shumaker	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 6-11-20 <u>63</u>
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Final Ruling: No appearance at the July 1, 2020 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 June 13, 2020. The court computes that 18 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 June 8, 2020.

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 subsection 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.

36. [20-20690-E-13](#) **JUSTIN/ANGELA ROBINSON** **MOTION TO DISMISS CASE**
[DPC-1](#) **Scott Shumaker** **6-12-20 [64]**

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 June 12, 2020. By the court's calculation, 19 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 debtors, Justin Lee Robinson and Angela Alyssa Robinson ("Debtor"), are delinquent in plan payments.
2. Debtor failed to provide proof of Social Security Numbers at the first and continued Meeting of Creditors.

DISCUSSION

Delinquent

Debtor is \$4,514.00 delinquent in plan payments, which represents one month of the \$4,514.00 plan payment. Debtor has paid \$0.00 into the plan to date. 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 Social Security Number

Debtor has not provided Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Linda Christina Conkling ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 17, 2020. Dckt. 69. Debtor acknowledges the delinquency and admits payments cannot become current. Declaration, Dckt. 70. Debtor cites COVID-19 related reasons for delaying the sale of Debtor's property. *Id.* Debtor anticipates the property will be ready for sale on July 1, 2020, and part of the proceeds would be directed to making plan payments. *Id.* She indicates having already employed a real estate agent to list the property once the repairs are completed. *Id.* Debtor also anticipates having a new proposed plan prior to the hearing on the instant motion. Opposition, Dckt. 69.

DISCUSSION

Delinquent

Debtor is \$9,385.29 delinquent in plan payments, which represents multiple months of the \$4,455.00 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor testifies to being affected by the current health pandemic as she has been unable to complete necessary repairs that will allow her to sell her property.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on August 5, 2020.**

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on September 23, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Brian Mitchell Okamoto ("Debtor"), is delinquent in Plan Payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 16, 2020. Dckt. 157. Debtor testifies he has encountered financial hardship indirectly related to COVID-19 moving his son back home and providing for him. Declaration, Dckt. 158. Debtor further encountered many unexpected medical, automobile, and home related expenses that caused delinquency. *Id.* Debtor states he will meet with his attorney to prepare a new plan. *Id.*

DISCUSSION

Delinquent

Debtor is \$12,748.31 delinquent in plan payments, with monthly plan payments in the amount of \$3,852.77. 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed

plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor testifies to being indirectly affected by the current health pandemic and encountered other financial hardships that have affected his ability to make plan payments. Moreover, Debtor has paid a total of \$93,708.95.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on September 23, 2020.**

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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on September 23, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Ara Hovakimyan and Anahit Hovakimyan ("Debtor"), are delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 37. Debtor states their income has been affected due to COVID-19 and will seek relief under the CARES Act to file a modified Plan that extends the life of their plan beyond sixty (60) months. Declaration, Dckt. 38.

DISCUSSION

Delinquent

Debtor is \$6,716.54 delinquent in plan payments, with monthly plan payments in the amount of \$2,207.03. 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

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 continued to **9:00 a.m. on September 23, 2020.**

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 June 3, 2020. 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, Andre L. Abernathy ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 16, 2020. Dckt. 62. Debtor alleges the delinquency was caused by a temporary loss of employment due to COVID-19. *Id.* Debtor further requests time to propose a Modified Plan pursuant to the CARES Act that extends the life of the plan by 11 months. *Id.*

DISCUSSION

Delinquent

Debtor is \$14,034.56 delinquent in plan payments, with monthly plan payments in the amount of \$3,197.54. 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).

CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor states the pandemic resulted in their being on a leave of absence. Unfortunately

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

Debtor offers no testimony or evidence in opposition to this Motion, but just the argument of counsel.

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—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 June 3, 2020. 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 hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 5, 2020.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Everardo Perez ("Debtor"), is delinquent in Plan Payments.

DISCUSSION

Delinquent

Debtor is \$2,958.00 delinquent in plan payments, which represents multiple months of the \$590.00 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).

Review of File

A review of the file discloses that Debtor's original counsel for this was Thomas O. Gillis, who was suspended from the practice of law in February 2020. An order authorizing the substituting of

Richard Jare as Debtor's counsel was entered on June 12, 2020. Dckt. 59. The Chapter 13 Plan was confirmed in this case on March 18, 2019.

Given Debtor's new counsel having been substituted in this case, the court continues the hearing.

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 continued to **9:00 a.m. on August 5, 2020**. The Chapter 13 Trustee shall serve a notice of continued hearing and the motion pleadings on Richard Jare, counsel for the Debtor, on or before July 7, 2020. Opposition shall be filed and served on or before July 22, and replies, if any, on or before July 29, 2020.

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on May 18, 2020. By the court's calculation, 38 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is XXXXX.

Tracy L. Wood ("Movant"), counsel of record for David Jerome Rynda ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and Local Civil Rules for the U.S. District Court, Rule 11-5(a).
- B. On May 15, 2020, Debtor informed this counsel by telephone that he is fired and that he has filed a bar complaint against this counsel.
- C. The above stated actions taken by Debtor render it unreasonably difficult for this counsel to carry out the employment effectively. Continued representation of Debtor by this counsel is resulting in an unreasonable financial burden on this counsel and has been rendered unreasonably difficult by Debtor.

- D. This counsel has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the Debtor, including giving due notice to Debtor, allowing time for employment of other counsel, and providing the client with all client papers and property.

Motion, Dckt. 218.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor informed counsel that he was fired and that Debtor had filed a bar complaint against Movant. Movant states in his declaration:

Debtor has today informed me he has fired me over a fee dispute, and he claims to have filed a bar complaint against me as well over a fee dispute.

Declaration, Dckt. 220.

Termination and Fee Dispute

It appears that the Debtor (individually and serving as the fiduciary Chapter 13 debtor) and Applicant have come to a parting of the ways. Movant has filed the instant motion not to withdraw just as counsel for the Debtor in the Adversary Proceeding, but in the bankruptcy case as well.

Movant asserts that Debtor informed Applicant in a phone call on May 15, 2020, that Movant was “fired” and that Debtor has filed a complaint with the State Bar. In his Declaration, Movant states that the disagreement relates to the terms of the fee agreement for services rendered in this bankruptcy case. *Id.* It is asserted that Debtor thinks that a pre-bankruptcy fee agreement for the State Court litigation governs the fees Movant is entitled to with respect to the bankruptcy case. Movant states that Debtor signed a subsequent bankruptcy fee agreement prior to Movant undertaking the bankruptcy representation, and the agreement provides for services such as the adversary proceeding to be billed on an hourly basis. A copy of the bankruptcy fee agreement is not filed with the instant Motion.

With a settlement having been reached with Ms. Machado and it appearing to have preserved substantial interests of the bankruptcy estate (Settlement Agreement, Dckt. 187; Civil Minutes, Dckt. 232), it appears that the legal services of Applicant have been very beneficial to the bankruptcy estate and the Debtor, having achieved establishing his ownership of the property in dispute.

DECISION

Under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor’s conduct, such as terminating Movant, allegedly having filed a state bar complaint, and refusing to pay the agreed upon fees for this case, is hindering Movant’s ability to carry out her employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Tracy L. Wood (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is **XXXXXX**.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 22, 2019. By the court's calculation, 69 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm is denied without prejudice.

