

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 5, 2020 at 9:00 a.m.

1.	<u>19-25202-E-13</u>	JACQUELINE NIXON	MOTION TO DISMISS CASE
	<u>DPC-3</u>	Allan Frumkin	7-21-20 <u>[75]</u>

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 21, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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

1. The debtor, Jacqueline Nixon ("Debtor"), is delinquent in plan payments.
2. No plan has been filed and set for confirmation.

DISCUSSION

Delinquent

Debtor is \$7,690.58 delinquent in plan payments, which represents multiple months of the \$1,922.93 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.

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 July 20, 2020. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

1. The debtor, Milton Perez ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$3,150.36 delinquent in plan payments, with monthly plan payments in the amount of \$1,575.18. 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.

3. 19-26410-E-13 **CHRISTOPHER FIGUEROA** **MOTION TO DISMISS CASE**
 DPC-1 **Gordon Bones** 7-15-20 [29]

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 July 15, 2020. By the court’s calculation, 21 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, Christopher Figueroa (“Debtor”), has failed to file an amended Plan and set it for confirmation.

2. Debtor has not filed all tax returns.
3. Debtor has failed to provide business documents.

DISCUSSION

No Pending Plan

The Trustee asserts that Debtor has not filed an amended Plan or a Motion to Confirm a Plan following the deadline for creditors to file claims. The Proofs of Claims filed include secured claims of \$204,370, \$25,200, and \$386,662; a priority unsecured claim of \$4,826; and general unsecured claims of \$176,000.

Debtor filed a Chapter 13 Plan on October 29, 2019, which was fourteen days after this case was commenced. It was not served on creditors by the BNC (Cert. Of Serv. Dckt. 16), the Debtor has not filed a motion to confirm, and no proposed order to confirm such plan was lodged with the court.

The Chapter 13 Plan, Dckt. 15, provides for the Debtor to make the following plan payments:

\$500.00 a month for the first 12 months

\$750.00 a month for the next 36 months

\$1,500.00 a month for the next 11 months

\$105,034.07 in the final month of the plan.

Plan, Additional Provisions, Dckt. 15 at 8. The Plan does not provide a mechanism for the Debtor making a \$105,034.07 payment in one month.

Nor does the Plan make any provision for paying any creditors. For the Class 1 Claims, Debtor states that there are \$0.00 in arrears on any claims and there are no post-petition monthly payments to be made on the three secured claims. Plan, ¶ 3.07(c); *Id.* at 3.

A Class 2 secured claim is stated to be in the amount of \$135,000, for which 0.00% interest is to be paid, and the Chapter 13 Trustee is to make a \$2,250.00 monthly plan payment to the creditor. Plan, ¶ 3.08(d). In no month does the Debtor propose to sufficiently fund the plan to make this payment - other than in the 60th month of the plan when Debtor is to make a \$105,034.07 payment.

For Class 4 secured claims, Debtor states that none will be paid. Plan, ¶ 3.10; *Id.* at 4.

Debtor lists \$147,237.36 in priority unsecured claims for Class 5 under the Plan. Plan, ¶ 3.12(c). Over sixty months, with no interest, this would require Debtor to fund the plan to make a \$2,453.95 a month payment on this priority claim.

For general unsecured claims, Debtor provides for making at least a 2% dividend on a stated \$168,985.35 in claims. Plan, ¶ 3.14; *Id.* at 5. This would require the Debtor to sufficiently fund the plan to make a monthly payment of \$57 for general unsecured claims.

Debtor's failure to prosecute confirmation of a Plan is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Further, the one Plan filed does not provide for payment of the claims.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2014-2018 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Six months of bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.
- E. Questionnaire.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. 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 Motion to Dismiss is granted, and the bankruptcy case is dismissed.

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.

August 5, 2020 Hearing

Nothing further has been filed by the Debtor since the Opposition on June 15, 2020.

Debtor's Opposition was that there was a delay in her receiving temporary disability checks, but Debtor assured the court in her declaration that this would be remedied because of her private insurance and she could perform the Plan. Declaration, Dckt. 43.

Debtor has not provided confirmation of her having received the insurance payments, having made the plan payments, or being able to perform the Plan.