The debtor, David Jerome Rynda ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$1,987.00 for 1 month, \$2,197.19 for 1 month, and \$2,470.52 for 58 months. Amended Plan, Dckt. 216. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On September 16, 2019, the Debtor filed an Addendum to the 8th Amended Plan. Dckt. 245. This Addendum states:

In the event debtor wins his quiet title complaint for 9436 Windrunner Lane, Elk Grove, CA 95758, against Elina Machado and Gabriel Machado, in adversary proceeding, case number 19-2023.

Once debtor obtains an order for quiet title he will record the order and list the property for sale at fair market value with a licensed real estate broker and sell the property as soon as he receives an offer from a qualified buyer for at least 90% of the appraised value, and he will pay off the mortgages on the property which are in the names of Elina and Gabriel Machado, and any utility liens placed on the property for utility services received by debtor during his ownership.

In the event debtor loses his quiet title complaint, debtor will vacate the premises within 60 days and turn the keys over to Elina Machado.

The plan, as stated in the Addendum, requires the sale of the real property at dispute with Elina Machado (Gabriel Machado not answering or otherwise opposing the relief sought by Debtor in the Adversary Proceeding).

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 9, 2019. Dckt. 225. Trustee argues Debtor is \$1,814.35 delinquent in plan payments under the proposed plan, and notes that the plan contains a summary of state court litigation in the additional provisions.

Trustee's March 17, 2020 Opposition

On March 17, Trustee filed an Opposition. Dckt. 268. Trustee opposes confirmation on the basis that:

- A. Debtor has been delinquent in plan payments since August 2019.
- B. Debtor's proposed Plan referenced litigation and Debtor must clarify the status of the litigation before the court can determine the feasibility of the plan.
- C. Debtor's proposed Plan calls for the sale of property if Debtor prevails on title, but does not provide a date for the sale or whether the mortgages will continue to be paid until the sale occurs.

The Chapter 13 Trustee reported that the Debtor is more than \$20,000 in default in plan payments. With monthly plan payments of \$2,479.52, as of the April 7, 2020 hearing, Debtor was in default for eight months.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is now \$20,000.00 delinquent in plan payments, which represents eight months of the \$2,470.52 plan payment. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The court has raised, in the hearings on motions to avoid the lien of David Hicks, that creditors Erika Leyva and John Rynda had liens recorded on the eve of bankruptcy. Such secured claims would appear to be fraudulent conveyances or preferential transfers that the Chapter 13 Debtor has the fiduciary duty of a trustee to avoid for the benefit of the bankruptcy estate and creditors pursuant to 11 U.S.C. §§ 547 and 548.

In this case Debtor has testified under penalty of perjury with respect to the deed of trust he granted his brother eleven days before this bankruptcy case was filed:

My brother paid over \$100,000 to help me with a situation that occurred ten years ago, and I owe him more than that for his help, therefore, as soon as I found a way to record my name on the title of my home by attaching a copy of my quitclaim

received from the Machados to a conveyance from me to my living trust. I also recorded with that a Declaration of Homestead, and a lien to secure the debt I owe my brother.

Declaration, p. 5:24-27,4:1.5; Dckt. 119.

The Deed of Trust given to Debtor's brother for the obligation ten years before the bankruptcy case was filed is Exhibit D, Dckt. 123. Though testifying the obligation occurred ten years earlier, the Deed of Trust states that the indebtedness is evidenced by a promissory note of the same date as the Deed of Trust in the amount of \$100,000. Deed of Trust, ¶ 1.3; *Id.*

The Deed of Trust has a Recorder's stamp date of November 30, 2018 at 2:08:48 p.m. The Deed of Trust is dated November 30, 2018 and a notary acknowledgment of the same date.

It appears that Debtor has documented either a voidable fraudulent conveyance (11 U.S.C. § 548, § 544) or a preference, if there was an enforceable obligation actually owed (11 U.S.C. § 547). While the Debtor has been candid about the obligation, he cannot choose to favor his family members over other creditors once he has filed bankruptcy. The Debtor must exercise the fiduciary duties and powers to properly recover all monies and assets for the bankruptcy estate, even if that means recovering it from his brother.

Debtor's plan makes no such provision, and though being in bankruptcy now for sixteen (16) months, neither he nor his counsel, both who owe duties to the bankruptcy estate to enforce its rights and recovery property for the estate, have taken any action to recover this purported transfer.

With respect to the obligation for which Erika Leyva was given a deed of trust against the Property, Debtor testified that she made a \$10,000 and a \$15,000 loan to Debtor. These debts appear to be asserted to have arisen sometime in the four years prior to the filing of the bankruptcy case. The Erika Leyva Deed of Trust for a \$10,000 obligation is Exhibit E, has a recorder stamp date of November 30, 2018 at 2:09:47 p.m. Dckt. 124 at 2-6. Exhibit F is an Erika Leyva Deed of Trust for a \$15,000 obligation, with a recording stamp date of November 30, 2018 at 2:08:48 p.m. Dckt. 125 at 2-6.

These two eve of bankruptcy recorded deeds of trust raise the same 11 U.S.C. § 544, § 548, and § 547 issues, and obligations on the Debtor and Debtor's counsel to prosecute for the bankruptcy estate.

Proposed Plan

Though unable to make the Plan payments for eight months, Debtor has allowed the defaults to multiply. In connection with the Adversary Proceeding, the Debtor has argued that he is helpless to move forward and sell the Property until the time he gets a final judgment quieting title in his favor. Then, as provided in this plan, he will then sell the Property.

Elina Machado has argued that she wants the property sold, the debt that is in her name secured by the property paid, and have her rights determined. Machado seems equally stymied in moving her interests forward.

It appears that both the Debtor and Machado, and their respective counsel, have not

considered 11 U.S.C. § 363(b), § 363(f), and § 363(h) that allows the federal court to order the sale of property in which the bankruptcy estate asserts an interest, that can be sold free and clear of any interest that is in bona fide dispute, and sell property in which the bankruptcy estate and another have an interest. Congress providing for the federal courts to have exclusive jurisdiction over property of the bankruptcy estate, including determining what is property of the bankruptcy estate (unless the federal court decides to abstain to have the issue determined in another court), the sale of the Property before conclusion of the Adversary Proceeding would be a simple task for two parties in a good faith bona fide dispute seeking to maximize the recovery obtained from the property.

In recent pleadings Debtor states that he cannot sell the Property before concluding the Adversary Proceeding because he needs to use the money to buy a replacement property. But if it is sold, even if all of the money is held in a blocked account, all of the money he would be paying toward interest on this debt would be freed up to pay rent pending resolution of the Adversary Proceeding.

Delayed Sale Terms

One argument made at some point in time in this case by Machado is that she wants the property sold, the debts paid, and not have these obligations she is personally liable on “hanging on out there.” It appears that Debtor and Machado could substantially reduce the areas of dispute by proceeding to immediately sell the property rather than waiting until after the litigation is completed and see if Debtor wins. 11 U.S.C. § 363(f) allows for the sale of property free and clear of an interest other than the bankruptcy estate when that other interest is the subject of *bona fide* dispute.

The Chapter 13 Plan requires the Debtor to make the current monthly payment and an arrearage payment on the Class 1 claim secured by the Property that is the subject of the litigation with Machado. Debtor has not made at least eight months of such payments.

Post-Petition Payment of Claim Against Debtor

In looking through the Docket the court noted that David Hicks, a creditor, filed a Satisfaction of Claim, stating that Proof of Claim No. 7 had been satisfied in full “by a corporate co-debtor.” Proof of Claim No. 7-1 was filed on February 15, 2019, which states under penalty of perjury that David Hicks is the creditor. The claim is stated to be in the amount of \$104,250.38, and it is secured by an abstract of judgment. The unidentified property securing this claim is stated to have a value of \$104,250.38. Questions 1, 7, 9; Proof of Claim 7-1.

Attachment 1 to Proof of Claim 7-1 is an Abstract of Judgment with a Recorder’s stamp date of December 15, 2015 (3 years before the bankruptcy case was filed). Mr. Hicks is not shown as the judgment creditor, and a Carlina Rynda is identified as the “Petitioner.”

The Abstract of Judgment identifies an Additional Judgment Debtor, which is stated to be: “Rynda’s #1 Insurance Services, Inc.,” with David Rynda identified as the agent for service of process. It appears that Rynda’s #1 Insurance Services, Inc. is the corporate co-debtor with more than \$100,000 to pay Mr. Hicks in February 2019, after this bankruptcy case was filed.

On the Statement of Financial Affairs Debtor lists being an owner of a business, Rynda’s No. 1 Insurance Services, Inc., which he stated has existed from “December 1995 to present.” Statement of Financial Affairs Question 27; Dckt. 51 at 7. In the section to describe the nature of the business it

states, “Insurance Broker. Debtor is former owner.” *Id.* This is inconsistent with saying that the period in which his business has existed is 1995 to present.

Erika Leyva is identified as the “accountant or bookkeeper” for the Debtor’s business.

In response to Question 18 on the Statement of Financial Affairs, Debtor states that he did not sell, trade, or otherwise transfer any property to anyone, other than in the ordinary course of business in the two (2) years before filing bankruptcy. Two years before filing this case would be December 12, 2016. *Id.* at 5.

APRIL 22, 2020 HEARING

At the April 22, 2020, hearing, counsel for the Debtor and counsel for Elina Machado (a defendant in the Adversary Proceeding to determine the estate’s and Ms. Machado’s interest in real property) reported to the court that Ms. Machado and the Debtor have entered into a stipulation resolving all issues, including those related to the Property but pending in other courts, and are proceeding with an immediate sale of the property pursuant to 11 U.S.C. § 363. A Status Report has been filed in Adversary Proceeding 19-2023 (Dckt. 155) stating the terms of the Stipulation.

The Debtor is proceeding to have the default of Defendant Gabriel Machado and judgment entered in the Adversary Proceeding pursuant to the Stipulation.

The Chapter 13 Trustee stated that he had no opposition to the continuance of the hearings in the Bankruptcy Case and the related Adversary Proceeding concerning assets of the bankruptcy estate.

SETTLEMENT WITH ELINA MACHADO AND PROSECUTION OF A PLAN

The “plan for a Plan” in this case has been for the sale of the Property once the Debtor could obtain a judgment documenting his interest in the Property. With the settlement with Elina Machado and the motion for entry of a default judgment against Gabriel Machado having been granted, the foundation has been laid for a plan providing for the liquidation of the Property as represented.

The current Plan, with its Eighth Amendment (Dckt. 245) is not a plan to be confirmed. The Debtor needs to clean the slate and get one, unified Chapter 13 plan before the court, with all of the terms thereof stated in one document and not a series of amendments.

The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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 Confirm the Chapter 13 Plan filed by the debtor, David Jerome Rynda (“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 to Confirm the Plan is denied without prejudice, and the proposed Chapter 13 Plan is not confirmed.

44. [18-27720-E-13](#) **DAVID RYNDA** **CONTINUED MOTION TO DISMISS**
[DPC-3](#) **Tracy Wood** **CASE**
1-13-20 [\[256\]](#)

No 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 January 13, 2020. By the court’s calculation, 51 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 XXXXXXXXXX.

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

1. The debtor, David Rynda (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file an amended plan and set it for confirmation.

On February 26, 2020, Trustee filed a Status Report admitting that the second ground for dismissal, that of no plan filed, was in error but requests the court to dismiss on delinquency grounds. Dckt. 262.

DISCUSSION

Debtor was, as of the Trustee’s Declaration filed on March 17, 2020, \$17,878.52, with another monthly payment of \$2,470.52 due on March 25, 2020. Opposition and Declaration; Dckts. 268, 269. The regular monthly plan payment is \$2,470.52. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

With respect to Chapter 13 cases, the Bankruptcy Code provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a “totality-of circumstances” test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the general “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

The major asset in this Bankruptcy Case is real property commonly known as 9436 Windrunner Lane, Elk Grove, California. On Schedule A/B Debtor states that it has a value of \$399,334. The ownership of this Property is in dispute, with Elina Machado asserting an interest of at least 1/3 of the net proceeds from the sale of the Property.

The property is encumbered by the secured claims of PHH Mortgage Corporation (transferee of claim from Ocwen Loan Servicing, LLC), which was (\$168,986.90), Proof of Claim No. 4-1, as of the commencement of this case (with there being more than \$20,000.00 of post petition unpaid amounts), and Lakeside Community Owners Association of (\$22,871.00, plus post-petition interest), Proof of Claim No. 6-1.

Using the Debtor’s valuation, there is potentially \$185,000 of value in the Property for creditors, if the Debtor is the owner. That value has been diminishing as Debtor and Elina Machado have engaged in non-protective adversary proceeding litigation.

During this time, Debtor has defaulted on the Plan payments, which includes the payments for the current monthly mortgage payments and arrearage cure payments on the PHH Mortgage Corporation claim.

In the Adversary Proceeding with Elina Machado, Debtor has testified with respect to the Property:

I am currently facing an emergency because eight unlawful tenants have entered my home, six of them without my permission, and are residing in my home as squatters since July 2019, and refuse to leave, and refuse to pay rent, claiming they do not need to pay rent because I am not the owner of the property.

19-2023; Declaration, p. 1:25.5-28.5, Dckt. 128.

In the past few months I have filed two Unlawful Detainer complaints in Sacramento County Court, in pro per, against dead beat tenants and squatters that refuse to leave my home. The Unlawful Detainer judge checked the County records online and found Elina M. Machado and Gabriel Machado listed as the owners, refused to look at the copy of my quitclaim, nor my proof of bankruptcy filing, nor my complaint filed and pending in the bankruptcy court for quiet title, told me bankruptcy courts do not hear claims for quiet title, and told me until I come back with order for quiet title, he will not evict anyone for me.

Id., p. 2:1-7. Debtor does not indicate who is representing him, as the fiduciary of the bankruptcy estate, in acting to protect the Property, which is property of this bankruptcy estate.

Without the ability to evict these non-paying tenants and squatters, and bring in two reliable tenants, I cannot afford to make my Chapter 13 Trustee's payment, and I have fallen behind over \$15,000 on my payments, and the Trustee has filed a motion to dismiss my case set for hearing 03/04/2020.

Id., p. 2:11.5-14.5.

In addition, these tenants are doing illegal drugs in my home, making it a filthy mess, they are very noisy, fighting, screaming and yelling at all hours of the night, and they often break into my room and garage and have stolen over \$1,000 of property from me. Police have been called to my home several times due to theft and disturbance caused by these tenants.