Cause exists to dismiss this 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 filed by 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 is granted and this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 June 19, 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: \$75.00 due on June 12, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$75.00.

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.

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 July 15, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

1. The debtor, Michael Morris (“Debtor”), is delinquent on plan payments.
2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$25,398.82 delinquent in plan payments, with monthly plan payments of \$6,349.73. Before the hearing, another plan payment will be due. **Debtor has paid \$0.00 into the Plan to date.** 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.

7. [20-20920-E-13](#) **MICHAEL MORRIS**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-24-20 [105]**

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 June 26, 2020. The court computes that 40 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on June 19, 2020.

The Order to Show Cause is sustained, and the case is dismissed.
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The court’s docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$9.00 of the installment payments of \$77.00 due on May 20, 2020, and \$77.00 due on June 19, 2020, being unpaid after application of the \$145.00 payment made by Debtor on June 26, 2020.

At the hearing, **XXXXXXXXXX** .

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.~~

8. [18-28023-E-13](#) **ROBERT/PENELOPE CARNEGIE** **MOTION TO DISMISS CASE**
[DPC-1](#) **Gabriel Liberman** **7-7-20 [26]**

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

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 7, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<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, Robert Edward Carnegie and Penelope Sue Carnegie's ("Debtor"), plan will not complete within 60 months.
2. Debtor is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on July 21, 2020. Dckt. 30. Debtor states they have fallen behind in plan payments because of reduced income and increased expenses caused by the pandemic. Debtor's Declaration, Dckt. 31. Debtor states they intend to file a Motion to Confirm a Modified Plan and use the

CARES Act to extend the life of the plan beyond 60 months if necessary. *Id.*

DISCUSSION

Plan Exceeds Sixty Months

Debtor is in material default under the Plan because according to Trustee's calculations, the plan will complete in 72 months due to Class 5 Priority Claims coming in at \$16,764.47 greater than scheduled. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Delinquent

Debtor is \$1,345.72 delinquent in plan payments, which represents multiple months of the \$1,250.00 plan payment. 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.

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 XXXXXXXXXX.

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.

Debtor's Declaration

On July 29, 2020, Debtor filed a Declaration testifying that she has been financially affected by COVID-19 as she was furloughed and at the time she was to start new employment she was exposed to COVID-19 and is now on self quarantine. Dckt. 80, at ¶ 4. Debtor also asserts that she has been making partial payments to Trustee. *Id.*, at ¶ 5. Debtor requests additional time to file a new plan and start new employment; she will also continue making partial payments to Trustee. *Id.*, at ¶ 7.

August 5, 2020 Hearing

At the hearing, **XXXXXXXXXX**

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 filed by 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 is **XXXXXXXXXX**

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 1, 2020. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

<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, Paul Wilson and Jessica Lucia Mainvoille-Wilson (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on July 22, 2020 requesting the court deny Trustee’s Motion or continue the Motion to September 23, 2020. Dckt. 48. Debtor states a Proof of Claim filed by Shellpoint is inaccurate and Debtor is reviewing documents obtained through a Real Estate Settlement Procedures Act (RESPA) request to prepare an Objection to Claim. *Id.*, at ¶¶ 4-6. Debtor asserts that an amended plan will be filed and hearing once the objection to claim is heard. *Id.*, at ¶ 7. No Declaration from Debtor was filed providing evidence to support the claims herein.

DISCUSSION

Delinquent

Debtor is \$2,708.16 delinquent in plan payments, with monthly plan payments of \$1,738.52. 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).

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 22, 2020, Dckt. 40. Debtor subsequently filed a new Motion to Confirm and Amended Plan, (Dckts. 33, 31) but the Motion was withdrawn. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor appears to explain the delay in confirmation is the result of an attempt to object to a claim by Creditor Shellpoint before filing an amended Plan. Dckt. 48. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

While a delay in filing an amended plan may be justifiable, Debtor obviously fails to address the default in payments. This demonstrates an inability to prosecute a plan in this case.