Id., p. 2:19-22.

The Debtor and his counsel in this case, owing their respective duties to the bankruptcy estate, appear to have been "lost" in the State Court, allowing the Property, as property of the bankruptcy estate to be used for illegal drug use, fighting, screaming, and break-ins. Though this federal court has exclusive jurisdiction over property of the bankruptcy estate, 11 U.S.C. § 1334(e) (from which it may elect to abstain) and Congress has created a specific federal right for the Debtor, in exercising the powers and responsibilities of a bankruptcy trustee, to obtain possession of all property of the bankruptcy estate from third-parties, 11 U.S.C. § 542, Debtor has not sought to so do.

In an earlier Declaration in the Adversary Proceeding Debtor testified that he had taken eight (8) persons in as tenants in the Property. *Id.*; Declaration, p. 2:6-8, Dckt. 107.

In this bankruptcy case Debtor state under penalty of perjury that he granted to his brother on the eve of the bankruptcy filing (eleven days before filing) a deed of trust to secure an asserted obligation of \$100,000 that dates back to ten years. Declaration, p. 3:24-27; Dckt. 119.

Debtor's brother, John Rynda, has filed a declaration in which he confirms under penalty of perjury that the "obligation" arises out of an attempt he made to provide funding to buy the Debtor's ex-wife's shares in the Debtor's insurance business in the ex-wife's bankruptcy case in 2009. Declaration, p. 2:5.5-14.5. John Rynda testified that he was the successful high bidder at \$100,000.00. However, he was unable to time pay the \$100,000 so the trustee conducted another auction and sold the shares to someone else. *Id.*, 2:16-20.

John Rynda, though unable to pay the \$100,000.00, “sued for the unpaid contract,” but “lost in court.” He then had to pay the trustee the difference between the \$100,000 he had contracted to pay and the trustee’s legal fees, which John Rynda testifies was another \$153,000. *Id.*, 2:21-25.

John Rynda’s testimony corroborates that the obligation for which the deed of trust was recorded on the eve of the bankruptcy filing was a decade old.

The Plaintiff-Debtor has stuck in the court’s face a textbook preference or fraudulent conveyance that may be avoided by a bankruptcy trustee or a Chapter 13 debtor who is responsible for exercising the duties, powers, and fiduciary responsibilities over property of the bankruptcy estate to avoid such preferences or fraudulent conveyances. 11 U.S.C. § 544, § 547, § 548, § 550.

APRIL 22, 2020 HEARING

At the April 22, 2020, hearing, counsel for the Debtor and counsel for Elina Machado (a defendant in the Adversary Proceeding to determine the estate’s and Ms. Machado’s interest in real property) reported to the court that Ms. Machado and the Debtor have entered into a stipulation resolving all issues, including those related to the Property but pending in other courts, and are proceeding with an immediate sale of the property pursuant to 11 U.S.C. § 363. A Status Report has been filed in Adversary Proceeding 19-2023 (Dckt. 155) stating the terms of the Stipulation.

The Debtor is proceeding to have the default of Defendant Gabriel Machado and judgment entered in the Adversary Proceeding pursuant to the Stipulation.

The Chapter 13 Trustee stated that he had no opposition to the continuance of the hearings in the Bankruptcy Case and the related Adversary Proceeding concerning assets of the bankruptcy estate.

JULY 1, 2020 HEARING

As Monday June 29, 2020, the file in this case still reflected that Tracy Wood was seeking to withdraw as counsel believing that the Debtor had fired him. At the recent hearing on the Motion to Approve Compromise, Mr. Wood indicated that the relationship between Mr. Wood and the Debtor may be improving and he could continue as counsel for the Debtor.

Now, eighteen months into this case and no confirmed plan in place and the Debtor having appeared before the court on multiple occasions, it is clear to the court that this Debtor must be represented by counsel (whether Mr. Wood or other bankruptcy attorney) to have any chance of confirming and performing a plan— including performing the settlement with Ms. Machado.

It may be that with the title issues resolved by the settlement and the judgment of this court, the Debtor may be left with only “friendly” creditors he desires to pay - other than the holder of the mortgage secured by the Property. The “friendly” creditors may not object to the Debtor leaving the protection of the bankruptcy court and address their claims and that of the “non-friendly creditor” mortgage holder in the cold, harsh real world beyond bankruptcy protection.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

~~———— Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is denied, and the case is converted to a case under Chapter 7.~~

~~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 David P. Cusick (“the Chapter 13 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, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.~~

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is ~~XXXXX~~.

Tracy L. Wood, the Attorney ("Applicant") for David Jerome Rynda, the Chapter 13 Debtor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 12, 2018 through April 29, 2020 Applicant requests fees and expenses in the total amount of \$30,537.25, with fees in the amount of \$25,916.00 plus \$4,000 for the Chapter 13 base fee, and costs in the amount of \$221.25.

APPLICABLE LAW

For Chapter 13 bankruptcy cases, Local Bankruptcy Rule 2016-1 provides, in pertinent part, the following for the allowance of reasonable attorney's fees for counsel representing a debtor. An attorney and client may elect for the attorney to be paid a flat ("no-look") fee of up to \$4,000.00 in nonbusiness cases and \$6,000.00 in cases in which the individual debtor has business obligations and assets. L.B.R. 2016-1(c). The approval of the no-look fee is made in the order confirming the Chapter 13 plan. *Id.* The attorney and client can opt-out of the no-look fee and have the attorney's fees and costs allowed as otherwise permitted under 11 U.S.C. §§ 300, 331. L.B.R. 2016(a).

If the attorney and client elect the no-look fee for the services relating to the Chapter 13 case, the attorney is allowed additional compensation beyond the scope of the no-look fees. *See*, L.B.R. 2016-1(c)(3).

The fee election is stated in the Rights and Responsibilities signed by the attorney and debtor

filed in the bankruptcy case. L.B.R. 2016-1(a).

The Rights and Responsibilities document filed by Debtor and Applicant in this case states with respect to fees:

Initial fees charged in this case are \$ 4,500.00, and of this amount, \$ 0.00 was paid by the Debtor before the filing of the petition. While this initial fee should be sufficient to fully and fairly compensate counsel for all pre-confirmation services and most post-confirmation services rendered in the case, where substantial and unanticipated post-confirmation work is necessary, the attorney may request that the court approve additional fees. If additional fees are approved, they shall be paid through the plan by the chapter 13 trustee unless otherwise ordered. The attorney may not receive fees directly from the Debtor.

Dckt. 14.

The scope of pre-petition, post-filing, confirmation, and post-confirmation services are the standard ones expected, and do not include adversary quite title litigation. However, they do include confirmation of a plan, entry of a discharge (if the debtor is eligible), and closing of the case. *Id.*

Statutory Basis For Allowance of Fees

Congress provides in 11 U.S.C. § 329 that the bankruptcy court shall determine whether fees charged by an attorney for a debtor are reasonable. For a Chapter 13 case, Local Bankruptcy Rule 2016-1 provides the vehicle for the court making that determination and sets some per se allowable amounts (which are always subject to a case by case review if appropriate).

Using the provisions of 11 U.S.C. § 330 in determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to

employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include defense of a motion for relief from the automatic stay, preparing and filing several plans and motions to confirm plans, prosecuting an adversary proceeding, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

Lodestar Analysis

If Applicant has opted out of the no-look fee or there are substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti*

& Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.), 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion for Relief From the Automatic Stay: Applicant drafted correspondence, communicated with Debtor, reviewed the file, and prepared and filed the substitution of attorney, and drafted the opposition and appeared at the hearing for the Motion for Relief from the Automatic Stay filed by Elina Machado.

Proposed Plans and Motions to Confirm: Applicant prepared, filed, and served nine proposed plans for Debtor along with Motions to Confirm said plans.

Adversary Proceeding: Applicant prepared, filed, and served Debtor's complaint for Quiet Title, and defended against Defendant Elina Machado's Counter Claims. Applicant further prepared, filed, and served discovery.

Case Administration: Applicant prepared, filed Debtor's petition and schedules; prepared filed, and served the instant application for attorney's fees and costs, drafted correspondence, and met with client for administration of the case.

Applicant spent 64.79 hours performing the work in the categories described above.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Tracy L. Wood	64.79	\$400.00	\$25,916.00
Total Fees for Period of Application			\$25,916.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$221.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Parking and Mileage		\$221.25
		\$0.00
Total Costs Requested in Application		\$221.25

REVIEW OF TIME RECORDS AND SET FEES REQUESTED

In the Motion, Applicant requests \$4,000.00 as the “Chapter 13 base fee” and \$25,916.00 for post-petition litigation. Motion, p. 2:10.5-13; Dckt. 305. In saying \$4,000.00 for a “base fee,” the court interprets that language to mean “for all of the services required to qualify for a \$4,000.00 no-look fee.” As discussed above, those services include not only filing a case, but getting a plan confirmed, completed, and discharge entered. There is not a confirmed plan in the current case. It appears that the success of the post-petition litigation with Ms. Machado may obviate a need for a confirmed plan.

Based upon the scope of the actual and necessary work done, a fixed fee other than in the proportions provided in Local Bankruptcy Rule 2016-1(c)(4) may be appropriate. But that is based on the actual work required.

Exhibits B and C filed by Applicant are the billing records to support the \$25,916.00 for post-petition litigation services. Exhibit B is for the State Court Litigation. Dckt. 309. The State Court fees total \$2,757.00. \$1,600 of the fees are for the review of the State Court judge’s move out order and drafting the appeal brief.

Exhibit C is for the Adversary Proceeding litigation with Ms. Machado (Mr. Machado having defaulted by not responding). Dckt. 310. Both fees for legal services and expenses are mixed into one set of billings organized by date.

The hours billed and fees are not separately stated, the total hours billed not identified, and there is not a task billing analysis. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

A review of the time records does not appear to indicate a large amount of time sunk into any one area. There are several motions for summary judgment, which the court notes were not granted.

Termination, Fee Dispute, and Pending Motion to Convert or Dismiss

With a settlement having been reached with Ms. Machado and it appearing to have preserved substantial interests of the bankruptcy estate (Settlement Agreement, Dckt. 187), it appears that the legal services of Applicant have been very beneficial to the bankruptcy estate and the Debtor, having achieved establishing his ownership of the property in dispute.

Unfortunately, it appears that the Debtor (individually and serving as the fiduciary Chapter 13 debtor) and Applicant have come to a parting of the ways. On May 15, 2020, in the Adversary Proceeding Applicant filed a Motion to Withdraw as counsel for the Debtor. This is not to withdraw just as counsel for the Debtor in the Adversary Proceeding, but in the bankruptcy case as well. 19-2023; Motion to Withdraw, Dckt. 218.

In the Motion, Applicant asserts that Debtor informed Applicant in a phone call on May 15, 2020, that Applicant was “fired” and that Debtor has filed a complaint with the State Bar. In his Declaration, Applicant states that the disagreement relates to the terms of the fee agreement for services rendered in this bankruptcy case. Dckt. 220. It is asserted that Debtor thinks that a pre-bankruptcy fee agreement for the State Court litigation governs the fees Applicant is entitled to with respect to the bankruptcy case. Applicant states that Debtor signed a subsequent bankruptcy fee agreement prior to Applicant undertaking the bankruptcy representation, and the agreement provides for services such as the adversary proceeding to be billed on an hourly basis. A copy of the bankruptcy fee agreement is not filed with the Motion to Withdraw.

There is also the continued hearing on the Motion to Convert or Dismiss this Chapter 13 case. Motion, Dckt. 283. As discussed in the Civil Minutes from prior hearings on the Motion to Dismiss, the Debtor is in substantial monetary default under the Chapter 13 plan he has proposed and has been unable to make the necessary plan payments. Civil Minutes, Dckt. 283. Debtor also has lost control of the Property, with several boarders he took in refusing to pay rent and then allowing other persons to occupy the Property. *Id.* Debtor has stumbled through multiple unlawful detainer proceedings, with the State Court judges refusing to issue order evicting them because Debtor never recorded a deed (which Debtor now says is lost) giving him title to the Property. Debtor failed to understand, even when pointed out to him by this court, that the federal court has exclusive jurisdiction over property of the estate, or what is asserted to be property of the estate, and the Bankruptcy Code and Rules provide express authority for ordering the turning over of possession of such property to a trustee or other fiduciary (such as a Chapter 13 debtor) of the bankruptcy estate.

Debtor has faced other challenges in this case and leading up to this case. On the eve of bankruptcy he recorded two deeds of trust which appear to be either for antecedent debts or debts which cannot be legally enforced against him. These were to Debtor’s brother for an obligation ten years earlier and a business associate. *Id.* Debtor has not acted on those potentially avoidable transfers. This may be based on a belief that if he performs the settlement with Ms. Machado and sells the Property, all creditors will be paid so as there not being a fraudulent conveyance or preference rights (and duties for the fiduciary of the bankruptcy estate) to be administered.

It appears that Debtor may not understand that Congress has made, as a matter of federal law, a determination of the fees that Applicant is entitled/allowed a federal law issue pursuant to 11 U.S.C. § 329. If Debtor has a dispute as to what are the terms of the agreement, that good faith dispute is to be

promptly and efficiently litigated in this court. While Debtor may file other complaints, that does not override 11 U.S.C. § 329.

It may be that there appearing to be a settlement with Ms. Machado that documents the vesting of title in the Property in the bankruptcy estate for the Debtor may well obviate the need for a Chapter 13 plan. It may be that a Chapter 7 trustee can firmly and properly exercise the rights of the bankruptcy estate in performing the settlement, with the Debtor able to provide constructive input and assistance. It may be, in light of the events in this case, that Debtor will be unable to perform the settlement.

The court will address this Application for Fee at the same time as the hearing on the Motion to Withdraw and the Motion to Convert this case.

At the hearing, xxxxxxxxxxxx

Final Ruling: No appearance at the July 1, 2020 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, Chapter 13 Trustee, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is dismissed without prejudice, it being duplicative of the motion filed in the bankruptcy case.

Tracy Wood, Counsel for Chapter 13 Debtor David Rynda, ("Applicant") filed this Motion for Allowance of Professional Fees in this accompanying adversary proceeding. Motions for allowance of professional fees are properly filed in the bankruptcy case, not with the adversary proceeding.