At the hearing, **XXXXXXXXXX**

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 (*pro se*) and Office of the United States Trustee on July 1, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Helen Marie Cowan ("Debtor"), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

DEBTOR'S OPPOSITION

Trustee filed Debtor's Opposition pursuant to FRBP 5005(c) on July 24, 2020, which was sent directly to Trustee and not filed with the court. Dckt. 53. Debtor states she is disabled and does not understand why Trustee is bringing the instant Motion. *Id.*, at 2. Debtor admits she hit "a few bad patches" and is trying to fix them. *Id.* Debtor is worried about losing her home, and states she is "in this mess" because she cannot afford an attorney. *Id.*

TRUSTEE'S REPLY

Trustee filed a Reply on July 24, 2020, Dckt. 54. Trustee first restates the reasons for bringing the instant Motion to dismiss including why her previous plan was denied and the current delinquency. *Id.*, at ¶ 1. Trustee notes Debtor may be able to file a new case if dismissed but may need to ask for the automatic stay to extend beyond 30 days. *Id.* Furthermore, Trustee lays out what Debtor needs to do in order to avoid a dismissal:

- A. Debtor needs to appear at the hearing and explain to the court how she will correct the problems with her bankruptcy.
- B. Debtor must file and set an amended plan for hearing serving the necessary parties accompanied by a Declaration, and become current in plan payments.
- C. Debtor may be able to hire counsel who will accept payment through the plan.
- D. Debtor needs to address mortgage arrears in the amount of \$16,140.29 in the new plan or Trustee will object to confirmation.

Id., at ¶ 2.

DISCUSSION

Delinquent

Debtor is \$230.00 delinquent in plan payments, which represents less than one month of the \$240.00 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 11, 2020, Dckt. 37. 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).

A review of Debtor's Schedule I states that she is "not employed," but then states that Debtor has \$2,257.50 a month in "wage income." Dckt. 15 at 26-27. On Schedule J Debtor states that her income is from Social Security. *Id.* at 30.

Check Into Cash Inc. has filed Proof of Claim No. 5-1 asserting a secured claim in the amount of (\$3,984.61), for which Debtor's BMW is identified as the collateral.

In Debtor's Opposition she pleads that as a 77 year old disabled person, if she loses her home, she will be homeless. She requests the Trustee to help explain the process.

Proof of Claim No. 4-1 filed by NewRez, LLC is in the amount of (\$128,519.32), for which there is asserted to be a pre-petition arrearage of (\$16,140.29), and that the collateral for the obligation is Debtor's residence.

On Schedule A/B Debtor states that her residence is worth \$283,000, but her interest in it is worth only \$160,739. Dckt. 15 at 1. Debtor does not list any secured claims on Schedule D, nor any unsecured claims on Schedule E/F. It appears that the stating of Debtor's value on Schedule A/B is the

equity in the property in excess of the NewRez, LLC's claim secured by the property.

It is clear that Debtor has some substantial assets, including the \$100,000+ equity in the real property. However, it appears somewhat clear that Debtor is so deep in the financial hole that she will continue on a downward spiral in which she could lose the \$100,000+ equity through foreclosure.

Debtor, while able to function in light, may well need the assistance of Adult Protective Services or other community legal service group to obtain the necessary legal representation. It may be that Debtor cannot keep her home, but if she sells it and puts \$100,000+ in the bank, she can use her Social Security benefits to pay rent in a nice condo and use the \$100,000+ to supplement her expenses.

The \$100,000+ in equity can be used to pay reasonable and necessary attorney's fees and expenses so that Debtor does not lose the \$100,000+ in equity.

At the hearing, **XXXXXXXXXX**

Based on the foregoing, **XXXXXXXXXX**

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 **XXXXXXXXXX**.

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 denied without prejudice.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Roldan Biansat Sebedia ("Debtor"), is \$7,525 delinquent with monthly plan payments of \$2,925.00.

DEBTOR'S OPPOSITION

Debtor filed an Opposition June 17, 2020. Dckt. 87. Debtor states a modified plan will be filed prior to the hearing date.

DISCUSSION

Debtor is \$7,525.00 delinquent in plan payments, which represents multiple months of the \$2,925.00 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 Debtor reports that the modified plan and motion to confirm are ready to be filed. The Chapter 13 Trustee agreed to a continuance of the hearing to afford Debtor the opportunity to so prosecute this case.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 30, 2020. Dckt. 92, 96. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 94. 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.