Applicant having filed a Motion for Compensation in the bankruptcy case, Case No. 18-277720, Dckt. 305, this Motion for Allowance of Fees is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by Tracy Wood

("Applicant"), Attorney for David Jerome Rynda, Chapter 13 Debtor, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Allowance of Fees is dismissed without prejudice.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, and Office of the United States Trustee on March 11, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Summary Judgment is dismissed without prejudice as moot, the court having approved the settlement of the issues in this Adversary Proceeding as between Plaintiff-Debtor David Rynda and Defendant Elina Machado (Dckt. 232), and having granted Plaintiff-Debtor's Motion for Entry of Default Judgment against Defendant Gabriel Machado (Dckt. 231).

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 for Summary Judgment filed by David Jerome Rynda ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the court having approved the settlement of the issues in this Adversary Proceeding as between Plaintiff-Debtor David Rynda and Defendant Elina Machado (Dckt. 232), and having granted Plaintiff-Debtor's Motion for Entry of Default Judgment against Defendant Gabriel Machado (Dckt. 231), and good cause appearing,

IT IS ORDERED that the Motion For Summary Judgment is dismissed without prejudice.

48. [18-27720-E-13](#) **DAVID RYNDA**
[19-2023](#) **Tracy Wood**
RYNDA V. MACHADO ET AL

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
10-16-19 [72]

Plaintiff's Atty: Tracy L. Wood
Defendant's Atty: Armando S. Mendez

Adv. Filed: 2/11/19
Answer: none
1st Amd. Cmplt. Filed: 3/3/19
Answer: none
2nd Amd. Cmplt. Filed: 9/17/19
Answer: none
3rd Amd. Cmplt. Filed: 10/16/19
Answer: 11/16/19
Counterclaim Filed: 11/16/19
Answer: 2/13/20

Notes:

Continued from 4/22/20 to afford the Parties the opportunity to effectuate the reported settlement.

[TLW-14] *Ex Parte* Application for Attorney Fees filed 4/26/20 [Dckt 167]; Withdrawal of Document filed 4/29/20 [Dckt 181]

Entry of Default and Order Re: Default Judgment Procedures [Gabriel Machado] filed 4/27/20 [Dckt 176]

[TLW-14] Debtor's Motion for Authorization to Sell Real Property of the Bankruptcy Estate and Authorization to Settle and Compromise the Rights and Interest of the Bankruptcy Estate filed 5/11/20 [Dckt 184]; set for hearing 6/25/20 at 11:00 a.m.

[TLW-15] Motion for Default Judgment filed 5/11/20 [Dckt 196], set for hearing 6/25/20 at 11:00 a.m.

The Status Conference is XXXXXXXXXX

FINAL RULINGS

49. [20-20302-E-13](#)
[DPC-3](#)

OMAR URCUYO
Peter Macaluso

MOTION TO DISMISS CASE
6-9-20 [\[52\]](#)

Final Ruling: No appearance at the July 1, 2020 hearing is required.

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 June 9, 2020. By the court's calculation, 22 days' notice was provided. 14 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:

1. the debtor, Omar Bermudez Urcuyo ("Debtor"), has not made any plan payments.
2. Debtor has failed to file a new plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 23, 2020. Dckts. 60, 57. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 61. 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.

50. [19-24768-E-13](#) **LARRY BELLANI** **MOTION TO DISMISS CASE**
[DPC-4](#) **Michele Poteracke** **6-1-20 [90]**

Final Ruling: No appearance at the July 1, 2020 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 June 1, 2020. By the court’s calculation, 30 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.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

The Chapter 13 Trustee David Cusick (“Trustee”) seeks dismissal of the case on the basis that the debtor Larry James Bellani (“Debtor”) failed to file a new plan and set it for hearing.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 15, 2020. Dckt. 103, 109. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 111. 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.

51. [19-25103-E-13](#) **PHILLIP CARRERA** **MOTION TO DISMISS CASE**
[DPC-1](#) **Mohammad Mokarram** **6-3-20 [28]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 the debtor, Phillip Lee Carrera (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$9,900.00 delinquent in plan payments, which represents multiple months of the \$3,100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor 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.

53.	<u>17-23305</u> -E-13 <u>DPC-2</u>	CHERRI DA ROZA Candace Brooks	CONTINUED MOTION TO DISMISS CASE 10-9-19 [55]
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Final Ruling: No appearance at the July 1, 2020 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 October 9, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Cherri Mae Da Roza (“Debtor”), is delinquent in plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on November 6, 2019. Dckt. 59. Debtor filed a Declaration in support of her Response. Dckt. 60. Debtor also filed Exhibit A. Exhibit A was properly authenticated in the Declaration.

Debtor testifies to the following:

1. Debtor has been dealing with health issues.
2. Debtor has been working on refinancing her mortgage, and attached as Exhibit A is an Approval Certificate for a new mortgage.
3. Debtor is in the process of submitting additional documentation needed to complete the approval.
4. Debtor requests this court allow her approximately 60 days to either file a motion to approve the refinancing of her mortgage loan or a motion to modify her chapter 13 plan in the event the refinancing does not go through.

DISCUSSION

Delinquent

Debtor is \$1,316.00 delinquent in plan payments, which represents multiple months of the \$658.00 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).

April 22, 2020 Hearing

In light of the time Debtor has been in this case, the issues relating to the Motion to Dismiss, and the impact of the COVID-19 restrictions on the ability to do business, the hearing is continued.

Debtor's Second Modified Chapter 13 Plan

On April 23, 2020, Debtor filed a Second Modified Chapter 13 Plan. Dckt. 94. The Plan was confirmed on June 2, 2020. Dckt. 102.

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 July 1, 2020 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 June 3, 2020. 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.

<p>Pursuant to prior order of this court, the hearing on the Motion to Dismiss has been continued to 10:00 a.m. on August 5, 2020. Dckt. 55</p>
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Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 debtor, Hsin-Shawn Cyndi Sheng (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$500.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

56. [16-24907-E-7](#) **MARY AIKEN** **MOTION TO DISMISS CASE**
[DPC-2](#) **Seth Hanson** **6-3-20 [54]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<p>The Motion to Dismiss is denied without prejudice as moot.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Mary Terlaje Aiken’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on June 16, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 59. 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 16, 2020. *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.

57. [19-25007-E-13](#) **JHENAI ROBLE** **MOTION TO DISMISS CASE**
[DPC-1](#) **Thomas Amberg** **6-3-20 [18]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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, Jhenai Pasco Roble (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 23, 2020. Dckts. 28, 24. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 26. 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.

58. [17-27908-E-13](#) **LYNETTE EDWARDS** **CONTINUED MOTION TO DISMISS**
[DPC-3](#) **Peter Macaluso** **CASE**
2-5-20 [36]

Final Ruling: No appearance at the July 1, 2020 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 June 9, 2020, Dckt. 82; 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 response filed by Lynette Shena Edwards (“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. 82, 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 July 1, 2020 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 June 3, 2020. 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.

<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 debtor, Lawrence Michael McNamee ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$55,728.00 delinquent in plan payments, which represents multiple months of the \$9,288.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

60. [20-20213-E-13](#) **ROYLEE/FLORENCE** **MOTION TO DISMISS CASE**
[DPC-1](#) **WOOLFORD** **6-9-20 [15]**
Mikalah Liviakis

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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 debtors, Roylee Woolford and Florence Maureen Woolford (“Debtor”), are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$7,392.33 delinquent in plan payments, with monthly plan payments of \$2,485.58. 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 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.