13.	<u>17-25945</u> -E-13 <u>DPC-3</u>	HARRY/JOSEPHINE NASH Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 6-3-20 [109]
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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 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 XXXXXXXXXX .

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.

August 5, 2020 Hearing

Since requesting a continuance in the Opposition filed on June 17, 2020, nothing further has been filed by the Debtor. Debtor's Chapter 13 Plan in this case is to cure substantial arrearages on claims secured by two parcels of property. For at least one of the properties the Debtor believes there is a substantial equity of around \$500,000.

At the hearing **XXXXXXXXXX**

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 filed by 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 **XXXXXXXXXX**.

14. [18-25051](#)-E-13 **JUSTIN/CHRISTINA BORGES** **CONTINUED MOTION TO DISMISS**
[DPC-4](#) **Mikalah Liviakis** **CASE**
6-3-20 [\[52\]](#)

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 bankruptcy case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Justin David Borges and Christina Rene Borges ("Debtor"), are \$10,740.55 delinquent with a monthly plan payment of \$3,956.64.

DEBTOR'S RESPONSE

Debtor filed a Response on June 16, 2020. Dckt. 56. Debtor states Debtor's business slowed down due to the COVID-19 pandemic, and Debtor will cure the delinquency prior to the hearing date. Declaration, Dckt. 57.

DISCUSSION

Debtor delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, a promise to pay is not evidence that resolves the Motion. While Debtor has provided a declaration in opposition to the Motion, it provides a short statement of several conclusions and little factual testimony.

At the hearing counsel for the Trustee reported that Debtor tried to physically deliver a payment the morning of the hearing, but that due to COVID-19 restrictions, such payments cannot be made in person. The Trustee agreed to a continuance to allow for the payment to be transmitted via the USPS.

August 5, 2020 Hearing

Since the July 1, 2020 continued hearing, the Debtor has not filed any further pleadings or documentation of the payments as represented to be made.

At the hearing, **XXXXXXXXXX** .

~~Cause exists to dismiss 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 filed by 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 is ~~granted and the bankruptcy case is dismissed.~~

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

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 July 20, 2020. By the court's calculation, 16 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 debtor, Sergio Javier Aviles ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$32,607.87 delinquent in plan payments, with monthly plan payments of \$2,607.87. 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.

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 July 20, 2020. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

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

1. the debtor, Walter Lyle Fletscher ("Debtor"), has failed to file a new plan.
2. Debtor is not eligible due to exceeding the unsecured debt limit.

DISCUSSION

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following Debtor's withdrawal of the motion to confirm the latest amended plan on June 11, 2020. Dckt. 94. 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).

Over Unsecured Debt Limit

Debtor is over the unsecured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, unsecured debts” of less than \$419,275.00 may be a debtor under Chapter 13.

Here, Trustee believes that Debtor has not filed his schedules in good faith. Although Debtor scheduled \$587,015.00 of unsecured claims (\$287,015.00 of unsecured taxes and \$300,000.00 of other unsecured claims (Dckt. 1), Trustee’s calculations indicate that Debtor owes \$1,101,475.48 in unsecured debt.

Debtor scheduled three claims (Claim 4.1, 4.2 and 4.3) to the Internal Revenue Service (“IRS”) as general unsecured and “unknown” claims. Schedule E, Dckt. 1. These scheduled claims were identified as “income taxes” incurred in 2015, 2013, and 2010. However, the IRS filed a Proof of Claim on November 25, 2019 in the amount of \$715,178.62, indicating that taxes for these years were assessed on August 15, 2011; November 17, 2014; and November 21, 2016. Proof of Claim No. 2. Trustee believes that Debtor did not file his schedules in good faith as Debtor knew or should have known the amounts owed where the taxes were filed and assessed timely.

Additionally, Debtor also scheduled an “unknown” claim owing to Melissa Fletscher (Claim 4.5) described as an “Equalization payment” in the amount of \$250,000.00. However, Ms. Fletscher filed a Proof of Claim on February 13, 2020 in the amount of \$330,203.12 on the basis of a “Spousal Equalization Payment Agreement.” Proof of Claim No.7. Furthermore, as Ms. Fletscher has filed proof of claims (Claim Nos. 5-7) totaling over \$500,000.00 in Debtor’s previous bankruptcy case (Case No.16-20883), Trustee believes Debtor had no reason to schedule this debt as “unknown.” As such, Debtor is well over the unsecured debt limit to be eligible for a Chapter 13 case.

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.

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, Sharmagne L. Winbush ("Debtor"), is delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on June 17, 2020. Dckt. 54. Debtor states the delinquency occurred due to a medical surgery. Declaration, Dckt. 56. Debtor states she made a payment of \$2,200.00 to the Trustee on June 9, 2020, and the rest of the delinquency will be cured and a new plan filed prior to the hearing date.

DISCUSSION

Debtor is \$6,313.62 delinquent in plan payments, with a monthly plan payment of \$2,177.20. 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 Debtor having provided information about the payments being made to cure the arrearage, the Trustee agreed to a continuance of the hearing on this Motion.

August 5, 2020 Hearing

Though the court continued the July 1, 2020 hearing at the request of the Debtor and representations that a modified plan would be filed, as of the court's August 1, 2020 review of the Docket, nothing further (whether documenting cure payments or a new plan and motion to confirm) has been filed by Debtor.

Unfortunately, cause exists to dismiss this Chapter 13 case that has been pending now for more than 60 months.

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 filed by 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 is ~~granted, and the bankruptcy case is dismissed.~~

18.	<u>20-20474</u> -E-13 <u>DPC-2</u>	CHRISTOPHER MODELLAS Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 6-9-20 [39]
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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, 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.

Debtor's Supplemental Declaration

On July 29, 2020, Debtor filed a Supplemental Declaration declaring that he was affected by COVID-19 as he is a construction worker and at first his hours were reduced but now that work has resumed he requests additional time to become current. Dckt. 48, at ¶ 1. Debtor asserts that he has sent one payment and will send another by August 5, 2020. *Id.*, at ¶ 2. Debtor testifies that he did not receive unemployment benefits. *Id.*

August 5, 2020 Hearing

The court continued hearing from the July 1, 2020 prior date to August 5, 2020, thirty-six days later. In the July 29, 2020 filed Supplemental Declaration Debtor requests further time until August 5, 2020 to have everything current.

At the hearing, **XXXXXXXXXX**

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 filed by 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 is ~~granted, and the case is dismissed.~~

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 7, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Christopher G. McIntosh ("Debtor"), has failed to file a new plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 22, 2020. Dckt. 96. Debtor's counsel states that his ability to represent Debtor has been impacted by COVID-19 because he has had to devote additional time to his personal affairs. Furthermore, Debtor's counsel had dental surgery on July 1, 2020 and became "largely incapacitated for more than two weeks due to the side effects of medication." *Id.* Debtor's counsel requests for a few additional days to prosecute this case.

DISCUSSION

A review of the docket shows that Debtor has filed a Motion to Confirm a plan but is confirming a plan filed in February 23, 2020. Dckt. 78. Moreover, Debtor's accompanying Declaration

to the Motion to Confirm refers to a new plan set for hearing on April 28, 2020 and is dated February 22, 2020. Dckt. 106. The Declaration's cover page includes a new caption for the October 6, 2020 hearing, but the second page shows that this is a previously used Declaration. The Motion to Confirm that plan was denied by Judge Christopher Klein on May 1, 2020. Dckt. 89.

Unfortunately, the Debtor does not have a plan to present to the court for confirmation. The proposed Plan filed on February 23, 2020, has been denied confirmation. It is not the Debtor's prerogative to merely ignore orders of the court denying relief and repeatedly file motions requesting the relief that was denied.

Debtor's recycling efforts include merely using his Declaration from February 2020 for the plan that has been denied confirmation. Dckt. 106. In recycling the testimony that was given for the denied plan, the Debtor states that he is providing for the April 28, 2020 hearing (the hearing that confirmation was denied). Declaration ¶ 3; Dckt. 106.

It appears that the Debtor needs the "reset" of a dismissal and filing a new Chapter 13 case that he can seek to diligently prosecute. The case has languished since the April 2020 denial of confirmation. This inaction cannot be laid to Debtor's counsel July 2020 oral surgery.