61.	<u>19-20614-E-13</u> <u>DPC-2</u>	LUIS TORRES MORAN Dale Orthner	MOTION TO DISMISS CASE 6-9-20 [42]
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Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 the debtor, Luis Enrique Torres Moran (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$1,935.00 delinquent in plan payments, which represents one month of the \$1,935.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 debtor, Joyce Loretta Jackson ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$12,822.42 delinquent in plan payments, with monthly plan payments of \$1,751.17. 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 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.

63. [18-20415-E-13](#) **KARINA HANGARTNER** **MOTION TO DISMISS CASE**
[DPC-3](#) **Diana Cavanaugh** **6-3-20 [59]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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, Karina A. Hangartner (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 23, 2020. Dckts. 69, 66. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 68. 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.

64. [19-21015-E-13](#) **CAVIN SMITH AND DIANA** **MOTION TO DISMISS CASE**
[DPC-1](#) **AGUILAR** **6-9-20 [20]**
 Scott Hughes

Final Ruling: No appearance at the July 1, 2020 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 June 24, 2020, Dckt. 26; 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 Cavin Wayne Smith and Diana Carolina Aguilar (“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. 26, 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 July 1, 2020 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 June 1, 2020. 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 denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Michelle Rosiles (“Debtor”), has failed to file a new plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 26, 2020. Dckt. 70, 73. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 72. 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 July 1, 2020 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 20, 2020. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 13, 2020.

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 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.

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 debtor, Edward Franklin Pettyplace ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$6,333.57 delinquent in plan payments, with a monthly plan payment of \$1,478.63. 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 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.

68. [19-24921-E-13](#) **CARRIE NOAH** **MOTION TO DISMISS CASE**
[DPC-3](#) **Bruce Dwiggins** **6-3-20 [42]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 debtor, Carrie Lynn Noah (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$8,002.38 delinquent in plan payments, with monthly plan payments of \$2,667.46. 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 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.

69. [18-26824-E-13](#) **LEE WUERZBURGER** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Seth Hanson** **6-3-20 [44]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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 debtor, Lee Emerson Wuerzburger (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$11,334.99 delinquent in plan payments, with monthly plan payments of \$3,218.27. 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 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.

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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 debtors, Jose Rodriguez and Erika Martinez (“Debtor”), are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$460.00 delinquent in plan payments, which represents multiple months of the \$115.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

71. [19-21025-E-13](#) [DPC-2](#) TASSANNA MILES MOTION TO DISMISS CASE
Jeffrey Meisner 6-9-20 [40]

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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 debtor, Tassanna Miles (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$7,616.70 delinquent in plan payments, with monthly plan payments of \$2,025.78. 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).

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.

73. [18-23927-E-13](#) **ROBERTO/ROWENA LOLENG** **MOTION TO DISMISS CASE**
[DPC-1](#) Jessica Dorn 6-3-20 [\[23\]](#)

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 Roberto and Rowena Loleng ("Debtors") are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$12,264.85 delinquent in plan payments, with monthly plan payments of \$4,122.26. 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 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.

74. [18-24928-E-13](#) **MARVIN/GINA DOMINGUEZ** **MOTION TO DISMISS CASE**
[DPC-3](#) **Mark Wolff** **6-3-20 [41]**

Final Ruling: No appearance at the July 1, 2020 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 June 24, 2020, Dckt. 48; 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 Marvin Antonio Dominguez and Gina Marie Dominguez (“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. 48, 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.

75. [18-25929-E-13](#) **JEFFREY YOUNG** **MOTION TO DISMISS CASE**
[DPC-2](#) **Chad Johnson** **6-3-20 [84]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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).

<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 Jeffrey Young ("Debtor") is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 26, 2020. Dckt. 96, 91. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 93. 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.

76. [19-21331-E-13](#) **GARY VASQUEZ** **MOTION TO DISMISS CASE**
[DPC-2](#) **David Foyil** **6-9-20 [76]**

Final Ruling: No appearance at July 1, 2020 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 June 3, 2020. 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.

<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 the debtor, Gary Joseph Vasquez ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$2,500.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

77. [19-25732-E-13](#) **RUDY/KAREN MENDEZ** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Thomas Amberg** **6-3-20 [45]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 the debtors, Rudy Delgaado Mendez and Karen Pancho Mendez (“Debtor”), are delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 8, 2020, indicating non-opposition as Debtor does not have the ability to cure delinquency or feasibly modify the plan. Dckt. 49.

DISCUSSION

Delinquent

Debtor is \$16,833.36 delinquent in plan payments, with monthly plan payments of \$4,373.06. 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 Debtor's own request to dismiss and the delinquency, 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.

Final Ruling: No appearance at July 1, 2020 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 June 1, 2020. 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). 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 debtors, Robin Arlene Harland and Thomas Scott Harland (“Debtor”), are in material default as the plan will not complete within 60 months.
2. Debtor is delinquent in plan payments.

DISCUSSION

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because according to Trustee’s calculations, the Plan will complete in 93 months as opposed to the 60 months proposed. The filed claims to be paid through the Plan were \$40,802.46 greater than scheduled. Section 6.04 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).

Delinquent

Debtor is \$9,220.08 delinquent in plan payments, with a last payment of \$600.00 posted May 14, 2020. 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 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.

Final Ruling: No appearance at July 1, 2020 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 June 3, 2020. 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.

<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 the debtors, Robin Arlene Harland and Thomas Scott Harland ("Debtor"), are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$9,220.08 delinquent in plan payments, with monthly plan payments of \$4,042.81. 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 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.

80. [18-22637-E-13](#) **KIMBERLY WILLIAMS-BRITO** **MOTION TO DISMISS CASE**
[DPC-1](#) **Peter Macaluso** **6-3-20 [24]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Kimberly Jeanette Williams-Brito (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 26, 2020. Dckt. 34, 31. The court has reviewed the Motion to Confirm the Modified 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.

81. [19-25843-E-13](#) **JERLINE WALLACE** **MOTION TO DISMISS CASE**
[DPC-3](#) **Peter Macaluso** **6-1-20 [106]**

Final Ruling: No appearance at the July 1, 2020 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 June 1, 2020. By the court’s calculation, 30 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:

1. the debtor, Jerline Linda Wallace (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 18, 2020. Dckts. 118, 115. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 117. 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.

82. [19-25745](#)-E-13 **GERALD/STATHIA SEARLES** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Mikalah Liviakis** **6-9-20 [36]**

Final Ruling: No appearance at July 1, 2020 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 June 3, 2020. 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.

<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 the debtors, Gerald Anthony Searles and Stathia Despina Searles (“Debtor”), are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$1,975.00 delinquent in plan payments, which represents multiple months of the

\$395.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

83. [18-26952-E-13](#) **ANTHONY/CANDIE SANDOVAL** **MOTION TO DISMISS CASE**
[DPC-2](#) **Steele Lanphier** **6-1-20 [67]**

Final Ruling: No appearance at the July 1, 2020 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 June 24, 2020, Dckt. 73; 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 reply filed by Anthony Adrian Sandoval and Candie Robin Sandoval (“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. 73, 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.