Fortunately, the work of Debtor's counsel for the Motions to Value and Objection to Claim will not be wasted, as presumably if Debtor intends to prosecute his Chapter 13 case, they can be used for filing in his new 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 Motion to Dismiss is granted, and the bankruptcy case is dismissed.

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 ~~XXXXXXXXXX~~.

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.

August 5, 2020 Hearing

At the hearing, **XXXXXXXXXX**

FINAL RULINGS

21. [19-25501-E-13](#) [DPC-3](#) AGUSTIN HINOJOSA MOTION TO DISMISS CASE
Mark J. Hannon 7-8-20 [73]

Final Ruling: No appearance at the August 5, 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 July 8, 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:

1. The debtor, Agustin Hinojosa (“Debtor”), has no plan pending.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on July 28, 2020. Dckt. 79, 82. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 81. 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.

22.	<u>17-22405-E-13</u> <u>DPC-3</u>	JUAN/MARGUERITE RODRIGUEZ Mark Shmorgon	CONTINUED RE: MOTION TO DISMISS CASE 6-3-20 [<u>98</u>]
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Final Ruling: No appearance at the August 5, 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 July 29, 2020, Dckt. 107; 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 Juan and Marguerite Rodriguez (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue 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. 107, 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.

23. [19-21105](#)-E-13 **RAYMOND/HOPE HANNEMANN** **CONTINUED MOTION TO DISMISS**
[DPC-1](#) **Muoi Chea** **CASE**
6-9-20 [[50](#)]

Final Ruling: No appearance at the August 5, 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.**

24. [20-20806](#)-E-13 **MOHAMMED KHAN** **ORDER TO SHOW CAUSE - FAILURE**
Richard Jare **TO PAY FEES**
6-19-20 [[34](#)]

Final Ruling: No appearance at the August 5, 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 21, 2020. The court computes that 45 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: \$76.00 due on June 12, 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 August 5, 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 July 29, 2020, Dckt. 39; 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 Pedro Verduzco (“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. 39, 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 August 5, 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.

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, 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 become 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), 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.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 23, 2020. Dckt. 46, 49. 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 August 5, 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.

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

The Motion to Dismiss is denied without prejudice.

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

NOTICE OF DEBTOR'S DEATH AND MOTION FOR OMNIBUS RELIEF

Debtor's Successor in Interest, Shaun Howerton, filed a Notice of Death and Motion for Omnibus Relief upon Death of Debtor requesting the court order that further administration of the case is possible and in the best interest of the parties on the grounds that Debtor has paid \$41,150.00 to the Trustee to date; Successor in Interest has reviewed and signed a modified plan to continue the administration of the case; and so that the court waive section 1328 requirements. Dckt. 52. The hearing on the Omnibus Motion is set for August 25, 2020.

FILING OF MODIFIED PLAN

Debtor's proposed successor representative filed a Motion to Confirm on July 20, 2020 and Modified Plan on July 21, 2020. Dckt. 47, 58. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor's Successor. Dckt. 54. 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. The hearing on the Motion to Confirm is set for August 25, 2020.

The late Debtor had made substantial plan payments. The proposed successor representative is advancing a plan to allow this case to be completed. As shown from the pleadings, there are some extraordinary facts concerning this case and the passing of the Debtor.

At this juncture, the proposed representative appears to be working to prosecute this case. While some additional evidence as to how the Plan will be funded and the ability of those to fund the plan to make the payments (rather than merely filing a Supplemental Schedule I for a deceased Debtor), the parties efforts should be focused on that.

Debtor's proposed successor 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 August 5, 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 July 29, 2020, Dckt. 56; 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 Courtney Wilson (“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. 56, 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 August 5, 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 July 7, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<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, Mariaelena Arriaga and Gerardo Arriaga (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

DISCUSSION

Delinquent

Debtor is \$14,575.50 delinquent in plan payments, which represents multiple months of the \$4,858.50 plan payment. Before the hearing, another plan payment will be due. Debtor has paid \$24,292.50 into the Plan to date. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 23, 2020, Dckt. 21. 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 August 5, 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.

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, 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.

Counsel for the Debtor reported that the Plan has been prepared and the Motion will be filed shortly. The Trustee concurred in the request for a continuance.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 29, 2020. Dckt. 48, 52. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 50. 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 August 5, 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 July 29, 2020, Dckt. 34; 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 Tiazjanae Wilridge (“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. 34, 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 August 5, 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 20, 2020. The court computes that 46 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 15, 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 August 5, 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).

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 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.

FILING OF MODIFIED PLAN

Debtor filed a Motion to Confirm and a Modified Plan on June 30, 2020. Dckts. 192, 196. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 194. 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.

The Chapter 13 Trustee has filed an Opposition to the Motion to Confirm. Dckt. 200. The Opposition address some computational questions and financial "clarifications" that the Trustee believes needs to be made. It appears that such are addressable by the Debtor in working to continue in the prosecution of this three year old Chapter 13 case.

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 August 5, 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 July 29, 2020, Dckt. 44; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Cleotilde Garcia (“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. 44, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the August 5, 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.

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, Eufemio Ordonia Seguban and Liza Frani Seguban (“Debtor”), are delinquent \$4,225.00 with monthly plan payments of \$845.00.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 16, 2020. Dckt. 82. Debtor states the delinquency occurred due to an increase in rent and a loss of income resulting from COVID-19 pandemic and an emergency dental procedure. Declaration, Dckt. 83. Debtor represents Debtor will file a modified plan prior to the hearing date.

DISCUSSION

Debtor is \$4,225.00 delinquent in plan payments, which represents multiple months of the \$845.00 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 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 or default cured), 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.

FILING OF MODIFIED PLAN

Debtor filed a Motion to Confirm a Modified Plan and a Modified Plan on July 14, 2020. Dckts. 86, 89. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 90. 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 August 5, 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 an Ex Parte Motion to Dismiss the pending Motion on July 29, 2020, Dckt. 165; 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 Tena H. Robinson (“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. 165, 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 August 5, 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 July 7, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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 debtor, Lorell Ann Long (“Debtor”), is in material default as the plan will not complete within 60 months.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 31, 2020. Dckt. 25, 30. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 27. 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.

38. [15-23867](#)-E-13 **DIANA RUBIO** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Nikki Farris** **CASE**
6-3-20 [\[33\]](#)

Final Ruling: No appearance at the August 5, 2020 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on July 29, 2020, Dckt. 42; 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 Diana Rubio (“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. 42, 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.

39. [20-22570-E-13](#) DONALD/KATHLEEN LENIHAN ORDER TO SHOW CAUSE - FAILURE
Michael Hays TO PAY FEES
6-22-20 [\[38\]](#)

DEBTOR DISMISSED:

07/07/2020

JOINT DEBTOR DISMISSED:

07/07/2020

Final Ruling: No appearance at the August 5, 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 24, 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 fees in the amount of \$79.00 due on June 17, 2020.

<p>The Order to Show Cause is discharged as moot.</p>
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The court having dismissed this bankruptcy case by prior order filed on July 7, 2020 (Dckt. 51), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 as moot, and no sanctions are ordered.

Final Ruling: No appearance at the August 5, 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 July 11, 2020. The court computes that 25 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 July 6, 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 August 5, 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 July 29, 2020, Dckt. 252; 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 Boatamo Mosupyoe (“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. 252, 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 August 5, 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 July 8, 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.

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, and the bankruptcy case shall proceed in this court.

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

DEBTOR’S OPPOSITION

Debtor filed an Opposition on July 22, 2020. Dckt. 63. Debtor states an amended plan will be filed prior to the hearing date. *Id.*, ¶ 3.

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 May 12, 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).

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

Proposed Plan and Motion
Filed July 31, 2020

Debtor filed an amended Plan on July 31, 2020. A summary review of the Motion to Confirm (Dckt. 65) and Declaration in support (Dckt. 67) appear to be consistent with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides specific testimony, not merely the Debtor's personal findings and conclusions.

Based on the amended plan having been filed and the Debtor appearing to be actively prosecuting the case, the court denies the Motion 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 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 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 August 5, 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 July 7, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<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 debtors, Kirk Byron Lossius and Michelle Monique Lossius (“Debtor”), are delinquent in plan payments.
2. Debtors have failed to file a new plan.

DISCUSSION

Delinquent

Debtors are \$27,000.00 delinquent in plan payments, which represents multiple months of the \$5,400.00 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 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 7, 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.