84. [19-23953-E-13](#) **GEORGE/ANH NGUYEN** **MOTION TO DISMISS CASE**
[DPC-1](#) **Mikalih Liviakis** **6-3-20 [19]**

Final Ruling: No appearance at July 1, 2020 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 June 3, 2020. 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.

<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, George Chieu Nguyen and Anh Lan Nguyen ("Debtor"), are delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$6,595.34 delinquent in plan payments, with monthly plan payments of \$3,187.04.

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 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.

85. [16-28154-E-13](#) **KEVIN BRIDGES** **MOTION TO DISMISS CASE**
[DPC-6](#) **Mark Wolff** **6-3-20 [76]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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, Kevin Brandon Bridges (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 24, 2020. Dckts. 83, 81. The

court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 85. 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.

86. [18-24856-E-13](#) **EVANGELINA CLARIZA** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **6-3-20 [91]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court's calculation, 28 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, Evangelina Gerales Clariza ("Debtor"), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 26, 2020. Dckt. 101, 99. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 102. 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.

87.	<u>19-21757-E-13</u> <u>DPC-1</u>	TROY MCDONALD Michael Hays	MOTION TO DISMISS CASE 6-3-20 [21]
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Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court's calculation, 28 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, Troy McDonald (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 24, 2020. Dckts. 30, 27. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 29. 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 July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Mark Haynes (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 11, 2020. Dckts. 50, 46. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 48. 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 July 1, 2020 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 June 3, 2020. 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.

<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 the debtor, Scott David Desper (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$9,381.82 delinquent in plan payments, with monthly plan payments in the amount of \$1,607.14. 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 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.

90. [19-25658-E-13](#) **JAY SMITH** **MOTION TO DISMISS CASE**
[DPC-3](#) **Robert Huckaby** **6-1-20 [70]**

Final Ruling: No appearance at July 1, 2020 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 June 1, 2020. 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). 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, Jay Andrew Smith (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$735.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 25, 2020. 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.

Final Ruling: No appearance at July 1, 2020 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 June 3, 2020. 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.

<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 the debtor, Stephen Joseph Williams ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$25,679.77 delinquent in plan payments, with monthly plan payments of \$4,297.11. 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 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.

92. [20-20059-E-13](#) **MARK/KAORI MONTGOMERY** **MOTION TO DISMISS CASE**
[DPC-2](#) **Thomas Moore** **6-3-20 [28]**

Final Ruling: No appearance at July 1, 2020 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 June 3, 2020. 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 debtors, Mark Montgomery and Kaori Montgomery (“Debtor”), are delinquent in plan payments.
2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$9,422.88 delinquent in plan payments, which represents multiple months of the \$4,550.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 10, 2020. 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.

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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.

<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 the debtors, Claudia Jenkins and Edward Riley Jenkins (“Debtor”), are delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 24, 2020. Dckts. 71, 67. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 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 July 1, 2020 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 June 3, 2020. By the court’s calculation, 28 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, Michael Schillaci (“Debtor”), is delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 25, 2020. Dckts. 54, 51. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 53. 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 July 1, 2020 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 June 1, 2020. By the court’s calculation, 30 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 debtors, Leonardo Merced Mercurio and Fely Duyanana Mercurio (“Debtor”), are delinquent in plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on June 26, 2020. Dckt. 111, 106. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 108. 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.

96. [19-27471](#)-E-13 **CAROLINE/KINGSLEY OBASEKI** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Peter Macaluso** **6-1-20 [46]**
WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 1, 2020 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.**

97. [20-20173](#)-E-13 **GERALD JOHNSON** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Gary Fraley** **6-1-20 [37]**
WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 1, 2020 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.**

Final Ruling: No appearance at the July 1, 2020 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 June 13, 2020. The court computes that 18 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 June 8, 2020.

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 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.

Final Ruling: No appearance at the July 1, 2020 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 14, 2020. The court computes that 48 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 7, 2020.

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 subsection 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.

Final Ruling: No appearance at the July 1, 2020 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 June 1, 2020. 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). 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, Aeron Lynnell Wallace (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file an amended plan after the prior proposed plan was denied.

DISCUSSION

Delinquent

Debtor is \$4,883.20 delinquent in plan payments, with monthly plan payments in the amount of \$1,361.71. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No Pending 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 February 4, 2020. A review of the docket 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).

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.

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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 debtor, Charles Gregory Jones (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$3,960.00 delinquent in plan payments, which represents multiple months of the \$990.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

102.	20-21381 -E-13	SAMUEL/CHRISTINA SEE Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-13-20 [27]
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Final Ruling: No appearance at the July 1, 2020 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, 2020. The court computes that 47 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 8, 2020.

<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 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.

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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 Agnes Beltran Dinorog's ("Debtor") Chapter 13 case. Debtor filed a Notice of Conversion on June 8, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 44. 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 8, 2020. *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.

104. [19-24682](#)-E-13 **ONRICKA HENDERSON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **6-3-20 [37]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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, Onricka Jermaine Henderson (“Debtor”), is delinquent in plan payments.
2. Debtor has not filed an amended Plan or Motion to Confirm after Debtor’s Plan was denied on January 2, 2020.

DISCUSSION

Delinquent

Debtor is \$2,400.00 delinquent in plan payments, which represents multiple months of the

\$400.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No Pending 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 14, 2020. A review of the docket 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).

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.

105.	<u>19-20187-E-13</u> <u>DPC-2</u>	SARAH WELLS Mark Shmorgon	MOTION TO DISMISS CASE 6-9-20 <u>[45]</u>
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Final Ruling: No appearance at the July 1, 2020 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 June 24, 2020, Dckt. 53; 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 Response filed by Sarah Wells ("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. 53, 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.

106. [18-20489-E-13](#) **DAVID SWEENEY AND STACY** **MOTION TO DISMISS CASE**
[DPC-4](#) **ADER-SWEENEY** **6-3-20 [86]**
 August Bullock

Final Ruling: No appearance at the July 1, 2020 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 June 23, 2020, Dckt. 94; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Opposition filed by David Sweeney and Stacy Ader-Sweeney (“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. 94, 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.

107. [19-27091-E-13](#) **MAISHA ANDERSON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Chad Johnson** **6-3-20 [55]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. By the court's calculation, 28 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.

<p>The Motion to Dismiss is denied without prejudice.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee") filed a Motion to Dismiss on June 3, 2020 because the debtor Maisha Nyota Anderson ("Debtor") is delinquent in plan payments and Debtor failed to file an Amended Plan and corresponding Motion after Debtor's Motion to Confirm was denied on March 13, 2020.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 2, 2020. Dckt. 48, 47. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 51. 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.

108. [19-24893-E-7](#) **RHIANNON NICHOLS** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Peter Macaluso** **6-3-20 [94]**

Final Ruling: No appearance at the July 1, 2020 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 June 3, 2020. 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.

<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, Rhiannon Winnoma Nichols (“Debtor”), is delinquent in plan payments.

2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$1,650.00 delinquent in plan payments, which represents one month of the \$1,650.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 10, 2020. A review of the docket 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).

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.

Final Ruling: No appearance at the July 1, 2020 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 June 24, 2020, Dckt. 45; 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 Response filed by Valentina Morgan (“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. 45, 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 July 1, 2020 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 June 1, 2020. 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 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 June 24, 2020, Dckt. 149; 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 reply filed by Christa Lynne Hylen ("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. 149, 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.